

(1881) 01 CAL CK 0018

Calcutta High Court

Case No: None

Jogendro Nath Roy

APPELLANT

Vs

Madhub Doss and
Others

RESPONDENT

Date of Decision: Jan. 31, 1881

Citation: (1881) ILR (Cal) 673

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

Bench: Division Bench

Judgement

Cunningham, J.

The first objection in this case is, that the Court below ought not to have granted the application of the respondent without better evidence of the inability of the applicant to measure the lands, and without ascertaining who are the persons liable to pay rent.

2. It appears that the respondent, who is the proprietor of the land in question, filed a verified petition, in which he stated that he had endeavoured to measure the land, and had been unable to do so; and that thereupon the Court below made the order u/s 38 of Beng. Act VIII of 1869, now appealed against. We think that that was a rightful proceeding, and that there is no ground for setting aside the order on that account.

3. But with regard to the procedure adopted by the Collector, we are not satisfied that there was a "due enquiry" sufficient to comply with the requirements of Section 38.

4. That section is a highly penal one, and we are bound to construe it with the utmost strictness. It appears that, by Section 40, the Collector, in conducting an enquiry of this kind, is empowered to make use of all the powers conferred on a Civil Court by the CPC in procuring the attendance of witnesses and otherwise taking evidence.

5. Now, it does not appear that the Collector in this case did put that section in force, or make use of all the powers which the Code gives a Civil Court to procure the attendance of witnesses. The consequence is, that if we upheld the present decision, we should be enforcing a very severe penalty against the witnesses, whom the Collector might, if he had chosen to exercise the powers vested in him by law, have brought before the Court, and thus avoided the penalty coming into force.

6. Under these circumstances, we think that the order appealed against should be set aside, and the Collector directed to institute another enquiry, using all the powers that the law gives him to bring the witnesses before him. If he is still unable to ascertain and record who the persons in occupation of the land are, and to measure the land, he will then be at liberty to make the lapsing order u/s 38.