

(1867) 02 CAL CK 0001

Calcutta High Court

Case No: Special Appeals Nos. 2100 to 2104 of 1864

R.W. Scott and Others

APPELLANT

Vs

Hurronath Roy and Others

RESPONDENT

Date of Decision: Feb. 26, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

The plaintiff in this case sued in the Backergunge Court for the recovery of certain lands, and the defendant objected that the lands in question were not in the district of Backergunge. By s. 5 of Act VIII of 1859, the Court has jurisdiction if the land is situate within the limits to which the jurisdiction of the Court extends. Under s. 14 the Court had power, before it proceeded to try the suit, to enquire and determine whether the lands were in Backergunge or not. The proviso to that section is as follows:--"Provided that, if it is shown that the land in dispute has been adjudged by competent authority to belong to an estate, village or other known division of land situate within the local jurisdiction of another Court, the Court in which the suit is brought shall reject the plaint, or return it to the plaintiff in order to its being presented in the proper Court" This seems to amount to no more than that if, on the presentation of the plaint, the Court should find that the question has been already determined by any authority competent to try and decide it, the Court should reject the plaint or return it for the purpose of being presented in the proper Court.

2. It cannot be said that either the decision of the Magistrate under Act IV of 1840, which found that the defendant was in possession of those lands, or the award of the surveyor, was a decision by a competent authority. Neither the Magistrate nor the Superintendent of Survey had power to determine the question conclusively. In order rightly to apprehend the meaning and object of the proviso it should be compared with s. 2.

3. Two cases were cited: Shamkanto Lahoree Chowdhry v. Hurish Chunder Chowdhry 2 Hay's Rep., 485 as to which we need only observe that the rejection of a plaint under s. 14 cannot give jurisdiction to a Court which does not otherwise

possess it; and Hurronath Roy v. Anund Chunder Roy 1 W.R., 329, which is similar to the present case.

4. The point is a very clear one, and the papers must be sent back to the Divisional Court with an expression of our opinion that the lower Court had the power to try whether the lands were in Backergunge or not. The above order applies to Special Appeals, Nos. 2101, 2102, 2103, and 2104 of 1864.