

**(1936) 05 CAL CK 0023**

**Calcutta High Court**

**Case No:** Civil Rev. No. 336 of 1936

Jogendra Nath Mukherjee

APPELLANT

Vs

Kshitish Chandra Roy Choudhury  
and Others

RESPONDENT

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**Date of Decision:** May 11, 1936

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### **Judgement**

1. On December 9th, 1930, the Petitioner made an application under sec. 93 of the Bengal Tenancy Act to the District Judge of Rangpur praying for the appointment of a common Manager for the estate belonging to the Petitioner and the Opposite Parties. On the 2nd April, 1932, after the notices under sec. 93 of the Act were served, the District Judge recorded the following order:--

I am satisfied that the appointment of a common Manager is necessary and the co-owners are directed to appoint a common Manager within a month from the date of the service of notice; issue notices under sec. 94 of the Bengal Tenancy Act to that effect on all the co-owners. Processes and process fees to be filed at once. Put up on the 6th May, 1932.

On May 6th, 1932, a fresh order for service of notice under sec. 94 was made, as the Petitioner did not pay the processes and process-fees in time and May 28th, 1932 was fixed for the hearing of the matter. On that date, all the co-sharers, that is, the Petitioner as well as the Opposite Parties reported to the Court that they had appointed Babu Bireswar Chatterjee, a pleader, as their common Manager. Thereupon, the learned Judge recorded the following order:--

Compromise petition filed by all the parties. Babu Bireswar Chatterjee, pleader, is hereby appointed common Manager in the term of the petition of compromise. Case disposed of.

2. Thereafter the common Manager took over charge of the estate and has been since then managing the estate. On July 29th, 1935, the Opposite Parties Nos. 1 to 3 filed an application purporting to be made under sec. 99 of the Bengal Tenancy Act

for discharging the common Manager and for restoring the management to the co-owners. The learned District Judge by his order dated the 29th February, 1936, has allowed the application of the Opposite Parties Nos. 1, 2 and 3 and has released the estate from the common management and has ordered the restoration of the estate to the co-owners. The Petitioner thereupon obtained this Rule.

3. The only point urged by Mr. Gupta on behalf of the Petitioner is that the learned Judge had no jurisdiction to remove the common Manager and to restore the common management to the co-owners under sec. 99 of the Bengal Tenancy Act. That section runs as follows:--

When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under sec. 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

4. By this section the District Judge is empowered to restore the management to the co-owners if the common Manager was appointed under sec. 95. Sec. 95 is in these terms:--

If the co-owners do not, within such period not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or where the order has been served as directed by that section within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time (a") direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or (b) in any case appoint a Manager.

5. It is clear from the terms of sec. 95 that the District Judge is empowered to appoint a common manager only when the co-owners fail to appoint a common manager in pursuance of a notice under sec. 94. If however after such notice the co-owners themselves appoint a common manager as was done in this case, the District Judge has no jurisdiction thereafter to appoint a common manager. In fact the jurisdiction of the Judge begins with a notice under sec. 93 and ends as soon as the co-owners report to him within the time fixed that they have appointed a common manager. There cannot be any doubt therefore that the common manager who is in charge of the estate was not appointed by the Judge under sec. 95 and consequently the Judge had no jurisdiction to remove him under sec. 99 and to restore the management to the co-owners.

6. Mr. Sannyal on behalf of the Opposite Parties contends that in any view of the case the District Judge had inherent power to set aside the order under sec. 93 in view of the fact that the order was obtained by misrepresentation and fraud. No

such case was made before the Judge. There is nothing to show that the order was obtained by any mis-representation or fraud. Further, alter the appointment of the common manager by the co-owners in pursuance of the notices under sec. 94 the Judge has no jurisdiction to set aside the order under sec. 93. We therefore make the Rule absolute and set aside the order of the learned Judge, dated the 29th February, 1936. The Petitioners will get their costs-- hearing fee, two gold mohurs.