(1954) 01 CAL CK 0026

Calcutta High Court

Case No: Appeals from Appellate Decrees No''s. 264 and 265 of 1948

Kshirode Narain Bhunia		APPELLANT
	Vs	
Tamiruddin Sheik		RESPONDENT

Date of Decision: Jan. 27, 1954

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 103A, 103A(2), 104A, 104A(2), 104G

Citation: (1956) 1 ILR (Cal) 444

Hon'ble Judges: Mitter, J; Lahiri, J

Bench: Division Bench

Advocate: Sitaram Banerjee, Hemendra Chandra Sen, Abinash Chandra Ghose, Saroj Kumar Maity and Nirmal Chandra Sen, for the Appellant;Provat Kumar Sen Gupta in Appeal No. 264 and Bhabesh Chandra Mitter in Appeal No. 265, for the Respondent

Final Decision: Allowed

Judgement

Lahiri, J.

These two appeals are at the instance of Defendant No. 1 Kshirode Warain Bhunia and they arise out of two suits instituted by the Plaintiffs for a declaration of their accupancy right under the lotdar Bankim Chandra Chakravartty Defendant No. 2 and for confirmation, or in the alternative, for recovery, of possession of certain lands in the Sundarban area, is the series of transactions by which the Plaintiffs acquired their title to the land in dispute are not challenged before us, it unnecessary to recite them in detail.

2. Broadly stated, the Plaintiffs'' case in both the suits is that they are occupancy ruiydts in respect of the lands in dispute which are situate in a temporarily settled estate; that sometime in the year 1930 the embankments surrounding the lands were swept away by high floods on account of the failure of the lotdar, Bankim Chandra Chakravartty to keep them in proper repairs with the result that the entire area was flooded with saline water rendering it unfit for cultivation and the Plaintiffs

had to leave the lands against their wishes without any intention of abandoning their rights; that sometime in 1935-36 the Plaintiffs came back and started repairing the embankments and began cultivation after 2 or 3 years; that during the last provisional settlement operation Defendant No. 1 asserted that he had taken settlement of the lands from the lotdar on the footing that the lands were it his khas possession, although in point of fact the Plaintiffs has never abandoned their holdings; that at the time of the provisional survey the names of the Plaintiffs were recorded as tenants by the settlement officer but Defendant No. 1 took an appeal against the decision of the settlement officer and the Director of Land Records, by an order, dated May 15, 1948, reversed the order on the settlement officer, holding, inter alia, that Defendant No. was the tenant under the lotdar and that the Plaintiffs has abandoned their holdings and directed that the name o Defendant No. 1 should be recorded as a tenant under the lotdar that the decision of the Director of Land Records which was illegal and without jurisdiction had cast a cloud upon the Plaintiffs'' title for which the Plaintiffs instituted the two suit for the reliefs mentioned above.

3. Second Appeal No. 264 of 1948 arises out of Title Suit No. 8 of 1944 which was instituted on October 23, 1944 and second appeal No. 265 of 1948 arises out of Title Suit No. 87 of 194 which was instituted on November 4, 1944.

4. Both the suits were contested by Defendant No. 1. Him defence in both the suits, so far as is material for the purpose of the present appeals was that the suits were barred by the provisions of Section 104J of the Bengal Tenancy Act; that they were also barred under Article 3, Schedule III of the Bengal Tenancy Act and the special rule of limitation u/s 104H of the Act; that the suits were bad for non-joinder, because the old lotdar Bankin Chandra Chakravartty had parted with his interest in favour of his daughter Sudha Rani Debi before the revisional survey and although the name of Sudharani Debi had been recorded in the finally published record of rights, she had not been impleaded a a Defendant; that the Plaintiffs had abandoned their holding and accordingly the lotdar had every right to settle the land with Defendant No. 1 which he did by a patta, dated May 27 1936; and that after taking settlement from the lotddr defencdant No. 1 started reclaiming the lands repairing the embankments cutting down jungles, erecting kutchery ghars and by actuacultivation.

5. Both the suits were dismissed by the Subordinate Judge who tried them by two decrees but those were reversed by the Extra Additional District Judge by two decrees from which Defendant No. 1 now appeals.

6. Mr. Banerjee, appearing in support of the appeals, has argued, in the first place, that the suits are barred u/s 104J of the Bengal Tenancy Act. To appreciate this point, it is necessary to state certain undisputed facts.

