

(1878) 06 CAL CK 0034

Calcutta High Court

Case No: None

Nirod Krishno Roy

APPELLANT

Vs

Woomanath
Mookerjee and Others

RESPONDENT

Date of Decision: June 25, 1878

Citation: (1879) ILR (Cal) 718

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

Bench: Division Bench

Judgement

Markby, J.

In this case the Subordinate Judge of Furreedpore, upon the application of the plaintiff, and without any opposition on the part of the defendants, instructed an ameen to prepare a map of the land in dispute, and to show by a distinct line if the land decreed to the plaintiffs in the former suit was identical with any portion of the land now in dispute. The ameen was also directed to check the map filed by the defendants, and show the result of it by a line of different colour in his own map. He was further directed to report whether the boundary set forth in the plaint was correct or not, and to ascertain the value of the land according to the profits of it. The last instruction was only in order to dispose of the objection made as to stamp-duty. This was in fact a commission issued for the benefit both of the plaintiff and of the defendants. Unfortunately, the District Judge seems to have thought, first, that he had a right to interfere with the Subordinate Judge in a suit pending before the Subordinate Judge, which he clearly had not; and, secondly, he seems to have interfered in a manner which, even if he had a right to interfere, was manifestly wrong. A. Circular Order of this Court, No. 41, dated the 2nd October 1866, directs that an ameen may be deputed in a case where it is necessary to ascertain by measurement disputed areas of land, or to ascertain whether particular lands are identical with lands detailed in documents, when the fact is disputed, and in such like instances. This is clearly an instance of the kind mentioned in that Circular Order. The result of this interference by the District Judge was to deprive

the parties of the evidence which they had expected would be derived from the issue of the commission to the ameen, and the Subordinate Judge had no alternative but to dismiss the suit, as it would have been unbecoming in him to disregard the order of the District Judge. But though the Subordinate Judge was constrained to make the order which he did make, we have no doubt that order was illegal and wrong, and ought to be set aside. The commission which had issued ought to have been returned. The result is that we set aside the order of the Court below and send this case back with directions that the ameen should complete his investigation, and when he has made his report, the Subordinate Judge will hear what other evidence the parties may offer in the case and then dispose of it. Costs will abide the result.

Prinsep, J.

2. In this case it is obvious that a local enquiry was necessary in order that the land, the subject of dispute, should be properly identified, and then the Court should be enabled to arrive easily at a proper decision. The Subordinate Judge, on the application of the plaintiff, and apparently with the consent of the defendants, ordered a local enquiry by the ameen on the points that have been already indicated in the judgment which has just been delivered by Mr. Justice Markby. In accordance with the Circular Order of this Court, No. 25, dated the 24th August 1870, the Subordinate Judge reported his order for the information of the District Judge, but the District Judge, without any authority at all, not only pointed out to the Subordinate Judge that his order was an improper order, but prevented its execution by withholding the services of the Court ameen, although the suit in which that order was passed still remained on the file of the Subordinate Judge, and that suit was ultimately decided by that officer and not by the District Judge. The Circular Order, upon which alone the District Judge could rely for any authority for his proceeding, commences with the following words: "The responsibility of ordering an enquiry u/s 180, Code of Civil Procedure, rests entirely with the Court before which the suit is pending, and which may order such enquiry when it deems a local investigation to be necessary or proper for the purpose of elucidating the matters in dispute or of ascertaining the amount of any mesne profits or damages"; and then the last paragraph of the circular is to the following effect: "Where the Court issuing such commission is subordinate to the Zilla Judge, a copy of such order shall be forthwith submitted to him, and he will note thereon the fact of complete or partial compliance with the foregoing rule,"--that is to say, all that the District Judge could do was to express his opinion as to the propriety or otherwise of the Subordinate Judge's order merely for his guidance in other cases which might subsequently come before him. Then another Circular Order, which was issued by this Court on the same subject, explains the duties of a District Judge, and states that "the object of the Circular Order was to afford the Zilla Judge an opportunity of satisfying himself that the general directions given in Rule 1 had been properly attended to, and not as in any way necessitating the Judge's sanction to the local or

other enquiry before it could be commenced. On the contrary, the responsibility of ordering an enquiry u/s 180 of the CPC rests entirely with the Court before which the suit is pending." Having these two Circular Orders before him, the District Judge clearly acted without any authority at all in interfering with the orders of the Subordinate Judge. The terms of the District Judge's order go further than this, for he takes it on himself to comment on the issues that were drawn up by the Subordinate Judge for the trial of the suit. In fact, the Judge seems to have constituted himself as a general Court of revision-a position which is not recognized by law.