

1894  
 THE  
 ADMINIS-  
 TRATOR-  
 GENERAL OF  
 BENGAL  
 v.  
 PREM LALL  
 MULLICK.

the proceedings of the Legislative Council at the time this measure was in preparation to obtain such light as they could throw on the intention and scope of the section in question. Such a course has been more than once taken by the Court here in recent times ; and in a case of such difficulty and importance as this appeared to be, we felt bound to adopt it." All I need say is that, if such a reference were admissible, what was shown to us would incline me to the same construction as that which I have put upon the Act without such reference. I agree with the opinion expressed by Mr. Justice Sale in the Court below and consider that this appeal should be dismissed with costs.

*Appeal dismissed.*

Attorney for the appellant : Mr. *Carruthers*.

Attorney for the respondent : Babu *G. C. Chunder*.

T. A. P.

## APPELLATE CIVIL.

*Before Mr. Justice Trevelyan and Mr. Justice Rangini.*

GOPI NATH MASANT AND OTHERS (PLAINTIFFS) v. ADOITA NAIK  
 AND OTHERS (DEFENDANTS), AND OTHERS, MINORS, REPRESENTED BY THE  
 COURT OF WARDS (PLAINTIFFS).\*

1894  
 April 24.

*Second Appeal—Bengal Tenancy Act, Chapter X, sections 101 clause 2, 106, 107, 108 clause 2—Dispute as to entries in record of rights—Question as to status of ryots—Order of special Judge on appeal from Settlement Officer—Civil Procedure Code, section 622.*

Under Chapter X of the Bengal Tenancy Act there is to be (1) a framing of the record of rights, (2) a draft publication for a period of one month during which time objections may be preferred, and (3) a final publication, previous to which publication "disputes" as to the correctness of the entries in the record of rights, other than entries of rents settled, are to be heard and decided. Under section 107 the decisions of the Settlement Officer in all proceedings under the chapter are to have the force of decrees, and under section 108, clause 2, an appeal lies to the Special Judge from all decisions of the Settlement Officer ; but it is only in cases under section 106 decided by the Special Judge on appeal from the Settlement Officer that a second appeal

\* Appeal from Appellate Decrees Nos. 2148 and 2149 of 1892 against the decree of J. Pratt, Esq., Special Judge of Midnapore, dated the 1st of September 1892, reversing the decree of Babu Rajendra Nath Bose, the Settlement Officer of Midnapore, dated the 8th December 1891.

lies to the High Court, and such cases can only relate to disputes regarding the correctness of entries other than the entries of rent settled.

Where a decision of the Settlement Officer in a case under section 104, clause 2 of the Act dealt with the question of the *status* of the ryots, and was passed before the record had been framed; and after the record had been framed there was no dispute as to correctness of any entry, except the entries of the rent settled: *Held*, that the order of the Special Judge on appeal from such decision of the Settlement Officer was not one passed in a case under section 106, and therefore no second appeal lay from it to the High Court.—*Shewbarat Koer v. Nirpat Roy* (1) and *Lala Kirat Narain v. Palukdhari Pandey* (2) referred to.

*Held*, also, that the case was not one which required the interference of the High Court under section 622 of the Civil Procedure Code.

THE suits out of which these appeals arose were brought under section 104, clause (d) of the Bengal Tenancy Act, for settlement of the rent and for determination of the *status* of the ryots. The plaintiffs claimed at different rates for the various classes of land, which varied from Rs. 1 to Rs. 8 per *bigha* for the year. The defendants who appeared, on the other hand, alleged that they were paying at a rate which gave an average of Re. 1-8 per *bigha* for the year, or Rs. 6-4 per 4 *bighas* 5 *cottahs* 12 *chittacks*. Some of the cases were heard *ex parte*. The Settlement Officer fixed the following issues: (1) What are the fair rents? (2) What is the *status* of defendants? And after dealing with the evidence, oral and documentary, which was brought before him, he, on the 8th December 1891, decided the first issue in favour of the plaintiffs' contention, and the second issue, as to the *status* of the defendants, in favour of the defendants, and held that this decision should govern the *ex parte* cases as well as those which were contested.

Subsequently on 19th February 1892 another proceeding was held by the Settlement Officer at which he took some further evidence, and made the following order:—

“It appears to me that certain lands in the *tehatian* have been assessed at the rates for the higher classes of lands, and that all tanks have been assessed at Rs. 8 the *bigha* when the rates vary from Re. 1 to Rs. 8. Ordered that the mistakes made should be corrected—”

thereby altering the rates fixed by him on 8th December 1891.

