
(1870) 02 CAL CK 0011

Calcutta High Court

Case No: Special Appeals Nos. 555 and 775 of 1869

Dwarkanath Biswas
and Another

APPELLANT

Vs

The Collector of Bogra

RESPONDENT

Date of Decision: Feb. 18, 1870

Judgement

Sir C.P. Hobhouse, Bart, J.

The facts of this case are very simple. One Peari Mohan, the proprietor of a certain tenure, died intestate. His property came under the jurisdiction of the Civil Court, under the provisions of Regulation V of 1799, and Regulation V of 1827. Under the provisions of section 5, Regulation V of 1799, and section 3 of Regulation V of 1827, the Collector of the district was appointed to take charge of the estate. It became than the Collector's duty to take the management of it as directed in the Regulations quoted. He did take and hold that management from August 1864 (Bhadra 1271) up to May 1868 (Jaishta 1275). During that period he collected the assets of the estate, and held them in his possession. Forty-five rupees of those assets, it is found by the Court below, he appropriated to the payment of Govern meat revenue due from the estate, and the balance of the assets he paid into Court under the following circumstances. A certain person got a decree against the estate of Peari Mohan. In execution of that decree, the decree-holder attached the assets of the estate in the hands of the Collector, under orders of the Court having jurisdiction to execute the decree. The Collector paid over the assets into Court in satisfaction of the decree, less the sum of 45 rupees which I have mentioned above.

2. Under these circumstances, the plaintiff now cornea into Court and avers that he is the superior landlord of the tenure which belonged to Peari Mohan, and that certain rents are due to him for that tenure from the years 1268 to 1273 (1861 to 1866), and be claims to recover those rents from the Collector, on the averment that the Collector standing in the place of Peari Mohan is his tenant, and is liable for the said arrears.

3. The suit is instituted under the provisions of Act X of 1859. It is quite clear that if any such suit could lie under the provisions of the said Act, it would, as it is admitted by the

pleader for the respondent, lie only for the rents due from and after the year 1271 (1864). But further, it seems to us that the Collector in this instance cannot, in any sense, be said to have been the tenant of the plaintiff; and that as there was no jurisdiction in the Revenue Courts, nor consequently in the lower appellate Court, to entertain this suit at all. By the provisions of section 5, Regulation V of 1799, the Court, in the case of a person dying intestate, is authorized to appoint an administrator for the due care and management of such estate, and such administrator is to give a full and just account of all receipts and disbursements during the period of administration. By the provisions of this section the Courts were formerly entitled to appoint any person to be the administrator in question, but by section 3, Regulation V of 1827, the power given to the Courts by the previous Regulation was so far modified, that it was declared that the Collector of land revenue should be the person to be appointed the administrator in question. When, therefore, in this instance the Collector of land revenue was appointed to be the administrator to the estate of Peari Mohan, it is obvious that he was simply an administrator responsible as such to give an account of his receipts and disbursements, and nothing more. The words of the Act imply exactly this, and no more; and it would be manifestly and obviously unjust to expect anything more.

4. The Judge below considers that the Collector is in part liable, because, as he puts it, having knowledge at the time that the zemindar's rent was due," the should perhaps on the evidence rather have said claimed "), the Collector ought not, in his opinion, to have remitted all the moneys belonging to the estate to the Civil Court, but should have reserved enough to meet the zemindar's claim for rent." The Judge remarks that the fact of the Collector's reply to the Principal Sudder Ameen shows that he did keep back a sum of 45 rupees for Government revenue, and the Judge thinks that it was equally his duty to have kept back a certain other amount to meet the zemindar's claim for rent. The answer to this seems to be that when the Collector, who after all was nothing more than the administrator, was directed by the Civil Court to pay in the moneys he had collected on account of that estate, his duty would rather seem to have been to pay in the whole he had collected and to have reserved nothing. No inference, therefore, we think can be drawn from the fact that the Collector kept back a certain sum of money, which perhaps in duty and strictness he ought not to have kept back at all. But whether that is so or not, the fact remains that the Collector could not, in our opinion, in this instance, be said to be in any sense the tenant of the plaintiff, the zemindar; and this being so, whether or not that zemindar has any other remedy against the Collector, it remains at least, that he has not the remedy which he has endeavoured in this suit to follow out.

5. We reverse the judgment of the lower appellate Court, and affirm the judgment of the first Court, dismissing the plaintiff's suit. It is admitted by the pleaders in special appeal, No. 775 of 1869, that this case must follow the decision given in special appeal No. 555 of 1869. This appeal No. 775 must be dismissed, and with costs, but as the objection now taken before us in special appeal No. 555 was not taken before, we think that in this last-named special appeal each party must bear his own costs in all the Courts.