

(1930) 11 CAL CK 0021

Calcutta High Court

Case No: None

Bishnupur Municipality

APPELLANT

Vs

Sarat Chandra Chaudhuri

RESPONDENT

Date of Decision: Nov. 14, 1930

Acts Referred:

- Bengal Municipal Act, 1932 - Section 29

Citation: AIR 1931 Cal 804

Hon'ble Judges: Mallik, J

Bench: Division Bench

Judgement

Mallik, J.

This rule is directed against an order passed by the learned Small Cause Court Judge of Bishnupur by which he dismissed "the petitioner's suit for recovery of arrears of municipal tax. The ground on which the learned Judge dismissed the petitioner's suit was that the suit had not been properly framed inasmuch as the suit had been framed in contravention of the provisions of Section 29, Bengal Municipal Act, and there-had been an amalgamation of two holdings in respect of which the arrears had been claimed in the suit.

2. On behalf of the petitioner it was first of all contended that if there had been any violation of the provisions of Section 29, Bengal Municipal Act it was only a clerical mistake and the suit ought not to have been dismissed on that ground. It appears that the suit was instituted in the name of the Bishnupur Municipality and not in the name of the Chairman on behalf of that Municipality as enjoined by Section 29. It appears also that the plaint was signed and verified by one Hem Chandra Kar who described himself as the Chairman of the Bishnupur Municipality. It was contended on these facts that if in the title of the plaint Bishnupur Municipality was written as the plaintiff instead of Hem Chandra Kar, the Chairman of the Bishnupur Municipality, it was nothing but a clerical error pure and simple. But this contention that it is nothing but a clerical error comes, in my opinion, too late in the day. The

record shows that an objection was taken by the defendant in his defence on the ground that the frame of the suit was defective, and the admitted defect in the frame of the suit must have been brought to the notice of the petitioner. But the petitioner and for the matter of that, any officer of the Bishnupur Municipality appears to have taken no notice of the defect pointed out or to have taken any steps to rectify the mistake which it is alleged now before me was nothing but a. clerical error, The learned Small Cause Court Judge held the suit to have been improperly framed on another ground and that ground was that the suit had been brought in respect of the tax of two distinct and separate holdings which were not contiguous. The learned advocate for the petitioner contended that although the suit was in respect of two holdings, namely, holding No. 831, and holding No. 838, no tax has, as a matter of fact, been claimed for one of these two holdings, namely, holding No. 831. The plaintiff however, does not show that nothing was claimed in respect of the holding No. 831. In this connexion, my attention was drawn by the learned advocate for the petitioner to some evidence in the case, the evidence of the tax daroga of the Bishnupur Municipality. This witness no doubt says that there had been remission of the tax on holding No. 831, but his evidence does not show that the tax on holding No. 831 had been remitted for the whole period in respect of which the arrears had been claimed. The two grounds which the learned Small Cause Court Judge held that the suit had not been properly framed cannot in my opinion, be successfully met. The result is that the rule is discharged with costs hearing fee one (sic).