
(1925) 05 CAL CK 0054
In the Calcutta High Court

Becharam Choudhuri and Others

APPELLANT

Vs

Purna Chandra Chatterji and Others

RESPONDENT

Date of Decision : 06-05-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 109, 7

Citation : AIR 1925 Cal 845

Hon'ble Judges : Walmsley, J;Suhrawardy, J;Newbould, J;C.C. Ghose, J;B.B. Ghose, J

Bench : Full Bench

Judgement

Walmsley, J.—These appeals are preferred by the defendants and they arise from suits brought by the landlord for rent and for enhancement of the existing rents. The landlord's claim was made u/s 7 of the Bengal Tenancy Act.

2. In the record-of-rights the tenures were described as permanent, but gar mokurari. The defendants asserted that the latter part of the entry was erroneous and that their rents were really fixed.

3. After the publication of the record-of-rights the landlord presented an application u/s 105 of the Tenancy Act for settlement of a fair rent on these tenures: But he withdrew the application and obtained from the Settlement Officer an order permitting him to institute civil suits for the same purpose.

4. Both the Courts below have held that Section 109 of the Tenancy Act does not bar the suits, on the ground that the application u/s 105 was withdrawn with permission to bring civil suits. On the merits, however, they disagreed, that is so far as the claim for enhancement is concerned. The first Court found that the defendants were entitled to a presumption u/s 50 of the Act, while the appellate Court held that the defendants could not claim the benefit of that presumption. The result was that the latter Court remanded the suits to the first Court for the determination of fair rents. It is against these orders of remand that the appeals are directed.

5. The principal argument on behalf of the defendants is that Section 109 of the Tenancy Act does bar the suits. Two other arguments were put forward, namely, that the status of the defendants was that of raiyats and that in suit No. 2 at any rate the evidence as to uniformity of rent is conclusive: but on examination of the record it appears that one of these arguments was not set out in the memorandum of appeal, and that the other is disposed of by the Judge's acceptance of the landlord's jama wasil baki papers.

6. On the principal question reliance is placed by the landlord on the case of Saraj Kumar Acharji Chowdhury and Others Vs. Umed Ali Howladar and Others and Gopal Chandra Saha and Others, . That case, however, is in opposition to other decisions of an earlier and a later date. There is the case of Srimati Abeda Khatun and Others Vs. Majubali Chowdhury and Others, followed by the case of Dino Nath Sikdar and Others Vs. Anadi Krishna Dutt and Others, . (Appeal from Appellate Decree No. 1358 of 1919, decided on January 16, 1923) in which the judgment was delivered by one of the Judges who decided Srimati Abeda Khatun and Others Vs. Majubali Chowdhury and Others, . This later case is important because it shows that in the earlier case no emphasis was placed upon the absence of permission to withdraw, the point upon which Srimati Abeda Khatun and Others Vs. Majubali Chowdhury and Others, was distinguished in Saraj Kumar Acharji Chowdhury and Others Vs. Umed Ali Howladar and Others and Gopal Chandra Saha and Others, . Again there is the case of Sasi Kanta Acharjya Vs. Salim Sheikh, . I think therefore that the current of authority is against the view taken by the lower appellate Court. So far as I am myself concerned, moreover, I am in the position that I was a party to the judgments in the case of Dino Nath Sikdar and Others Vs. Anadi Krishna Dutt and Others, and of Sasi Kanta Acharjya Vs. Salim Sheikh, and I have not heard any argument which would induce me to change my views.

7. It is said that we ought to refer the case to a Full Bench, but I venture to think that the decisions to which I have referred make that course unnecessary.

8. In my opinion the appeals should be allowed, and the order of remand set aside.

9. My learned brother is of opinion that the appeals should be dismissed with costs. According to Section 36 of the Letters Patent as explained in the case of Bhaidas Shivdas v. Bai Gulab AIR 1921 P.C. 6 my opinion prevails with the result that the appeals are allowed with costs and the plaintiff's suits for enhancement of rent are dismissed. The hearing fee in this Court is assessed at one gold mohur in each case.

