

(1912) 08 CAL CK 0049

Calcutta High Court

Case No: None

Bhabangana Debya

APPELLANT

Vs

Harendra Narain Roy and Others

RESPONDENT

Date of Decision: Aug. 2, 1912**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 98(4)

Citation: 16 Ind. Cas. 48**Hon'ble Judges:** Sharf-un-dun, J; Coxe, J**Bench:** Division Bench

Judgement

1. This is a Rule calling upon the opposite party to show cause why the orders, dated the 1st and the 22nd May 1912, should not be set aside on the ground that they were made without jurisdiction and that the first order was made without notice to the petitioner.

2. The following are the facts of the case: One Chandra Kanta Lahiri and others were co-Owners of a patni, called Taraf Chupri. Under the Bengal Tenancy Act, a common manager was appointed by the District Judge as there existed a dispute among the co-owners as to the management of this patni estate, which was likely to cause injury to private rights. Sometime after the appointment of this common manager, Chandra Kanta Lahiri died leaving a Will under which the present petitioner, who is his widow, obtained one-and-a-half annas share in the taluk. Nalini Kanta Lahiri, a son of the deceased, was appointed executor under the Will and as such he obtained Probate thereof, after which he used to receive rents from the common manager due on account of the "petitioner, his mother, who again used to receive her share of the rent from the executor, her son. It seems that this arrangement went on satisfactorily for sometime, when there arose a difference between the petitioner and her son and as a result of this difference, it is said that her son began to appropriate her share of the rent, and on an application to the District Judge, the common manager was directed to stop payment of the petitioner's share of the

rent to him.

3. In 1909, the common manager resigned and another was appointed by the District Judge on the nomination of Nalini.

4. Sometime after the appointment of the new common manager, Nalini died. On his death an application was made by the petitioner to the District Judge in which she prayed that as the executor had died, the common manager should in future be directed to make payment of her share of the rent direct to her. It is then alleged that on the order of the District Judge the common manager paid some money to her.

5. We now came to the facts which have given rise to the present Rule.

6. On the 1st of May 1912, Sarat Kamini Debya and Surja Kamal Bhattacharjee made an application to the District Judge in which they alleged that they were the executors of the last Will of Nalini Kanta Lahiri and said that the rents and profits of Taraf Chupri be not in future made over to the present petitioner and that the former order, that the petitioner's share of the rents and profits be made over to her, be cancelled. The District Judge, without issuing any notice to the petitioner, passed an ex parte order in terms of this application and directed that the rents and profits of the petitioner's share be kept in deposit with the common manager, until the petitioner's title to the share claimed by her be established by a competent Court. On the above order having been passed, the present petitioner applied to the District Judge for a cancellation of that order, but her application was rejected after a hearing on the 22nd of May 1912.

7. The petitioner obtained this Rule from this Court against the orders of the 1st and 22nd May 1912 and the grounds urged on her behalf are:

(1) That the District Judge had no jurisdiction to make an order on the common manager to accumulate the rents and profits without making an order for their distribution.

(2) That the District Judge acted without jurisdiction in allowing the question of the ownership of the petitioner to be raised in the present proceedings.

(3) That a common manager can be appointed only when there happens to be a dispute between the co-owners of an estate or tenure as to the management thereof, and that the only dispute being as to the title of the petitioner, the provisions of the section of the Bengal Tenancy Act, dealing with the appointment of a common manager, had no application, and that the common managership having terminated on the death of Chandra Kanta Lahiri, the orders of the District Judge were ultra vires.

8. The executors of the Will of Nalini dispute the title of the petitioner under the Will of her husband and the validity of the Will. Obtaining Probate of a Will means

nothing more than that the Will was executed by the testator. Whether the testator had power to make the Will and whether the dispositions under the Will were valid or not, are questions beyond the Probate proceedings, to was only after the death of Nalini that the question of the validity of the Will of Chandra Kanta Lahiri cropped up, because it is now alleged by the opposite party that under the Will of her husband the present petitioner was a benamidar for her son, Nalini. That being now the allegation, the co-ownership of the petitioner becomes a question in dispute. This can only be decided when a competent Court declares that she is not a benamidar of her son and that she, in her own right, is entitled to receive rents and profits to the extent of her alleged share in the taluk. Then the question arises, what order should be passed with regard to that share of the rent which the petitioner claims under the Will?

9. u/s 98, Clause (4), of the Bengal Tenancy Act, a common manager is required to deal with and distribute the prints in accordance with the orders of the District Judge. The petitioner's title being disputed, the common manager cannot and ought not to be compelled to make over a share in the collection of rents to a party whose interest and title as a co-owner are disputed. Under the same section, a common manager is subject to the control of the District Judge The District Judge has passed the two orders complained of. The question is whether he could pass those orders. We are of opinion that, inasmuch as the question of the co-ownership of the petitioner has yet to be decided by a competent Court, the District Judge not only had full jurisdiction to direct the common manager to retain the disputed share of the rent in his hands, but it was the only possible course to adopt so long as the common manager remained in charge and so long as a competent Court had not adjudicated upon the title of the petitioner. The question, whether on the death of Chandra Kanta Lahiri, the appointment of the common manager had terminated and whether the appointment should be cancelled, now that disputes have arisen, are beyond the present Rule. There has been no application to the District Judge for the removal of this common manager on either ground.

10. The Rule is, therefore, discharged. We allow costs of two gold mohurs.