7. At the commencement of the revenue settlement operations in respect of the disputed lands, the Plaintiffs claimed that they were in possession of the disputed lands as occupancy raiyats and that their interest had not been extinguished on account of their temporary absence due to inundation by saline water. This claim was resisted by Defendant No. 1 on the strength of the potta which he had obtained from the lotdar Bankim Chandra Chakravartty on May, 27, 1936.

8. In a proceeding u/s 103A of the Bengal Tenancy Act the revenue officer disallowed the Plaintiffs'' claim and in the record of rights which was finally published u/s 103A(2) the name of Defendant No. 1 was shown as the tenant in possession. The Plaintiffs then filed an objection u/s 104E of the Bengal Tenancy Act and the revenue officer upheld their objection, with the result that the names of the Plaintiffs were recorded as tenants. Against the order of the revenue officer u/s 104E of the Bengal Tenancy Act, Defendant No. 1 filed an appeal to the Director of Land Records and that officer, by an order, dated May 15, 1943, allowed the appeal and directed that the name of Defendant No. 1 should be recorded as the tenant upon a finding that the Plaintiffs had abandoned their tenancy and that Defendant No. 1 had acquired a valid title on the strength of the patta, dated May 27, 1936, and that Defendant No. 1 was in possession on the strength of this patta. The order of the Director of land Records is Ex. E. and it was made in the presence of the Plaintiffs, Defendant No. 1 and Sudharani Debi who had acquired the interest of lotdar Bankim Chandra Chakravarty.

9. Mr. Bannerjee argues that it was" the duty of the Plaintiffs to institute a suit u/s 104H of the Bengal Tenancy Act within, a period of six months from the date of the final publication of the record of rights and as the Plaintiffs failed to do that, the entry in the record of rights become conclusive u/s 104J of the Bengal Tenancy Act. This argument was accepted by the trial court but rejected by the court of appeal below. In support of his contention Mr. Banerjee has relied upon the decision of the Privy Council in the case of Kumar Chandra Singh Dudhoria v. Midnapore Zemindary Company, Ltd. (1941) 46 C.W.N. 802. Prior to this decision it was held by this Court, following a series of previous decisions, that only the entry as the amount of rent fixed by the revenue officer became conclusive u/s 104J of the Bengal Tenancy Act. The question whether the tenant was actually liable to pay the rent thus fixed on account of a previous contract between him and the holder of the estate was not within the scope of the enquiry of the revenue officer under Sections 104A to 104G of the. Bengal Tenancy Act and no suit u/s 104H would be necessary if the tenant asserted that in spite of the rent fixed being fair and equitable, the landlord had no right to realise it by reason of a previous contract. In other words, the revenue officer in fixing a fair and equitable rent under Part II of Chapter X of the Bengal Tenancy Act had jurisdiction to determine the same in an ideal sense and he had no jurisdiction to decide whether the landlord had a right to realise it. This view was over-ruled by the Privy Council which held that u/s 104A to 104F of the Bengal Tenancy Act the revenue officer had jurisdiction not only to determine the amount

of rent in an ideal sense but also to determine the question of liability. This case is an authority for the proposition that if between the recorded landlord and the recorded tenant a dispute arises on the question whether the tenant is liable to pay rent at the contractual rate, or at the rate entered in the record of rights prepared under Part II of Chap. X of the Bengal Tenancy Act, the tenant is bound to pay at the rate entered in the record of rights in" the absence of a suit u/s 104H of the Bengal Tenancy Act.