Suhrawardy, J.

10. I adhere to the view adopted in the case of Saraj Kumar Acharji Chowdhury and Others Vs. Umed Ali Howladar and Others and Gopal Chandra Saha and Others, , to which decision I was a party. The matter was further considered on review from that decision and the same view was upheld. It is not necessary to

repeat the reason on which our opinion was based.

11. I would therefore dismiss these appeals with costs.

Walmsley, J.

12. After we had delivered our judgments and intimated that, u/s 36 of Letters Patent, the opinion of the Senior Judge would prevail, we were asked to hear arguments on this last point. It was urged that the decision which I have mentioned related only to appeals from the Original Side of this Court. It is true that the decision was in such an appeal, but I can find nothing in the wording of the judgment to indicate that the rule is applicable to one kind of appeal and not to another.

13. My learned brother has examined the authorities with elaborate care, and come to a different conclusion. It is only on account of the clearness, as I think, of the decision by their Lordships that I venture to differ.

14. We cannot continue to differ ad infinitum as to the effect of our difference, so with my learned brother's assent I direct that my opinion shall prevail, and that the appeals shall be allowed.

Suhrawardy, J.

15. We have differed as to the order to be passed in this case, my learned brother being for allowing the appeal while in my view it ought to be dismissed. Apparently and in accordance with the unvarying practice of this Court as well as all the other High Courts of India, this appeal should be dismissed u/s 98, Civil Procedure Code; but it is argued, on the authority of the recent judgment of the Judicial Committee in the case of Bhaidas v. Bai Gulab AIR 1921 P.C. 6 that this appeal should be decreed in accordance with the judgment of the senior Judge under clause 36 of the Letters Patent of 1865 governing this High Court.

16. Before considering the Privy Council judgment above referred to, it will be profitable to try and find the law as is to be found in the Letters Patent and the Code of Civil Procedure.

17. Clause 15 of the Charter "provides for appeals within the High Court, viz., from the judgment of a Judge of the High Court to a Bench of the same Court. Clause 16 invests the High Court with appellate jurisdiction over the Provincial Courts. Clause 36 regulates the procedure to be followed in the case, among others, of difference of opinion between two Judges of the Court forming a Division Bench in the exercise of either appellate or original jurisdiction. If this provision stood alone the appellant's contention must prevail but Clause 44 makes all the provisions of the Letters Patent subject to the legislative power of the Indian Legislature which was vested with similar authority by Section 22 of the India Councils Act, 1861. It is therefore necessary to determine if the Legislature has by any subsequent enactment modified or superseded the provisions of Clause 36 of the Letters Patent.

