

(1872) 09 CAL CK 0010

Calcutta High Court

Case No: None

In Re: Gabinda
Chandra Ghose and
Anothers

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 17, 1872

Judgement

Glover, J.

This is a referenda made by the Sessions Judge of Jessore to have a certain order passed under s. 218 of Act XXV of 1861 by the Deputy Magistrate of that district quashed. The only substantial ground on which the Judge thinks the Deputy Magistrate's order illegal is that, whereas the patta under which one of the portion in this case claims was signed by a great number of co-sharers of the land in question, and all of those co-sharers have not been served with notice, but only one of them, this is a sufficient ground for invalidating the whole of the Deputy Magistrate's proceedings

2. There is nothing in the law which enjoins the serving of notice on all the co-sharers in an estate which may, in some shape or other, form the subject of a litigation under s. 318. That section says, that, after a Magistrate is satisfied that a dispute likely to induce a breach of the peace is about to take place within his jurisdiction, he shall record a proceeding stating the grounds of his being so satisfied, and shall call on all parties concerned in such dispute to give in written statements of their respective claims. It is quite clear that the other co-sharers who, Mr. Rochfort contends, have not been served, were not concerned in the dispute, for in that case they would have undoubtedly appeared in the Court below and taken steps to support the references made by the Judge. The only parties concerned were those who did appear before the Deputy Magistrate and although it may be technically said that Shamasundari got no notice, it is clear that she was all along aware as to what was going on for she appeared in Court and prayed to have witnesses examined on her behalf. That her case was not thoroughly gone into was her own fault, for the petition asking for the examination of the witnesses was made, as the Deputy Magistrate says, at the last moment; and in the exercise of the

discretion allowed him by the law, he refused to grant any farther postponement of the case. Under the circumstances it appears to us that there is no ground on which to support the Judge's recommendation, and we accordingly decline to interfere with the order of the Deputy Magistrate.