10. In the appeals before us, however, the facts are entirely different. In these appeals there is no dispute as to the amount of rent and the Plaintiffs have also not been recorded as tenants and so far as the record of rights is concerned, they are complete strangers. The present Plaintiffs cannot in any sense be said to 1 be persons who are "aggrieved by an entry of a rent settled in a "settlement roll or by an omission to settle a rent" within the meaning of Section 104H of the Bengal Tenancy Act. Their only grievance is that they should have been recorded as tenants under the lotdar in the place of Defendant No. 1. Such a suit, in our opinion, does not fall within the scope of Section 104H of the Bengal Tenancy Act. Reliance was placed by the Appellant upon the provisions of Section 104A(2) of the Bengal Tenancy Act which requires that the settlement roll should show the name of each landlord and each tenant whose rent has been settled; but the decision by the settlement officer on every point cannot be the subject-matter of a suit u/s 104H of the Bengal Tenancy Act. A suit for a declaration that the name of the; tenant has been wrongly recorded in the record of rights is not; suit u/s 104H of the Bengal Tenancy Act. The conclusive presumption u/s 104J attaches only to "rents settled ""under Sections 104A to 104G in respect of which a suit could have ""been instituted u/s 104H". As the suits out of which the present appeals arise cannot, in our opinion, be said to be suits relating to an entry of rent, or an omission to settle a rent, the conclusive presumption u/s 104J is not available to Defendant No. 1. We are accordingly of the opinion that the decision of the Judicial Committee in the case of Kumar Chandra Singh Dudhoria v. Midnapore Zemindary Company. Ltd., (1) does not apply to the facts of these appeals and the present suits ire not barred u/s 104H or Section 104J of the Bengal Tenancy Act. We ought to mention that Mr. Sen Gupta for the Respondents invited our attention to the decision of the Supreme Court in the case of Aukland Jute Company Ltd. v. TuhichandrU Goswami (1950) S.C. (C.W.N.) 17. In that case the rent was assessed upon a diara land by the revenue authorities purporting to act u/s 9 of Regulation VII of 1822 and Section 2 of Act XXXI of 1858 and it was decided that the provisions of the Bengal Tenancy Act were not applicable. A Division Bench of this Court held that the provisions of Regulation VII of 1822 regarding appeal to Board and the rights of suit are in pare material with the provisions in Part II, Chap. X of the Bengal Tenancy Act and the consequences of not availing oneself of those provisions must be the same. This view was negative by the Supreme Court which pointed out the distinction between the provisions of Regulation VII and those of Part II, Chap. X. In our opinion, this decision is no

authority with regard to the interpretation, of the relevant provisions contained in Part II, Chap. X of the Bengal Tenancy Act. Moreover, in this case also the dispute was between the recorded and lord and the recorded tenant as to the amount of rent payable by the latter. We are, accordingly, of the opinion that his decision does not assist the Respondents. But for the reasons which we have already given we cannot accept-the first point leased by the Appellant. If, as we have already held, Sections 104H and 104J of the Bengal Tenancy Act stand out of their way, the Plaintiffs have the undoubted right of bringing the present suits under the proviso to Section 111A of the Bengal Tenancy Act.

11. The second point raised by Mr. Banerjee in support of the appeals is that the suits are bad for the non-joinder of Sudharani Devi who had acquired the interest of lotdar Bankim Chandra Chakravarty sometime before the commencement of the revisonal survey operations and whose name had been recorded as the lotda''r in the record-of-rights prepared under Part II, Chap. X. of the Bengal Tenancy Act. It appears that though Jus point was specifically raised by Defendant No. 1 in his written statement, the Plaintiffs allowed the suits to proceed against the old lotdar who was imp leaded as Defendant No. 2 in both the suits. The court of first instance upheld this plea on Defendant No. 1 and adopted this as one of the reasons for dismissing the suits, but unfortunately the court of appeal below has reversed the decision of the first court without even adverting to this point. We have, therefore, to consider whether the declaration asked for by the Plaintiffs can be granted in the absence of the present lotddr Sudharani Devi.

12. I have already stated that the Director of Land Record made his order, dated May 15, 1943, in the presence on Sudharani Devi and it appears that her name has been recorded as the lotdar in the provisional record-of-rights with Defendant No. 1 as her tenant. She will, therefore, have the undoubted right of suing Defendant No. 1 for rent and will not be bound by the decision in these suits as she is no party thereto. On the other hand, if the Plaintiffs are granted decrees for recovery on possession on declaration of their title against Defendant No. and Bankim Chandra Chakravartty, Defendant No. 1 will for ever be precluded from possessing the land. In other words, Defendant ant No. l''s liability for rent to Sudharani Devi will continu although his right to possess the land will be barred. This is the anomaly which will result if the Plaintiffs succeed in getting declaration of their title in the absence of the present lotdar an in the presence of the old lotdar.

