

(1881) 03 CAL CK 0029

Calcutta High Court

Case No: None

Mahamud Chowdhry
and Others

APPELLANT

Vs

Tarini Pershad Misra
and Another

RESPONDENT

Date of Decision: March 16, 1881

Citation: (1881) ILR (Cal) 378

Hon'ble Judges: Prinsep, J; Cunningham, J

Bench: Division Bench

Judgement

Cunningham, J.

The first question which calls for consideration is, whether we can regard the decision of the Deputy Commissioner of 18th June 1879 as a finding of a Civil Court on a case properly certified u/s 5 of the Regulation.

2. By Reg. III of 1872, Section 5 it was provided that pending the settlement, suits regarding land and rent should be excluded from the ordinary jurisdiction of the Civil Courts established under Act VI of 1871. "Such suits," it was provided, "shall be heard and determined by the officers appointed by the Lieutenant-Governor u/s 2, Act XXXVII of 1855, or by the Settlement Officers hereinafter mentioned, according as the Lieutenant-Governor shall from time to time direct."

3. By a notification of the 7th May 1872 the Lieutenant-Governor directed that, until further orders, the officers appointed u/s 2 of Act XXXVII of 1855, should entertain and adjudicate suits for land u/s 5 of the Regulation. According to this notification the officers appointed u/s 2 of Act XXXVII of 1855, and not the Settlement Officers as such, are the persons empowered to try suits, and consequently to certify issues to the Civil Courts u/s 5 of Reg. III of 1872. We are not aware of the grounds on which the Commissioner finds that, under a Resolution of the Lieutenant-Governor "the Settlement Officers are selected to deal with cases u/s 5," and consequently to certify under that section. No such Resolution has been brought to our notice, nor

upon inquiries directed by ourselves could any such Resolution be found; we are, therefore, constrained to hold that the notification of the 7th May 1872 is still in force, and that no such power has been conferred on the Settlement Officers. So far, then, as he was acting as a Civil Court, the Deputy Commissioner, Mr. Oldham, had no jurisdiction to try the issues sent to him. It appears, however, that he was vested with powers as a Settlement Officer, and as such would be fully competent to deal with the case himself. Regarding, therefore, all proceedings taken as purely settlement-proceedings, we do not think that the parties can in any way be prejudiced by the irregularity committed in sending the case to him u/s 5. But if he has been acting as a Settlement Officer, we have no jurisdiction to hear any appeal from his orders. Such orders are appealable elsewhere, and provision has been made by the Regulation for enabling them to be questioned in a civil suit by the party injuriously affected.

4. We accordingly dismiss this appeal with costs.