18. Section 96 of the CPC allows appeal not only from one provincial Court to another but from a provincial Court to the High Court which derives this jurisdiction under Clause 16 of the Charter. It has been held that Section 96, CPC concerns itself with cases not covered by Clause 15 of the Charter but in the application of the jurisdiction vested in the High Court by Clause 16: *Debendra Nath Das v. Bibudhendra Mansingh* (1916) 43 Cal. 90. If Section 96, CPC refers to the jurisdiction vested in the High Court by Clause 16 of the Letters Patent, Section 98 which is in the same Part as Section 96 and a corollary to it a fortiori applies to such appeals. Section 117 of the CPC makes Part VII of the Code which includes Section 98 applicable to the High Court and Section 120 which excludes the applicability of certain sections to the High Court does not mention Section 98 as one of them. It is therefore legitimate to suppose that to the extent to which Section 98, CPC is inconsistent with Clause 36 of the Letters Patent, the former has, by virtue of the power conferred on the Indian Legislature by Clause 44 of the Letters Patent superseded or modified the latter. No doubt Section 4, CPC saves) provisions of other laws, in the absence of specific provision in the Code abrogating or superseding them. Such specific provision, so far as appeals to which the Code applies are concerned, is to be found in Section 98 read with Sections 117 and 120 of the Code. This view has been consistently held by all the High Courts in India and formed subject of consideration by the Full Benches of Calcutta, Bombay and Allahabad: *Gossami Sri Gridharji Maharaj Tickait v. Purushottum Gossami* [1884] 10 Cal. 814; *Bhuta Jayatsing v. Lakadu Dhansing* (1919) 43 Bom. 433 and *Husaini Begam v. The Collector of Muzaffarnagar* [1889] 11 All. 176. The Madras High Court has also adopted this view: *Narayanasami Reddi v. Osuru Reddi* [1902] 25 Mad. 548. It is redundant to observe that this practice has been invariably and uniformly followed by all the High Courts since the provision as now embodied in Section 98, Civil Procedure Code, found its way into the law of procedure of the Civil Courts of the land, In almost every volume of the Law Reports, instances of the application of Section 98, Civil Procedure Code, are to be found. In the cases of *Bibi Ahmadi Begum v. Tarak Nath Ghose* [1913] 18 C.L.J. 399 the question of procedure was considered by Jenkins, C.J., at page 424 and in *Mohunt Krishen Doyal Gir v. Irshad Ali Khan* [1915] 22 C.L.J. 525, Mookerjee, J., at page 538, accepted the same view. I may quote a few instances in this Court to show that the practice has been uniform since the Full Bench decision of *Sri Gridharji Maharaj Tickait v. Purushottum Gossami* [1884] 10 Cal. 814 the authority of which has to some extent been weakened by *Bhaidas's* case AIR 1921 P.C. 6, but has not been departed from even after the promulgation of the Privy Council judgment in that case: *Mohendro Chandra Ganguly v. Ashutosh Ganguly* (1893) 20 Cal 762; *Lata Suraj Prosad v. Golab Chand* (1901) 28 Cal. 517; *Asutosh Boy v. Hari Narain Singh Deo* (1906) 3 C.L.J. 143; *Bibi Ahmadi Begum v. Tarak Nath Ghose* [1913] 18 C.L.J. 399; *Mohunt Kissen Doyal Gir v. Irshad Ali Khan* [1915] 22 C.L.J. 525; *Amrita Lal Roy v. Secretary of State for India* [1922] 35 C.L.J. 221; *Ram Narain Singh v. Chota Nagpur Banking Association* [1916] 43 Cal. 332; *Cossipur Chitpur Municipality v. The Corporation of Calcutta* [1919] 46 Cal. 910;

Promotha Nath Pal Choudhuri v. Mohini. Mohan Pal Choudhuri [1920] 47 Cal. 1108; Anilabala Chowdhurani Vs. Dharendra Nath Saha, ; Mohini Kanta Saha Choudhury and Others Vs. Preo Nath Neogy and Others, ; Biman Chandra Dutta Vs. Promotho Nath Ghose and ok his Death His Heiress And Lrgal Representative, Srimati Mrinalini Dasi, ; Uday Kumar Das v. Katyani Debi AIR 1922 Cal. 87.

19. It is now necessary to consider the judgment of the Privy Council in Bhaidas''s case AIR 1921 P.C. 6. The suit out of which the appeal arose was tried on the Original Side of the Bombay High Court. There was an appeal under Clause 15 of the Letters Patent and the Division Bench, composed of two Judges, which heard it, was divided in opinion, the Chief Justice being for allowing the appeal while the other learned Judge was for dismissing it. The Court apparently in view of the provisions of Section 98, CPC dismissed the appeal. In this state of the facts, their Lordships of the Judicial Committee were of opinion that Section 36 of the Letters Patent applied to the case and not Section 98 of the Code. The essence of their Lordships'' opinion is that in the appeal before them, Section 36 of the Letters Patent should have been applied. Though that opinion was expressed in wide and unrestricted terms, it must be taken to be confined to the facts of the case before them.