13. Mr. Sen Gupta, appearing for the Respondents, made a determined attempt to get out of this difficult position by arguing that neither the present lotdar nor the old lotdar is a necessary party to the suits and that the old lotdar Bankim Chandi Chakravartty was unnecessarily impleaded as Defendant No. Having regard to the fact that the Plaintiffs proceeded with the suits with Bankim Chandra Chakravartty as a necessary part in the two courts below, it is hardly open to them to argue in the third court that he is not a necessary party. But apart from this, having regard to the

frame of the suits and the allegation made in the plaints, we are of the opinion that the lotdar is necessary party in these suits. In the plaints, the Plaintiff alleged that Defendant No. 1 took settlement by an alleged patta dated May 27, 1936 and succeeded in getting an erroneous order from the Director of Land Records on the basis of the said patta but the occupancy rights of the Plaintiffs had not in any was been affected by that patta. The object of the suits is evident to get rid of the claim asserted by Defendant No. 1 on the strength of the patta granted by the lotdar. In this view of to matter the old lotdar was impleaded in both the suits Defendant No. 2, so that the Plaintiffs might get an effective declaration in his presence. We, accordingly, hold that the lotdar is a necessary party to these suits.

14. Mr. Sen Gupta relied upon a decision of this Court in the case of Sabirer Ma and Others Vs. Behari Mohan Pal and Others, , in support of the proposition that in a suit for declaration of a tenancy right the landlord is not a necessary party. The case cited, however, only lays down that in a suit for a declaration of the right of pasturage the superior landlord is not a necessary party in the absence of any allegation against him. In the present appeals, as I have already pointed out, the Plaintiffs were making an attempt to get rid of the claim made by Defendant No. 1 on the strength of a patta obtained by him from the landlord. In that view of the matter the case cited by Mr. Sen Gupta does not really help him. It is possible to conceive of cases where the landlord is not a necessary party in a suit for declaration of a tenancy right; for example, where a person asks for a declaration of tenancy right on the ground of wrongful dispossession by a trespasser without majoring any reference to any act of the landlord. But where, as here, the object of the suit is to nullify the effect of a lease granted by the landlord to the Defendant, and where the landlord has been actually imp leaded on that footing, the principle of the decision in the case of Sabirer Ma and Others Vs. Behari Mohan Pal and Others, cannot apply. I have already pointed out the anomaly that will result in the event of the Plaintiffs'' success in the absence of the present lotdar. The question, therefore, is whether in view of that anomaly we shall be justified in granting the declaration in favour of the Plaintiffs. It is a well settled proposition of law that the grant of a declaratory decree is in the discretion of the court and that the court will not be justified in granting a declaration if it has the effect of creating anomalies, or leading to multiplicity of suits. We have, accordingly, reached the conclusion that we shall not be justified in granting the declaration asked for by the Plaintiffs in the absence of the present lotdar Sudharani Devi.

15. The third point urged by Mr. Banerjee for the Appellant is that these suits are barred by the special rule of limitation under Schedule III, Article 3, of the Bengal Tenancy Act. It is urged that the Plaintiffs were dispossessed by the lotdar through the instrumentality of Defendant No. 1 by creating a lease in his favour on May 27, 1936, and as the present suits were instituted in 1944, beyond two years from the date of the pdtad, the suits are barred under the special rule of limitation of two years under Schedule III, Article 3, of the Bengal Tenancy Act. On this point also, the

courts below differed in their conclusions, but we are bound by the findings of fact arrived at by the lower appellate court. The findings of fact arrived at by the lower appellate court are to the effect that in 1937 Defendant No. 1, after obtaining the lease from the lotdar, began to construct embankments and gradually began to reclaim the land by cutting jungles and that Defendant No. 1 began to possess the land at least from 1938. The further findings is to the effect that the Plaintiffs were in constructive possession till 1936-37; that Defendant No. 1 did not drive out the Plaintiffs from the disputed land; that Defendant No. 1 came into possession of the disputed land which remained fallow; and that there was, therefore, no real dispossession of the Plaintiffs. In the plaints, however, the Plaintiffs allege that the disputed land remained under saline water for about 3 or 4 years from 1930 on account of the failure of the lotdar to keep the embankments in proper repairs, for which reason the Plaintiffs had to leave the land, and they approached Defendant No. 2 to repair the embankments. But as he failed to do it, the Plaintiffs came back towards the end of 1342 B.S. (corresponding to the beginning of 1936) and started reconstructing the embankments and cutting jungles and thereafter started actual cultivation. On their own showing therefore the Plaintiffs were in actual possession from the beginning of 1936. In coming to the conclusion that the Plaintiffs were in constructive possession till 1936-37, the learned Additional District Judge evidently overlooked this part of the Plaintiffs'' case. The Plaintiffs are bound by the statements made in their plaint and we must, therefore, hold that the Plaintiffs were in actual possession from the beginning of 1936. If, therefore, Defendant No. 1, acting on the strength of his lease started re-constructing the embankments and cutting jungles from 1937 and began possessing the land at least from 1938, it is difficult to resist the conclusion that the possession of Defendant No. 1 amounted to an actual dispossession of the Plaintiffs and not merely to a constructive dispossession, as held by the learned Additional District Judge. Upon the findings arrived at by the learned Additional District Judge read with the Plaintiffs'' case as made in their plaints, we hold that the Plaintiffs were actually dispossessed by Defendant No. 1 at least from 1938 and the suits having been brought in 1944 are barred under Schedule III, Article 3 of the Bengal Tenancy act, if that article applies to the facts of these cases.

