
(1870) 08 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 151 of 1870

Maharaja Dhiraj
Mahatab Chand
Bahadur

APPELLANT

Vs

Makund Ballabh Bose
and Others

RESPONDENT

Date of Decision: Aug. 18, 1870

Judgement

E. Jackson, J.

This was a suit for arrears of rent. The question before both the lower Courts seems to have been whether the jurisdiction to try the suit was in the Civil Court, or was in the Revenue Court. Both the lower Courts have come to the conclusion that the jurisdiction was with the Revenue Court, and have dismissed the suit of the plaintiff from bearing in the Civil Court. On special appeal to us, it is argued that this decision is wrong, and that the jurisdiction at the time this suit was preferred was in the Civil Court. It would not have been necessary to try this point now, as, whether the Jurisdiction was in the one Court or the other, the jurisdiction is now in the Civil Court: but as the question has been pressed upon us in connexion with the matter at costs, it becomes necessary to decide whether, at the time this suit was put in, it was entertainable in the Civil Court or not.

2. The mehals leased appear to consist of two large bazars in the town of Burdwan. One of them is the Chandee bazar, close to the Maharajah's palace. The kabuliath is put in From the kabuliath, it is quite clear that not only is the land leased, but also the buildings in the bazar are leased"

3. The rent which is assessed does not issue only out of the land, but also out of the buildings; and, in fact, in the case of a bazar like this, it must issue principally out of the buildings.

4. One case which was quoted by the respondents' vakeel before us, in order to fortify his argument, is directly against him, namely, the decision in the case of Tariney Prasad

Ghose v. The Bengal Indigo Co. That was a case in which the land had been leased for certain indigo manufacturing purposes. Factories had subsequently been built upon the land, and a suit regarding rent had been brought, and it was attempted to be contended that, as factories were situated upon the land, the suit could not be brought in the Revenue Courts; but was held that, as the lease was not for the factory, but only for the land, the suit would lie in the Revenue Courts. Had, however, the lease been for the factory, as well as the land, the suit could not have been preferred in the Revenue Court. The decision is directly against the argument of the respondents' pleader. I quite concur in that decision, and I understand that that decision has been followed generally in this Court for some years past. The rent which is demanded in this case not being solely for the land, but also for the buildings, it appears to me that the suit does not lie in the Revenue Court, and that the lower Courts are wrong in deciding to that effect. The decision of the lower Courts must be set aside, and the case must be remanded to the first Court for trial. The respondent must pay the costs of all the Courts.