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Calcutta High Court

Case No: Special Appeal No. 2209 of 1863

Ramnarayan Banerjee and Others		APPELLANT
	Vs	
Jayakrishna Mookerjee		RESPONDENT

Date of Decision: Dec. 10, 1864

Judgement

Norman, J.
The decisions[1] of this Court alluded to by the learned Judges who referred the point, bear date the 18th March 1864 and 4th July 1864. In the latter case, Mr. Justice Levinge differed from the other Judges trying the case, and held that a suit of this kind, though not admissible u/s 18, was clearly so u/s 23 of Act X of 1859. Section 18 is of course applicable only to the case of ryots having a right of occupancy, but the terms of section 23 appear large enough to embrace all suits between all parties, when the relation exists, and when the object of the suit is to obtain remission, in some one or other of the ways indicated in that section.

2. The suits mentioned in section 23 cannot be restricted to suits between proprietors and actual cultivators, for we see in clause 6 the words "farmer or tenant" used along with the word "ryot" and if farmers who, in many instances, hold large tracts of country under their leases, be allowed to bring suits under this law as against their landlord, why should not a patnidar who holds a lease in perpetuity? The period of the lease cannot affect the question. Clause 3, section 23, embraces all suits coming under sections 13, 14, 15, 16, 17, and 18 of the Act. Now, sections 15 and 16 relate to dependent talookdars, a class in existence at the time of the permanent settlement, but differing in no other respect from patnidars. If these may bring suits, why not patnidars? And from a consideration of the various parts of the Act it would appear to have been the object of the Legislature in enacting it to bring all questions relating to the rent of land between landlord and tenant, of whatever degree, under the cognizance of the Court, the powers of which have been much enlarged, as the preamble states, to enable it to dispose of them. It speaks of ryots, farmers, or tenants. Harington, in his Analysis on the Chapter on the Rights of

Landlords and Tenants, Vol. III, page 419, thus describes those who were called tenants and under-tenants as designated by Shore: "Whether zamindars, separated talookdars, maliks, and "other declared proprietors, who, with reference to the nature of their "tenures, or holding directly from Government, may be denominated superior landholders and tenants-in-chief; or the dependent talookdars and "other inferior landholders, as "well as the immediate occupants of the "soil, who holding their tenures under the zamindars and other proprietors of land standing between them and Government, may be classed "under the general designation of under-tenants." Now, it is evident that the patnidars fall under the second of these classes; and if so, why should they be excluded from bringing suits for abatement in the Collector''s Court, which, by the concluding rules of section 23, is declared to be the only Court in which such suits can be brought? If it be said that suits under that section are limited to those between the proprietors and cultivators, it may very fairly be asked, where are the restrictive words? For the section speaks of suits by ryots and farmers and tenants, and so apparently embraces all classes of tenants. Looking, therefore, at the object of the Act, which was to comprehend in one Code all questions relating to rent that might arise between landlord and tenant, we see no ground for excluding a suit brought by a patnidar or any other leaseholder for abatement of rent, as being beyond the purview of the Act.

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[1] Unreported