20. It has been repeatedly urged to avoid abuse of application of precedents, to read a decision in conjunction with the facts of the case on which it is founded. The danger of regarding a decision based on a particular set of circumstances which were before the Judge''s mind and formed the mould on which the proposition of law, however broadly stated, was shaped cannot be overrated and the law on the matter has been authoritatively laid down in Kreglinger v. New Patagonia Meat Co. [1914] A.C. 25; Quinn v. Leatham [1901] A.C. 495. The Judicial Committee were considering a case under the Letters Patent and it would, according to the accepted canons of application of precedents, be misconstruction of their decision to extend its authority to appeals under the CPC which were not then under their Lordships'' consideration. This is patent from the arguments of Counsel at the bar who cited authorities relating only to that particular class of appeals. This is also apparent from their Lordships remark that the proposition they were laying down was not novel in India. Had their Lordships intended that the view they were expressing was intended to qualify the interpretation put by the Indian High Courts on Section 98, CPC they would have surely expressed themselves in quite a different language, for as I have observed, all the High Courts in India had been unanimous in construing Section 98, CPC contrary to their Lordships'' supposed opinion. Furthermore, their Lordships referred in support of their view, to three Indian cases the fact of which undoubtedly invoked the operation of clause 36 of the Letters Patent. No reference is made to the Full Bench decisions of the High Courts in India holding Section 98, CPC applicable to oases from the Moffusil specially that of the Bombay High Court [from which the appeal in Bhaidas''s case AIR 1921 P.C. 6 was taken to the Privy Council] passed shortly before and Bhuta Valad Jayatsing v. Dhoming (1919) 43 Bom. 433, in which the learned Chief Justice has so ably

and thoroughly discussed the question as to put it beyond cavil.

21. Now with regard to the case on which reliance is placed by the Judicial Committee the cases from Allahabad and Madras were of appeals under clause 15 of the Letters Patent. The reference to the Calcutta case, namely, the case of Nun-deeput Mahta v. Urquhart [1870] 13 W.R. 209 which was an appeal from the Mofussil presents on the face of it some difficulty, But on closer examination it will be abundantly clear that the case supports the view pronounced by their Lordships while it does not militate against the view I am advocating. That case was decided in 1870. The CPC then in force was Act VIII of 1859 which contained no provision in case of difference of opinion between the Judges hearing a case., This omission was supplied by the supplementary enactment of Act XXIII of 1861, Section 23 of which for the first time laid down the procedure similar to that in Section 98, Civil Procedure Code. That Act was passed before the High Court's Letters Patent of 1862 or 1865 and is headed as not to be applicable to Courts established by Royal Charter. After the establishment of the High Court therefore there was no provision governing such cases except Section 36 of the Letters Patent. Though Act XXIII of 1861 was made by the rules of the High Court framed under its general powers applicable to it there was no enactment as contemplated by Clause 44 of the Letters Patent by the Indian Legislature modifying Clause 36. Norman, C.J., was therefore right in saying that the case before him was governed by Clause 36 of the Letters Patent. The provision contained in Section 23 of Act XXIII of 1861 was included in the CPC of 1877, carried over to the Code of 1882 and reproduced in Section 98 of the present Code.

22. It is therefore clear that when Nundeeput's case[1870] 13 W.R. 209, was decided Clause 36 of the Letters Patent was the only provision of law in force even in cases coming from Mofussil. This case therefore is no authority for the proposition that Clause 36 of the Letters Patent is still applicable to Mofussil cases.

23. I may add that the right to prefer a second appeal to the High Court is granted by Section 100 of the CPC and is also restricted in some cases by that Code, thus virtually qualifying the general appellate jurisdiction of the High Court over provincial Courts conferred by Clause 16 of the Letters Patent. Section 117 of the Code makes all the provisions relating to appeals as contained in the Code applicable to the High Court and Section 120 does not exclude this specific provision.

24. In this connection reference may be made to Rule 6 of Order 47 relating to reviews where similar procedure is laid down. It is evident that the intention of the Indian Legislature is to uphold a decision, under appeal or review, where the Judges are equally divided in opinion as to its correctness thus giving effect to the concurrent view of two Judges in preference to that of one Judge though the latter may be the senior Judge composing the Bench.

25. For the reasons given above I am of opinion that u/s 98, CPC these appeals ought to be dismissed.

26. Against this judgment, the plaintiffs appealed under Clause 15 of the Letters Patent.

27. The appeals came on for hearing before Sir Nalini Ranjan Chatterjea, Knight, Judge, Sir William Ewart Greaves, Knight, Judge, and Mr. Justice Panton, who referred the cases to the Full Bench.

