

(1869) 02 CAL CK 0031

Calcutta High Court

Case No: Special Appeal No. 1309 of 1868

Mussen Ali

APPELLANT

Vs

Amanat Ali Chowdhry

RESPONDENT

Date of Decision: Feb. 20, 1869

Judgement

Bayley, J.

In this case the ground taken before us in special appeal, is that, as this was a suit to set aside a decree of the Revenue Court, u/s 25, Act X of 1859, the suit cannot at all lie. I am, however, of opinion that there cannot be a decree u/s 25. That section only contemplates an order passed by the Revenue Court. It is true that before such an order is passed, the Collector may, for the purpose of satisfying himself as to the propriety of granting the application for ejectment made under that section, investigate the facts, receive all the evidence bearing upon them, and enter into all the forms of a judicial enquiry, but still his decision upon it is but an order, an appeal from which u/s 25 lies to the Commissioner, and not to the Judge. This view is borne out by the Full Bench ruling in the case of Phillip v. Shibnath Maitra (Case No. 7 of 1862, 1st July 1863).

2. I would add that there might be a suit for ejectment (as laid down in the Full Bench ruling) under clause 5, section 23, Act X of 1859, and there an appeal would lie to the Judge, and the decree would have the effect of that in a regular suit for the trial of the matter.

3. In this view I would dismiss this appeal with costs.

Hobhouse, J.

4. I agree that this special appeal must be dismissed. The material facts are these:--The defendant applied u/s 25, Act X of 1859, to obtain assistance to eject the present plaintiff. The plaintiff, at the hearing of the application, set up certain pottas, and the defendants certain kabuliyats. The Collector thought that the present defendants kabuliyats were established, and on the 14th September 1866 ordered

that the present plaintiff should be ejected.

5. The present plaintiff, therefore, sued to recover possession, to have the kabuliyat set aside, and the above pottas established. The Courts below have found the pottas in favour of the plaintiff, and have given him a decree.

6. The defendants appeal specially, urging that, u/s 2, Act VIII of 1859, the plaintiff's suit is barred. The question, therefore, is whether the order of the Collector, of date the 14th September 1866, was an order passed in a suit, and was an order passed by a Court of jurisdiction competent to determine the present plaintiff's rights under the pottas. The Full Bench ruling, quoted by Mr. Justice Bayley, seems to me conclusively to have held that (in the words of that decision) "an order passed by the Collector upon an application made u/s 25, is not a judgment in a suit, or an order passed in the course of a suit and relating to the trial thereof," but is simply a ministerial order not affecting the rights of the parties, on which an appeal lies not to a Civil Court but to a ministerial officer, the Commissioner.

7. This being so, it is quite clear to me that the point in this case was not res-judicata, and the special appellant, therefore, has no ground for his appeal. I concur, therefore, in dismissing with cost.