
(1875) 06 CAL CK 0001

Calcutta High Court

Case No: Appeal No. 1 of 1875

Kala Bibi

APPELLANT

Vs

The Collector of
Chittagong

RESPONDENT

Date of Decision: June 23, 1875

Judgement

Macpherson, Officiating C.J.

1. In this case I think that the conclusion at which Markby, J., has arrived is right. The tenure, with reference to which the question arises, was in existence before the Collector took charge, having been created before the death of the proprietor to whom the minor, whose estates are now in charge of the Court of Wards, succeeded as heir. It is clear, according to the ordinary principles of justice and equity, that the position of the tenant ought not to be in any way damnified or altered by the simple fact that the present proprietor is a minor, unless the law expressly says that it shall be so. The question is whether the law does expressly declare anything of the kind. It seems to me that it does not. The section on which the Collector relies, viz., s. 75 of Beng. Act IV of 1870 refers only to farmers and others holding tenures "direct from the Collector." The tenure, the subject of salt cannot in my opinion, be said to be held "direct from the Collector" seeing that it was in existence before the Collector even had charge of the estate. Markby, J., was right in reading s. 75 as applying only to tenures created by the Collector during the time that the estate has been in the hands of the Court of Wards. A tenure created by the Collector would no doubt be held direct from him: and being so created there would be nothing inequitable in applying to it the provisions of s. 75.

2. The last clause of the section shows that the construction which I adopt is right. That clause declares--"when the farm is held from the manager, these rules, &c., shall not apply." The distinction thus drawn between farms "held from the manager" and farms "held direct from the Collector" proves that the whole section was meant to apply exclusively to farms and tenures created during the management of the Court of Wards. For the intervention of a manager between the farmer and the Collector would not, in the

case of a farm created before the Court of Wards took charge, cause the farm to be either more or less directly held under the Collector, nor would it be any reason why one set of rules, &c., should be applicable rather than another, though it would be- otherwise in the case of farms created under the management of the Court of Wards by the Collector and by a manager respectively.

3. S. 75 evidently takes the place in the new Act of the second clause of s. 3 of Regulation VI of 1822. The first clause of s. 3 may be found reproduced with modifications in s. 9 and other sections of Beng. Act IV of 1870. But reading the two parts of s. 3, Regulation VI of 1822 together, it cannot be doubted that they both of them applied only to farms and other tenures created under the Court of Wards. That this was so strengthens as in the view we now take of the effect of s. 75. I therefore think that this appeal should be dismissed, and that the decision of Markby, J., should be affirmed.