15. In the case of Abdul Latif v. Hamed Gazi (1933) 38 C.W.N, 61, it was held that dispossession of a tenant by the lessee of the landlord would be equivalent to dispossession by the landlord within the meaning of Article 3 of Schedule. III. The recitals of the pdttd granted by the lotdar on May 27, 1936, which is Ex. A, also shows that the lotdar was authorising Defendant No. 1 to go upon the land and take possession of it as the old tenants had left without making arrangement for the payment of rent and had become ferari Although the decision in the case of Abdul Latif v. Hamed Gazi was given by a Single Judge, we respectfully agree with the principle enunciated therein and applying this principle we hold that the dispossession by Defendant no, 1 on the basis of the patta Ex. A is equivalent to

dispossession by the landlord. We must, therefore, hold that the suits are barred by the special rule of limitation of two years under Schedule III, Article 3 of the Bengal Tenancy Act.

17. The fourth point raised on behalf of the Appellant is that the Plaintiffs lost their title by abandonment. It is argued that upon the facts admitted and proved it should be held that the Plaintiffs had abandoned their holdings and that the lotdar had acquired a right to settle the land with, Defendant No. 1, which he did by the pdtad Ex. A. It is an admitted fact that the Plaintiffs were in possession till 1930 when the embankment was washed away by high floods. As the land was inundated in 1930, the Plaintiffs left the land and removed to a place which is at a distance of 20 miles from the abad. It is further admitted that the Plaintiffs left the land without making any arrangement for payment of rent. It is also admitted that between 1930 and the beginning of 1936 the land remained subject to periodical tidal inundation on account of the breaches in the embankment. The only controversy between the parties is with regard to the question whether the action of the Plaintiffs in leaving the abad without making any arrangement for the payment of rent was voluntary or involuntary. On this point, as with regard to other points, the courts below arrived at different conclusions. The trial court held that the Plaintiffs left the land voluntarily, whereas the appellate court held that they left involuntarily. For a solution of this question both the courts below embarked upon an enquiry as to whether the lotdar was liable to keep the embankment in repairs and whether he was liable to reconstruct it after it had been washed away by the floods of 1930. The Plaintiffs'' case in the plaints is to the effect that it was the lotdar who was responsible for the repair and maintenance of the embankments, and as he failed or neglected to perform his duty, the Plaintiffs were compelled to leave the and against their wishes the trial court points out that the pattas, exs. 1 and 1-A, granted in favour of the Plaintiffs'' predecessor, do not contain any provision as to the liability of the lotdar, whereas the appellate court holds that these pattas do not throw the liability on the tenants. The documentary evidence adduced by the parties is, therefore, inconclusive. We have, therefore, to examine the surrounding circumstances to arrive at a finding on this point. The trial court'' relies upon the fact that one Hem Naskar who was a tenant of the adjoining abad himself repaired the embankments, but the appellate court holds that since the lease of Hem Naskar is not on the record, no conclusion can be based upon it. We think the appellate court was not right in brushing aside this fact on account of the absence of Hem Naskar''s lease. When the documentary evidence on the record is inconclusive, the court is justified in enquiring into the conduct of the tenants of the disputed abaci as well as of neighbouring abads for the purpose of arriving at a correct conclusion. In the plaints, the Plaintiffs admit that when they returned to the abad in the beginning of 1936, some of the tenants of the abad, along with Makbarali, the Plaintiffs'' predecessor-in-interest, started repairing the embankments, as the lotdar failed to do so. It has also been found that Defendant No. 1, after getting his patta. from the

