

**(1868) 07 CAL CK 0009**

**Calcutta High Court**

**Case No:** Special Appeal No. 3078 of 1867

Madhab Chandra Pal

APPELLANT

Vs

A. Hills

RESPONDENT

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**Date of Decision:** July 23, 1868

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### **Judgement**

Phear, J.

We think the Principal Sudder Ameen is wrong in holding that the Civil Court had no jurisdiction to entertain the subject of the suit. Section 27, Act X of 1859, gives to the transferee of a permanent transferable interest in land the right to have his name registered in the sherista of the zamindar in the place of that of his vendor; and every zamindar is by the same section required to admit to registry and otherwise give effect to all such transfers when made in good faith. There can be no doubt that if the section stopped there the transferee would be entitled to come into a Civil Court to enforce the right if necessary, which the section gives him. But the section goes on to say that if any zamindar refuses to admit to registry, and soon, the transferee may make applications the Collector, and the Collector shall enquire into the case and pass the requisite orders. The Principal Sudder Ameen is of opinion that these words have the effect of giving jurisdiction to the Collector, and to the Collector exclusively, to entertain the question of right arising under this section; and has upon that ground dismissed the plaintiffs suit. But the first section of the CPC enacts that the Civil Courts should take cognizance of all suits of a civil nature with the exception of suits of which their cognizance is barred by any Act of Parliament, &c. Now the right given by Section 27 is, undoubtedly, a right of a civil nature; and, therefore, the Civil Courts have cognizance of all suits necessary for the purpose of enforcing such a right, unless that cognizance is barred expressly. But the words of Section 27 which give power to the Collector to entertain suits of this kind, and to determine them, do not bar the jurisdiction of the Civil Courts, in this respect differing from other parts of Act X as for instance Section 23, in which exclusive jurisdiction is in certain cases given to the Collector, and agreeing with sections of the same Act in which the jurisdiction to be given to the Collector, is not

exclusive but concurrent. We think therefore, that the decision of the Principal Sudder Ameen must be reversed, and as the Principal Sudder Ameen has found all the facts necessary for a determination of the case in favour of the plaintiff, we direct that the plaintiff's suit be decreed. The plaintiff must have his costs both in this Court and in the Lower Appellate Court.

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<sup>1</sup>[Sec. 27:--All dependent talookdars and other persons possessing a permanent transferable interest in land intermediate between the zamindar and the cultivator are required to register, in the Sheriseh of the zamindar or superior tenant to whom the rents of the talooks or tenures are payable, all transfers of such talooks or tenures, or portions of them, by sale gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zamindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions. If any zamindar or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act, and if no sufficient grounds are shown for the refusal, shall pass an order enjoining the zamindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession. Provided that no zamindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zamindar or superior tenant.]

Registry of transfers of talooks, etc.

Proviso.

<sup>2</sup>[Sec. 1:--The Civil Courts shall take cognizance of all suits of a civil nature, with the exception of suits of which their cognizance is barred by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, and Bombay respectively, or by any Act of the Governor-General of India in Council.]

Civil Courts have cognizance of all suits unless specially barred.