Appeals were filed from these orders by the tenants (defendants) from that of 8th December 1891, and by the landlords (plaintiffs)

(1) I. L. R., 16 Calc., 596.

(2) I. L. R., 17 Calc., 326.

1894

GOPI NATH  
MASANT  
v.  
ADOITA  
NAIK.

1894  
 GOPI NATH  
 MASANT  
 v.  
 ADOITA  
 NAIK.

from that of 19th February 1892, and were heard by the Special Judge. He came to the conclusion on the defendants' appeals that "on the materials before him the Settlement Officer was not justified in deciding the rates as he did, and so the appeals of the tenants must prevail." As to the order of 19th February 1894 the Special Judge held that it was *ultra vires*, and that the appeals in respect of it must be allowed. He said :—

"The result is that all the appeals are allowed ; the Settlement Officer's assessment and revised assessment are set aside, and matters must remain as they were ; the record of rights, so far as regards the rents payable by each tenant, being declared null and void. I have no proper materials on which to determine what ought to be the rents or rates of rent. If the landlord-desire further enquiry they will have to pay for it. It will no longer be open to them to adduce evidence as to existing rates ; the enquiry would be directed to ascertaining fair rents. All parties to pay their own costs of these appeals."

From this decision the plaintiffs appealed to the High Court.

Mr. Jackson and Babu *Debendro Nath Ghose* for the appellants.

Baboo *Umakali Mukerjee* and Baboo *Srish Chunder Chowdhry* for the respondents.

The judgment of the Court (TREVELYAN and RAMPINI, JJ.) was as follows :—

The facts of these cases have not been fully or clearly stated by the lower Courts. It has, therefore, been very difficult for us to understand what has actually taken place.

We find, however, that there were two suits, Nos. 42 and 43, under section 104 (d) of the Bengal Tenancy Act brought before the Settlement Officer of Midnapore on the 25th September 1891.

The plaintiffs in these suits were (1) the Masants who were cosharer-landlords to the extent of 13 annas in respect of the lands held by the defendants ; and (2) the Court of Wards who represented two minors who were the cosharer-landlords of the remaining 3 annas share. The defendants in suit No. 42 were 119 ryots, and in suit No. 43 were 311 ryots of the *mouzahs* Maguri and Jagannathchak, *pargana* Kashijora.

The parties in the proceedings before the Settlement Officer were at issue as to two points : (1) as to the *status* of the defendants, and (2) as to the rates of rent payable by them. The

Settlement Officer, by his decision of the 8th December 1891, gave the first point in favour of the defendants, and the second in favour of the plaintiffs.

1891  
GOPI NATH  
MASANT

We have been told that subsequently on the 10th December 1891, the Settlement Officer issued a notice, under rule 33 of the Government rules under the Tenancy Act; that on the 10th January 1892 he published the draft *khatian*; that on the 11th *idem* he issued a notice under rule 34; and on the 18th February 1892 he finally published the *khatian* or record of rights. Then on the 19th February 1892, that is, the day after the final publication of the *khatian*, he recorded the evidence of one Aftabuddin Mahomed, manager under the Court of Wards, who said that the lands had been assessed at rates higher than the ryots would be able to pay, upon which on that date, the 19th, and the following date, the 20th, he reduced the assessment on tanks and *dobas* to Rs. 1 instead of Rs. 8 as before.

v.  
ADOKTA NAIK,

Meantime, on the 2nd February 1892, both the Masant landlords and certain of the defendants had appealed to the Special Judge.

The Masant landlords' appeals were numbered 236 and 237, and the tenants' appeals were numbered 119 and 120. But the Court of Wards did not appeal on behalf of the minors, and out of the 311 defendants in suit No. 43 only 45 appealed.

We have not been told how many of the defendants out of the 119 defendants in suit No. 43 have appealed in special appeal No. 2149, and on the view of the case which we take this point is not material.

The Special Judge decreed all the appeals. He held the revised assessment by the Settlement Officer on the 19th and 20th February to have been *ultra vires*, and he set it aside. He also set aside the assessment of the 8th December 1891, and declared that the record of rights as regards the rent payable by each tenant was null and void. He further ordered that "if the landlords desire further enquiry they will have to pay for it. It will no longer be open to them to adduce evidence as to existing rates. The enquiry would be directed to ascertaining fair rents."

