

(1869) 02 CAL CK 0022

Calcutta High Court

Case No: Motion No. 90 of 1869

Pyari Mohan Mookerjee

APPELLANT

Vs

Kina Bewa

RESPONDENT

Date of Decision: Feb. 3, 1869

Judgement

L.S. Jackson, J.

This is an application on behalf of Pyari Mohan Mookerjee, for a precept or order of this Court, directing the Deputy Collector of Serampore to receive upon a stamp paper of the value of 8 annas, an application made u/s 25 of Act X of 1859, for the assistance of the Collector in ejecting a ryot. It appears that such an application was presented by the Petitioner to the Deputy Collector upon a stamp of 2 rupees. The Deputy Collector referring to a Circular Order of the Board of Revenue issued in September 1867, observes that such applications were to be deemed plaints; and he, accordingly, considered that the application in question required a stamp of 8 rupees, and refused to receive the application unless that amount of stamp duty were made up. I observe that the Board of Revenue in the Circular Order in question directed that such applications as this were to be deemed plaints until the question should be otherwise judicially determined. I find that in Phillip v. Shibnath Maitra (Case No. 7 of 1862, 1st July 1863), a Full Bench of this Court expressly held that applications of this nature were not suits, consequently this point has been already decided judicially. The Board of Revenue probably were not aware that such was the case.

2. And I see nothing in Act XXVI of 1867, the new Stamp Act, which at all affects the ruling of the Full Bench upon this point. The Schedule B annexed to that Act does not lay down any new rule as to what are to be considered plaints, and what applications. In fact, as pointed out by the vakeel of the petitioner, the words relating to this subject in the Schedule annexed to Act XXVI correspond exactly with those in the Schedule annexed to Act X of 1862. I think, therefore, that the Revenue Courts ought to receive such applications, as the present one, upon a stamp of 8 annas. We think it probable that on being made aware of the opinion of this Court

on the matter, the Deputy Collector will be prepared to receive the application. But if the Revenue Courts should, after further consideration, still decline to receive the application otherwise than on stamp paper of the value required for complaints, the petitioner may renew his application to us; and we shall be prepared to make such further order in the matter as may be necessary under our powers of superintendence.

Ejectment of cultivators, farmers, &c., by zeminders.	Sec. 25:--If any zemindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorised by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated ticcazur-i-peshgee or the like, in which an advance has been made by the leaseholder on the proprietor's right.
Proviso.	