(1866) 02 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 2293 of 1865

Dinanath Bose		APPELLANT
	Vs	
Kali Kumar Roy		RESPONDENT

Date of Decision: Feb. 1, 1866

Judgement

Sir Barnes Peacock, Kt., C.J., Bayley, Pundit and Macpherson, JJ.

The question in this case depends upon the proper construction of the proviso to s. 77 Act X of 1859. The words are:-- "Provided always that the decision of the Collector'' shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of his decision." The question is whether the word decision means the decision of the Collector, or the final decision in the suit, if an appeal is preferred. It appears to us that it means the final decision in the suit. By s. 23 it was enacted that suits for arrears of rent should be tried by the Collectors of laud and except by way of appeal should not be cognizable in any other Court. The proviso in s. 77 was to prevent decisions in trials under the Act from being final, or barring a suit to the right to the rent between the plaintiff and the intervenor. When the Legislature spoke of the decisions of the Collector, doubtless they intended to include decisions in appeal from those decisions. By s. 150 it was enacted that:-- "All the powers vested in the Collector by the preceding sections of this Act may be exercised by any Deputy Collector in cases referred to him by a Collector, and in all cases without such reference, by any Deputy Collector placed in charge of any sub-division of a district; and all applications and reports allowed or required by this Act to be made to the Collector may be made to any Deputy Collector having such local jurisdiction." S. 150 was repealed by Bengal Act VI of 1862 and was re-enacted with slight alterations by s. 19. But this does not make any difference with reference to the point now under consideration. S. 155 of Act X of 1859 says:-- "When any such suit as aforesaid, in which, if tried and decided by a Collector, the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy lie to the Collector."

2. Now if a person were to sue for arrears of rent under Rs. 100, the decision of the Collector would be final; but if tried by a Deputy Collector, there would be an appeal to the Collector. Suppose the question had arisen in a suit under Rs. 100 tried by a Deputy Collector, would the year be reckoned from the date of the decision of the Deputy Collector or from the date of the decision of the Collector? If it is from the decision of the Collector, it dates from the decision in appeal; but if from the decision of the Deputy Collector, it would date from the decision of the original Court. It appears to us that, in such a case as that it would come strictly within the words "the decision of the Collector." Then it would be from the decision of the Appellate Court; and if from the decision of the Appellate Court, does not that show, that in the case of an appeal from the decision by a Collector in the first instance to a Judge, the Act meant that the period should date from the decision of the Appellate Court. It appears to us that the decision meant was the final decision in the case. The party in whose favor the decision of the Court of first instance is given would have no ground to appeal against it, but if the period of one year is to be reckoned from the date of the decision of the Collector, as in cases appealable to the Judges, the party in whose favor the decision of the first Court was given would be too late to establish his right to such in the Civil Court, if, on appeal by his opponent, the case should be determined against him by the Judge after the expiration of a year from the date of the decision of the Court of first instance.

3. We think that the words of the Legislature must receive a reasonable construction, and that the right of either party who may have a legal title to the rent to establish his title by a suit in the Civil Court is not barred or affected by the decision of the Court of first instance or of the Court of Appeal, if the suit is in the Civil Court instituted within one year of the decision against him.

Seton-Karr, J.

I only wish, in addition to what the learned Chief Justice has said, to state that this point does not come before me now for the first time. In one of the decisions cited by the Judges who have referred the case, I decided on the purely technical and grammatical construction of s. 77, that the limitation must be reckoned from the decision of the Collector, Neenaye Joogy v. Assurooddeen Mahomed 4 W.R., Act X Rul., 21. But subsequently, in another case, sitting with Macpherson, J., I reconsidered that opinion, and thought, in accordance with the ruling of Pundit and Phear, JJ., that the limit ought to run from the date of the decision of the second Court, and I hold that opinion on full consideration of the subject, whether the decision of the first Revenue Court be favorable or adverse to the plaintiff who has to seek his remedy afterwards in the Civil Court. This seems to me the only way of avoiding certain inconsistencies and of removing the difficulties which the lower Court would feel in applying the law of limitation under this section if the literal text of this section were insisted on. Sometimes the appeal in Act X lies to the Collector from the Deputy Collector, sometimes from the Collector to the Judge, and

sometimes from the Collector to the High Court. If we insist on the grammatical and literal interpretation of s. 77, discrepancies and difficulties must arise; the fair way of meeting them and of interpreting the section is to rule, that in all cases the limitation should run from the date of the decision of the second, or the Appellate Court.

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(1)As to the repeal Act X of 1859 and Act VI of 1862 (B.C.), see Act VIII of 1869 (B.C.) s. 107