

(1865) 05 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 2779 of 1864

Syed Hameedooddeen

APPELLANT

Vs

Syed Moulvie Rayeooddeen
Ahmed

RESPONDENT

Date of Decision: May 26, 1865

Judgement

1. The question for us to determine is whether an appeal from a decision passed under s. 77 of Act X of 1859 in a suit for a sum in value less than Rs. 100 in amount, lies to the Judge. It is provided by the law just cited that "when in any suit between a land-holder and a ryot or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the ryot or under-tenant is disputed; and such right is claimed by or on behalf of a third person, on the ground that such third person, or a person through whom he claims, has actually, and in good faith, received and enjoyed such rents before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision." In s. 153 of the same law, it is declared that no appeal shall lie from the decree of a Collector in suits under clauses 2, 4, and 7 of ss. 23 and 24 of the Act for a sum less than 100 rupees in value, "unless in any such suit a question of right to enhance, &c., or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment is open to appeal in the manner provided in ss. 160 and 161.

2. It has been contended before us, that in an enquiry under s. 77 the right to receive rent is investigated; that this right is an interest in land, and that, therefore an appeal lies to the Judge; but we cannot assent to this reasoning. We think that

under s. 77, the only matter enquired into is the fact of the actual receipt and enjoyment of rent before, and up to the time of the commencement of the suit; that this fact is totally unconnected with the legal title to, or any interest in, the land, or with the right to receive the rent, which is by the proviso of the section reserved for enquiry in the Civil Court; and that, consequently, no appeal lies to the Judge under ss. 153 and 160 of Act X of 1859. The view which we take was adopted by two Judges of the late Sudder Court in the case of Bhuggobutty Dabee v. Sama Churn Banerjee, decided on 1st October 1861, and of its correctness we have not the slightest doubt.