

(1863) 08 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 2313 of 1862

Gourmonee Goopto

APPELLANT

Vs

Mudun Mohan Roy

RESPONDENT

Date of Decision: Aug. 21, 1863

Judgement

Sir Barnes Peacock, Kt., C.J.

In this case the landlord sued in the regular Civil Court to eject a tenant, after the expiration of an ijara. The defendant set up that the suit could not be brought in the Civil Court, but that the case fell within section 25, Act X of 1859, and ought to have been brought before the Collector. It is not now suggested by the tenant, or by his vakeel, that the case comes within section 23 of that Act. But it is put simply as one falling u/s 25, and it is contended that if a landlord wishes to eject a tenant upon the ground that, his lease has expired, he must apply to the Collector for assistance, u/s 25, and cannot sue in a Civil Court. A Full Bench of this Court has already determined in Phillip v. Shibnath Moitra Ante, p. 21 that an application to the Collector u/s 25 is not a suit, and that the order of the Collector in such a case is not one from which an appeal lies to the Civil Court; but that the application is a mere summary application to the Collector to give assistance under circumstances under which, according to the old law, the landlord might have ejected the tenant without resort to the Courts of Judicature. There was nothing in the old law to prevent a landlord from going to the Civil Court for redress, instead of taking the law into his own hands. In like manner, it is clear that section 25, Act X of 1859, does not preclude the zamindar or other person from asserting his rights in the regular Civil Courts, instead of applying to the Collector for assistance. Section 23, Act X of 1859, takes away the right of suing in any other Court than that of the Collector, for causes of action made cognizable by the Collector; but section 25 contains no such provision. If it had been intended to take away the right of suing in the Civil Courts, the provisions of section 25 might have been incorporated with section 23. The other points have been determined by the Court which has referred only this point for the opinion of the Full Bench; and this point having been determined against the appellant, the appeal

is dismissed with costs and interest at 12 per cent.