28. The Order of Reference was as follows:

One of the questions which arises in this appeal is whether Section 109 of the Bengal Tenancy Act operates as a bar to a suit for enhancement of rent by reason of a previous application u/s 105 having been withdrawn with liberty to bring a fresh suit. There is a conflict of decisions on the point. See Saraj Kumar Acharji Chowdhury and Others Vs. Umed Ali Howladar and Others and Gopal Chandra Saha and Others, and Srimati Abeda Khatun and Others Vs. Majubali Chowdhury and Others, , Dino Nath Sikdar and Others Vs. Anadi Krishna Dutt and Others, . We think the question should be referred to a Full Bench for decision and we accordingly refer the following question to the Full Bench. When an application u/s 105 of the Bengal Tenancy Act for settlement of rent is withdrawn with liberty to bring a fresh suit whether a suit for enhancement of rent is barred by the provisions of Section 109 of the Bengal Tenancy Act. As the question arises in a second appeal (Miscellaneous) the whole appeal is referred to the Full Bench.

29. This order governs the connected Appeal No. 3 of 1924.

Walmsley, J.

30. The question referred is as follows:-" When an application u/s 105 of the Bengal Tenancy Act for settlement of rent is withdrawn with liberty to bring a fresh suit, whether a suit for enhancement of rent is barred by the provisions of Section 109 of the Bengal Tenancy Act."

31. There have been several conflicting decisions on the question but I do not think it would serve any useful purpose to discuss them or even to enumerate them. It is enough to say that one set of decisions favours the view that an application u/s 105 (or Section 106) of the Tenancy Act, if withdrawn by permission of the Court, is to be regarded as not having been made, while the other set proceeds on the footing that the making of an application under either of those sections, whatever be its fate afterwards, brings into operation the prohibition contained in Section 109 of the Tenancy Act.

32. The words of Section 109 are these: "Subject to the provisions of Section 109-A 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 proceeding taken under Sections 105 to 108 (both inclusive)." The

provisions of Section 109-A have no bearing on the present matter.

33. The words " subject of an application made" seem to me so clear as to admit of only one interpretation, and that is that once an application is made, the Civil Court cannot entertain an application or suit in respect of the same matter. It is of no consequence what happens to the application: it may be prosecuted to a conclusion, or abandoned, or dismissed for default, or withdrawn by leave of the Court or without the leave of the Court. It is the fact of the application being made, and not the manner of its disposal that has to be considered.

34. The view that the presiding officer can prevent the making of the application from producing the result by permitting its withdrawal, involves the necessity of adding a gloss to the words of the section, and offends against the principle that the words of a statute must be understood in their plain and ordinary meaning.

35. In my opinion therefore it is the making of the application that brings into play the prohibition of Section 109, and the answer that I would give to the reference is to that effect, namely, that if an application is made u/s 105 of the Bengal Tenancy Act, and subsequently withdrawn whether with or without the permission of the Court, a suit on the same subject-matter is barred by the provisions of Section 109 of the Tenancy Act; and as concerns the appeals which have given rise to the reference, I would allow them and dismiss the suits as not maintainable. The plaintiffs must pay costs of the other side in all the Courts. The hearing fee in this Court for all the hearing is assessed at ten gold mohurs for the two appeals.

Newbould, J.

36. I agree that the question referred to this Full Bench should be answered in the affirmative for the reasons given by my learned brother Walmsley, J., in the judgment which he has just delivered.

