(1868) 07 CAL CK 0016

Calcutta High Court

Case No: Special Appeal No. of 1868

Srihari Mandal		APPELLANT
	Vs	
Jadunath Ghose		RESPONDENT

Date of Decision: July 16, 1868

Judgement

L.S. Jackson, J.

It has been argued before us, that there was no fair trial as to the original rate of rent paid by the defendant, the defendant having, with regard to the trial of that issue, been taken by surprise. The question is one in which, after some consideration, we think that the appeal ought to prevail. The directions as to the mode of trial and framing of issues under Act X are somewhat different from those prescribed by the Civil Procedure Code. Act X appears to contemplate suits before the Collector of two categories, one in which the question at issue is of an extremely simple kind, capable of being decided upon the evidence adduced in the first instance, and where the Collector can give judgment at once. In such cases, after hearing the evidence, and without the framing of any formal issue, the Collector is able to pass a decree. But Section 65 provides (reads[2]) It seems to us, therefore, that when the Collector finds that there is a point on which the parties are at issue, and on which further evidence will be required, his duty is not only to frame such issue, but to fix a convenient day for the trial of that issue, regard being had to the facilities which the parties may have for producing their evidence. It would clearly not be fair, and not in accordance with the provision of that section, for the Collector having first framed certain issues, and having examined the parties or their witnesses, in connection with those issues, suddenly, upon the last day of trial, to frame a new issue of fact, demanding proof on either side, of which the parties had no notice, and as to which, consequently, they could not be prepared with their evidence. It is impossible for us to say, as the matter comes before us in special appeal, whether the defendant, who appeals, could have produced further evidence, or no. It is sufficient for the purposes of this appeal to say, that possibly he might have been able to do so; and as the plaintiff can be, in nowise, prejudiced by affording the defendant an opportunity of producing that evidence, and as the defendant might be seriously prejudiced by not being afforded such

opportunity, we think it right to set aside the decision of the Lower Appellate Court, and to remand the case, in order that the defendant may have the opportunity of producing evidence to show what the rate which was formerly paid by him may. have been, and of course the plaintiff will, also, be at liberty to produce any further evidence which he may think necessary.

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[1][Sec. 65:--If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such and shall fix a convenient day for the examination of witnesses and the trial of the suit, and the trial shall take place on that day unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.]

If necessary, Collector to record and to fix a day for hearing fur(sic) evidence.

[2]Act X of 1869, s. 65:-- ï¿½If on such examination as aforesaid, it appears that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses, and the trial of the suit; and the trial shall take place on that day, unless there he sufficient reason for adjourning it, which reason shall be recorded by the Collector."