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There are also against the appellant's contention two Allahabad cases, *Sohun Lall* v. *Lala Gya Pershad* (1), and *Puran Mal* v. *Ali Khan* (2).

It is true that the appellant has in his favour a very recent case—*Rama Kurup* v. *Sridevi* (3)—in which the learned Judges came to the conclusion that the case of *Kanizak Sukina* v. *Monohur Das* (4), was wrong; but in that case the learned Judges do not seem to have been referred to any of the other decisions.

Before we could give effect to the appellants' contention we should have to refer the case to a Full Bench: but as we agree with the judgment of Mitter and Macpherson, JJ., in *Kanizak Sukina* v. *Monohur Das* (4), which supports the cases of *Seetanath Ghose* v. *Madhub Narain Roy Chowdhry* (5), and *Khyrat Ali* v. *Syfullah Khan* (6), we decline to refer this case to a Full Bench, and dismiss the appeal with costs.

Appeal dismissed.

J. V. W.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Prinsep.

DURGA CHURN LASKAR AND OTHERS (PLAINTIFFS) *v.* HARI CHURN DAS AND OTHERS (DEFENDANTS).*

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Bengal Tenancy Act (VIII of 1885), s. 108—Record of rights—Appeal to Special Judge—Publication of record of rights—Bengal Tenancy Act, ss. 55, 105, 106.

There is nothing in section 108 of the Bengal Tenancy Act which limits the jurisdiction of a Special Judge to deal only with matters of objection taken after publication of the record of rights.

THIS was an appeal against an order of the District Judge of Backergunge reversing an order of a Revenue Officer purporting to have been passed under s. 106 of the Bengal Tenancy Act.

* Appeal from Appellate Decree No. 1414 of 1892, against the decree of A. E. Staley, Esq., Special Judge of Backergunge, dated the 27th of May 1892, reversing the decree of Mr. D. Dutt, Settlement Officer, Government estates, Backergunge, dated the 25th of September 1891.

(1) 6 N. W., 265.
(2) I. L. R., 1 All. 285.
(3) I. L. R., 16 Mad. 290.
(4) I. L. R., 12 Calc., 204.
(5) 1 W. R., 329.
(6) 8 W. R., 130.

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It appeared that the Revenue Officer was preparing a record of rights of *khas mehal* No. 5256, *chur* Umed, and that on the 10th March 1891 he directed that the names of the plaintiffs should be struck out, and the names of the defendants entered in their stead, as the *jotedars* of 59 fields on the Amin's *khasra*. On the 8th April 1891 the plaintiffs objected to this order and to the substitution of the defendants' names instead of their own. The Revenue Officer treated this objection as one made under s. 106 of the Bengal Tenancy Act, and, making the defendants parties in the case, tried it as a suit, and found that the defendants were in possession of the disputed land; but that, though their possession was based on no valid title, yet as the plaintiffs could show no valid title to the land, the case should be decided on the actual possession; and he therefore held that the plaintiffs' suit ought to be dismissed, and refused to record their names on the register as the *jotedars* of the land in question.

The plaintiffs appealed to the Special Judge under s. 108 of the Bengal Tenancy Act. At the hearing of this appeal it was discovered that the Revenue Officer had not either at the time of passing his order striking out the name of the plaintiffs from the *khatian* of the Amin, or previously to his order then under appeal, made any publication of the record of rights in the manner directed by s. 105 of the Tenancy Act and the rules made under Chapter VI of that Act. The Judge, therefore, held that the order striking out the name of the plaintiffs was merely an executive order and not one made under s. 106, inasmuch as at that time no record of right had been completed and published; he therefore quashed the order of the Revenue Officer as having been made without jurisdiction, considering that he himself had no jurisdiction to pass any further order in the case.

The plaintiffs appealed to the High Court.

Babu *Trailokya Nath Mitter* and Babu *Chunder Kant Sen* for the appellants.

Dr. *Rash Behari Ghose* for the respondents.

The judgment of the Court (PETHERAM, C.J. and PRINSEP, J.) was as follows:—

This is a matter under s. 102 of the Bengal Tenancy Act in which the Revenue Officer was making a record of rights

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of a certain estate. The matter in dispute between the parties was as to who should be recorded as tenants of these particular lands, the plaintiffs contending that they held a half share with the defendants; the defendants, on the other hand, stating that they were the sole tenants. Before any record of rights could be prepared, it was absolutely necessary for the Revenue Officer to ascertain, in the first place, who were actual tenants of these particular lands. He proceeded under s. 107 to try the matter in dispute as therein directed, and his order in favour of the defendants was taken in appeal to the Special Judge under section 108. The Special Judge, however, has refused to try the appeal holding that the proceedings were entirely without jurisdiction because the record of rights had not been published in the manner directed by s. 105, and therefore, in his opinion, the Revenue Officer was not competent to receive and consider any objections that might be made, and not only was the Revenue Officer not competent to make any order, but there was nothing to give him the (Special Judge) jurisdiction to try the appeal on the merits.

The matter in dispute, however, was dealt with under section 106, and there is nothing under section 108 which limits the jurisdiction of the Special Judge to deal only with matters of objection taken after publication of the record of rights. We, therefore, think that the order of the Special Judge was erroneous, and we accordingly set it aside. The appeal will be tried on the merits. The costs will abide the result.

Appeal allowed.

T. A. P.

ORIGINAL CIVIL.

Before Mr. Justice Sale.

THOMPSON *v.* CALCUTTA TRAMWAYS COMPANY.*

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Feb. 26.

Appeal to Privy Council—Civil Procedure Code, 1882, *ss.* 596, 600—*Finding of facts not concurrent but in effect the same—Case in which no question of law is involved.*

Where there is no point of law involved in a case, the mere fact that the finding of the Appellate Court does not in terms coincide with the finding of the Original Court, is not sufficient, where the findings of fact of the

* Application in Original Civil Suit No. 517 of 1892.