Two farther facts remain to be noted, *viz.*, (1) that on the 25th November 1892, an application in respect of this matter was made to this Court under section 622 of the Civil Procedure

1894 Code, but was rejected by Tottenham and Ameer Ali, JJ. ; and  
 (TOPI NATH MASANT v. ADOIFA NAIK.) (2) that on the 14th December 1892, the Masant plaintiffs applied to the Settlement Officer for a re-enquiry, apparently in pursuance of the Special Judge's order of the 1st September 1892.

Now, the Masant plaintiffs appeal to this Court in special appeals Nos. 2148 and 2149, and urge--(1) that the order of the Special Judge was wrong, inasmuch as it set aside the Settlement Officer's decree, not only as against the defendants who appealed to him, but as against the remaining defendants who did not appeal, including 6 (Nos. 1, 17, 106, 117, 124 and 282), who, it is said, admitted the rates of rent claimed from them by the plaintiffs ; and (2) that as regards the tenants who did appeal, their appeal was not ripe for hearing and should not have been heard by the Special Judge.

On the other hand, on behalf of the respondents, *i.e.*, the whole of the defendants, who have all been made respondents, a preliminary objection is urged to the effect that no appeal lies, as the decision of the lower Appellate Court deals with the question of the rate of rent only and with no other question.

We must dispose of this preliminary objection in the first instance, and it seems to us that we must give effect to it. No doubt, as has been contended by the learned Counsel for the appellants, the decision of the Settlement Officer of the 8th December 1891 disposed of a question of the ryots' *status* as well as of the question of the rates of rent payable by them, but we do not think that there was any "dispute" on this point within the meaning of section 106 as between the parties so as to give a right of second appeal to this Court.

It must be admitted that the provisions of Chapter X of the Bengal Tenancy Act are somewhat obscure as regards the procedure to be followed in cases under the chapter ; but, as far as we understand them, there is to be (1) a framing of the record of rights ; (2) a draft publication for a period of one month, during which time "objections" may be preferred ; and (3) a final publication, previous to which publication "disputes" as to the correctness of the entries in the record of rights other than entries of rents settled are to be heard and decided.

Under section 107 the decisions of the Settlement Officer in all proceedings under the chapter are to have the force of a decree, and under section 108, clause 2, an appeal lies to the Special Judge from all decisions of the Settlement Officer. But it is only in cases under section 106 decided by the Special Judge that a second appeal lies to this Court, and such cases can only relate to disputes regarding the correctness of entries other than entries of rent settled.

Now, it is clear that the decision of the Special Judge appealed against in the present cases was not passed in cases under section 106. The decision of the Settlement Officer of the 8th December 1891 was the only one which dealt with the question of the *status* of the ryots. This was no doubt a decision in a proceeding under Chapter X, but it was not a decision in a case under section 106. It was passed before the record had been framed. After the record had been framed there was no dispute as to the correctness of any entry except the entry of the rent settled, and hence it seems to us no second appeal lies to this Court. See the cases of *Sheubarat Koer v. Nirpat Roy* (1) and *Lala Kirat Narain v. Palukdhari Pandey* (2), which have been followed in several unreported cases (3).

We have been asked if in our opinion no appeal lies in these cases to deal with the memoranda of appeal as if they were applications under section 622, Civil Procedure Code. But we cannot do so for the reason that an application under section 622 with regard to this matter has already been rejected by this Court, *viz.*, on the 25th November 1892. Circumstances have not altered since that application was refused, and from any point of view we do not think that this is a case in which the ends of justice require that we should interfere under section 622.

We therefore dismiss these appeals.

This order will direct that the appellants do pay the costs of the respondents.

J. V. W.

*Appeals dismissed.*

(1) I. L. R., 16 Calc., 596.

(2) I. L. R., 17 Calc., 326.

(3) Sp. Ap. 719 of 1890 decided by TOTTENHAM and TREVELYAN, JJ., on 17th April 1891; Sp. Ap. 710 of 1891 decided by TOTTENHAM and GHOSE, JJ., on 17th February 1893; Sp. Ap. 2002 of 1892 decided by TREVELYAN and RAMPINI, JJ., on 22nd February 1894; and Sp. Ap. 308 of 1893 decided by AMEER ALI and RAMPINI, JJ., on 29th March 1894. *Rep note.*