
(1872) 02 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 633 of 1871

Brajanath Kundu
Chowdhary and Others

APPELLANT

Vs

Lowther

RESPONDENT

Date of Decision: Feb. 9, 1872

Judgement

E. Jackson, J.

We think that this case must be remanded to the Judge. As I understand the Judge's judgment, he has refused to try this case, because he states that it was instituted under Act VIII of 1869 (B.C.), and that Act VIII of 1869 (B.C.) is not applicable to lands used for building purposes. I understand that to be the whole of his judgment, and that he will not try the case, and does not go into the evidence in the case, because the suit is improperly brought under Act VIII of 1869 (B.C.) It seems to me that under s. 33, Act VIII of 1869 (B.C.), jurisdiction is given to the Civil Courts in all cases which were formerly brought under Act X of 1859; and, as regards all cases which did not fall within Act X of 1859, the jurisdiction of the Civil Courts still remain as it was before. The meaning of passing this law of 1869, or at all events one of the reasons of the Legislature for enacting that law was to put an end to a great extent to collision and to the difficulties which arose in ascertaining the jurisdiction between the two Courts, Revenue and Civil. This suit having been brought in the Civil Court, the question can be determined whether the plaintiff is entitled to enhance the defendant's rent or not. It is true, as argued by the pleader for the respondent, that a notice was served under Act X of 1859, but this seems to us to be immaterial. It was quite proper that a demand should be made in some way, and the notice, whether given in the form prescribed by Act X of 1859 or any other form is a sufficient demand for the enhanced rate. The plaintiff having brought his suit, it remains then for the Civil Court to decide whether he is entitled to what he demands from the defendant. The Court will have to look into the grounds upon which the demand is made, whether they are sufficient grounds, and whether sufficient evidence have been given of the existence of those grounds, and to decide whether the plaintiff is entitled to enhance the defendant's rent or not. We set aside the decision of the Judge, and remand the case

to be tried. The costs of this appeal to be costs in the suit.

Mitter, J.

2. I am of the same opinion. I do not see any reason why this suit should not have been tried as a suit under Act VIII of 1869 (B.C.) The rent claimed is alleged to be due on account of land, and it makes no difference whether the lease was originally granted for building purposes, or whether the land is situated in part of a town. S. 23, Act X of 1859, distinctly says that all suits for arrears of rent due on account of land shall be brought in the Collectors Court and nowhere else; and as the jurisdiction of the Collector has been transferred to the Civil Court, there seems to be no reason whatever why the suit should not be tried by that Court, when it is perfectly clear, that the plaintiff is suing for the rent of the land, and not for that of the buildings which admittedly belong to the defendant. I have already expressed my opinion on this point at some length in a case *Rani Durga Sundari Dasi v. Bibi Umdatannissa*, ante, 101 which recently came before me, and I do not therefore wish to say anything further.