
(1919) 06 CAL CK 0010
In the Calcutta High Court

Apurba Krishna Roy and Others

APPELLANT

Vs

Syama Charan Pramanik and Others

RESPONDENT

Date of Decision : 20-06-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103B, 105, 105A, 107, 109

Citation : 54 Ind. Cas. 952

Hon'ble Judges : Duval, J;Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for a declaration that an entry in the Record of Rights, stating that the plaintiff held the land in dispute under the defendant and that the land was liable to assessment of rent, is erroneous, the lands being nishkar (rent-free).

2. The Court of first instance held that the order of the Settlement Officer u/s 165 of the Bengal Tenancy Act operated as res judicata. That decision has been set aside on appeal by the learned Subordinate Judge, who remanded the suit for trial on the merits. As against that decision, the present appeal has been preferred by the defendants.

3. As stated above, in the Record of Rights the land was entered as Mal land liable to assessment of rent. After final publication of the Record of Rights, the landlords defendants in the present case applied for settlement of fair and equitable rent under the provisions of Section 105 of the Bengal Tenancy Act. The present plaintiff thereupon raised the objection that the land was not liable to assessment of rent, it being lakhraj. Several issues thereupon were framed, one of them being whether the land in suit is nishkar lakhraj property of the defendants, the defendants, however, did not produce any evidence and the Settlement Officer by his judgment, dated the 19th November 1913, assessed certain rent upon the land. The Settlement Officer in his judgment stated that the lands were recorded in the names of the defendants as tenants under the plaintiffs and noted as being liable to assessment of rent in the Record of Rights.

He further said that the defendants had failed to produce any evidence after the framing of the issues and so the cases had been proceeded with ex parte.

4. It is contended before us that there was no decision by the Settlement Officer that the lards were not lakhraj. But the defendants expressly raised the issue whether the land was nishkar lakhraj and did not adduce any evidence upon that issue. The entry in the Record of Rights under the provisions of Section 103 B of the Bengal Tenancy Act shall be presumed to be correct until it is proved by evidence to be incorrect. The Record of Rights was before the Settlement Officer and was expressly referred to by him in his judgment. In the absence of any evidence to show that it was incorrect, the Settlement Officer was not only justified but was bound to act upon that record, and he did act upon that record. That is what he meant by saying that the case had been proceeded with ex parte. The landlord had not to adduce any other evidence except to produce the Record of Rights and it was upon that record that the Settlement Officer proceeded and fixed the rent. We do not see, how, in these circumstances, it can be said that there was no decision by the Settlement Officer.

5. It may be pointed out that where a question has been necessarily decided in effect though not in express terms between parties to a suit, they cannot raise the same question as between themselves in any other Suit in any other form. See *Gregory v Molesworth* 26 E. R. 1160 and *Soorjomonee Dayee v. Suddanund Mohapatter* 12 B.L.R. 304 (P.C.) : 20 W.R. 377 : I.A. Sup. 212 : 3 Sar. P.C.J. 285. It may also be pointed out that where a question is decided by necessary implication, the decision would operate as *res judicata*. See *Puhlwan Singh v. Maharaja Mohessur Buksh Singh* 12 B.L.R. 391 (P.C.) : 18 W.R. 182 : 2 Sar. P.C.J. 660 : 3 Sar. P.C.J. 163. We have referred to these authorities only in answer to the argument advanced that there was no express decision as to the land not being lakhraj, but it seems to us, taking the judgment as a whole, that there was a decision upon the question raised before us.

6. We think, therefore, that the decision of the Settlement Officer u/s 105 A is binding upon the plaintiff in the present case, having regard to the provisions of Section 107 of the Bengal Tenancy Act.

7. Apart from the provisions of Section 107, we think that the present suit cannot be maintained under the provisions of Section 109 of the Bengal Tenancy Act. That section lays down that "subject to the provisions of Section 109A, a Civil Court shall not entertain any application or suit concerning any matter which is, or has already been, the subject of an application made, suit instituted or proceedings taken under Sections 105 to 108, both inclusive." In this case the question whether the land is lakhraj, was the subject matter of an application u/s 105 A of the Bengal Tenancy Act before the Settlement Officer.

8. It was contended that the question was not raised by the landlord but by the tenant in his objection and that, therefore, it was not the subject of an application. But we think it is unnecessary that the question should be raised by

the applicant before the Settlement Court, because Section 105A clearly refers to the "issues." It says: Where in any proceedings for the settlement of rents under this part, any of the following issues arise, (a) whether the land is or is not liable to the payment of rent, &c. &c...the Revenue Officer shall try and decide such issue and settle the rent u/s 105 accordingly." It does not lay down that those issues can only be raised by the application : on the contrary, some of them (from their very nature) must be raised by the opposite party.

9. The learned Pleader for the respondent referred us to the case of Nawab Bahadur of Murshidabad v. Ahmad Hussain 35 Ind. Cas. 695 : 21 C.W.N. 1004 : 25 C.L.J. 156 : 44 C. 783 but that case merely lays down that "Section 109 requires that the civil suit should have for its subject a matter which has already formed, and not one which might have formed, the subject of an application u/s 105." There the question which formed the subject-matter of the suit before the Civil Court was never raised before the Settlement Court and the decision, therefore, does not affect the case before us.

10. We were also referred to the case of Parbati v. Toolsi Kapri 20 Ind. Cas. 1 : 18 C.W.N. 604 : 18 C.L.J. 128. All that the case decided is that the decision of a Settlement Officer to which the force and effect of a decree of a Civil Court is given by Section 107 of the Bengal Tenancy Act does not include an order of dismissal of a suit u/s 106 of the Act for default, the word "decision" implying an adjudication on the merits."

11. In the present case, as we have seen, the question was directly raised and there was an express issue on the point and even though the defendant did not adduce any evidence in Court, the decision of the Settlement Officer was open to appeal and to second appeal to this Court.

12. In all these circumstances, the order of the Subordinate Judge remanding the case must be set aside and the decision of the Court of first instance dismissing the suit must be restored with costs in all Courts.

13. It appears from the order passed by Teunon and Walmsley, JJ., on the 13th February 1919 that the appeal was dismissed against the minor respondents Nos. 3, 4, and 5, as the appellant's Pleader informed the Court that the appellant would not proceed against them. The appeal will, therefore, stand dismissed against the said respondents.

14. In the view we have taken in Second Appeal No. 1282 of 1918, the decree of the lower Appellate Court in this case is set aside and the case sent back to that Court in order that the questions other than that dealt with by us in Second Appeal No. 1282 of 1918 may be decided and the case disposed of according to law. Costs to abide the result.

15. It appears from the order passed by Teunon and Walmsley, JJ., on the 13th February 1919 that the appeal was dismissed against the minor respondents Nos. 3, 4, and 5 as the appellant's Pleader informed the Court that the appellant

would not proceed against them. The appeal will, therefore, stand dismissed against the said respondents.