lotdar, began to repair the embankments in 1936 although there is no provision in his patta, Ex. A, throwing the liability on him. From these facts it can be reasonably inferred that the liability for the repair of the embankment was on the tenants and not on the lotdar. The appellate court holds that the evidence on the Plaintiffs'' side shows that according to the terms of the leases the lessor was bound to repair the bundh. The leases in favour of the Plaintiffs'' predecessor are exs. 1 and 1A. They, however, do not contain''any such term. If that be so, it is difficult to realise how oral evidence was admissible to add to the terms of the leases. We have, therefore, no hesitation in setting aside the finding as it is based on inadmissible evidence. The result of the foregoing discussion is that the Plaintiffs cannot be said to have been compelled to leave the land on account of any inaction on the part of the lotdar against their wishes and that they left the land voluntarily in 1930.

18. Assuming, however, that it was the lotdar''s legal duty to maintain and repair the bundh, it is to be noticed that the Plaintiffs have signally failed to prove that they made any attempt to enforce this legal liability of the lotdar between the period of 1930 and 1936. There is-no finding and no evidence worth the name to show that the Plaintiffs ever approached the lotdar, or took any steps under the Bengal Embankments Act to compel him to repair the embankment. If the Plaintiffs had the intention to return to the abad after they had left it in 1930 and if they thought that it was the lotdar''s duty to repair the bundh, it is reasonable to expect that the Plaintiff should take some steps to compel the lotdar to do his duty, but nothing was done. Moreover, there is neither any allegation nor any proof to the effect that the Plaintiffs made any offer of rent to the lotdar after they began actually possessing the land on their return in the beginning of 1936. From these circumstances the conclusion is irresistible that when the Plaintiffs left the abad in 1930, they had no intention to return to it. This inference is also borned out by the recitals in the patta, Ex. A, in which the lotddr states that the recorded tenants had left the land since 1336 (corresponding to 1929-30) and that they had not exercised any act of possession, nor made any arrangement for the payment of rent since that time, and from those facts he was led to believe that those tenants had become ferari ( ). The literal meaning of the Bengali expression ( ) ferdri is intraceable, but in the context in which that expression is used n that patta we think, differing from the lower appellate court ihat by that expression the lotdar intended to mean that the old tenants had abandoned their holdings; otherwise he could not assert his right of granting a new settlement to Defendant No. 1. The question of abandonment is an inference of law from proved facts and it depends upon the intention of the tenants to be gathered from proved and admitted facts. It is true that mere turn-payment of rent does not constitute abandonment, but non-payment of rent coupled with failure to take any steps to bring lie land under cultivation for a long period which is found to be six or seven years in the present appeals, does: Mr. Sen Gupta appearing for the Respondents pointed out that the landlord did not comply with the requirements of Section 87 of the Bengal Tenancy Act. But it is well settled that

Section 87 is not exhaustive and it does aot prescribe the only mode in which the holding can be treated is having been abandoned.

19. Upon a consideration of all the facts and circumstances numerated above, we agree with the trial court that the old lenants abandoned their holdings and the lower appellate court was wrong in coming to a different conclusion. The fourth point irgued for the Appellant must accordingly succeed.

20. We ought to mention that Mr. Banerjee also faintly argued that the decision of the Director of Land Records, Ex. E, operates is res judicata in the present suit and relied upon the decision of the Supreme Court in the case of Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, for this purpose. We find it impossible to five effect to this argument for a variety of reasons. Apart from the fact that this question was not raised in any of the courts below, with the result that the Plaintiffs had no opportunity of easting whether the parties to the present suits were also parties to the appeal before the Director of Land Records, the Plaintiffs have a statutory right u/s 111A of the Bengal Tenancy Act to challenge the entry in the record of rights prepared on the basis of the decision of the Director of Land Records. The Director of Land Records cannot accordingly be said to have an exclusive jurisdiction to determine the question raised before him. We have, therefore, no hesitation in rejecting this last contention raised on behalf of the Appellants.

21. For the reasons given above, these appeals must be allowed; the judgments and decrees of the lower appellate court must be set aside and the decrees of the court of first instance restored with costs in all the courts.

Mitter, J.

22. I agree.