37. I was one of the Judges who held in the case of Mohamed Ayezuddin v. Prodyat Kumar Tagore AIR 1921 Cal. 741, that a suit lies to correct an entry in a finally published record-of-rights and that the fact that an application u/s 106 of the Bengal Tenancy Act was withdrawn does not bar the jurisdiction of the Civil Court to deal with the matter. In the judgment in that case no reasons are given for that decision. I have no doubt that the reason is that, at the time of hearing, the decisions of this Court were all one way. In the case of Cheodith v. Tulsi Singh (1913) 40 Cal. 428, it had been held that an application u/s 105 which had been withdrawn must be treated as non-existent. That decision appears to have been followed without question until doubt was thrown on it by the judgment in the case of Srimati Abeda Khatun and Others Vs. Majubali Chowdhury and Others, . This case was decided a short time before the hearing of the case of Mohamed Ayezuddin v. Prodyat Kumar Tagore AIR 1921 Cal. 741, and had not been reported. Had we been aware of that decision our judgment would certainly have contained some reference to the law on this point. The point is mentioned as subsidiary to the question whether a Civil suit lies to correct an entry in the

record-of-rights. It was contended on behalf of the appellant in that appeal that Section 106 of the Bengal Tenancy Act provided an exclusive remedy. After discussing the rulings on this point we decided it against the appellant without any further mention of the subsidiary question which is identical with the subject of the present Full Bench Reference. Now that I have considered this question more carefully and am no longer bound by the authority of previous decisions I have no doubt as to the meaning of Section 109 of the Bengal Tenancy Act. It clearly bars a suit for enhancement of rent in a civil Court after an application has been made u/s 105 of the Bengal Tenancy Act for settlement of rent even though that application has been withdrawn with liberty to bring a fresh suit.

38. I also agree with my learned brother Walmsley, J. that the appeals should be allowed and the order of remand set aside.

C.C. Ghose, J.

39. The facts of the case giving rise to this Full Bench reference are set out in the judgments of Mr. Justice Walmsley and Mr. Justice Suhrawardy dated the 22nd November, 1923, and it is, therefore, unnecessary for me to set out the same again. The learned Judges differed as to the proper construction of Section 109 of the Bengal Tenancy Act and thereupon there was an appeal u/s 15 of the Letters Patent. The learned Judges who heard the Letters Patent appeal were of opinion that having regard to the conflict of decisions on the question of the proper interpretation of Section 109 of the Bengal Tenancy Act, the following question should be referred to the Full Bench: " When an application u/s 105 of the Bengal Tenancy Act for settlement of rent is withdrawn with liberty to bring a fresh suit, whether a suit for enhancement of rent is barred by the provisions of Section 109 of the Bengal Tenancy Act." This reference came on for hearing before us on the 27th April. There is no doubt that there has been a conflict of decisions on the question: [see the cases mentioned in the order of the referring Judges and the case of Sasi Kanta Acharjya Vs. Salim Sheikh, .

40. The question depends on the proper construction of Section 109 of the Bengal Tenancy Act which runs as follows:

Subject to the provisions of Section 109-A, 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).

41. Now it is settled law that in construing the words of a statute one must give to them their plain, grammatical, natural and ordinary meaning and, in my opinion, construing this section according to the rule indicated above, it would follow that once a matter is or has been the subject of an application made u/s 105 of the Bengal Tenancy Act a civil Court cannot entertain an application or suit in respect of the same matter. In my view, it is wholly immaterial for the purposes of construction of Section 109 whether the application referred to above has been withdrawn with or without the leave of the Revenue Officer u/s

105 or whether the application has been disposed of on its merits by the Revenue Officer. I, therefore, agree with Mr. Justice Walmsley in the answer which he proposes to give to the question referred to the Full Bench and in the order made by him.

Suhrawardy, J.

42. I have the misfortune to differ from any learned brothers in the answer proposed to be given to the Reference.

43. The sole question before us is where an application under Sections 105 to 108, Bengal Tenancy Act, is made before the Revenue Officer and withdrawn with leave to bring a fresh "suit," can the matter in dispute form the subject of the civil suit. I am not concerned with oases of withdrawal without leave or dismissal for non-prosecution, of such application. I shall, therefore, confine myself to the consideration of the law as applicable to the facts of the present suit.

44. By giving liberty to bring a fresh "suit" I take it that the Revenue Officer meant to permit the applicant to present a fresh application before him. What is the effect of such an order? When a suit is allowed to be withdrawn with leave to bring a fresh suit under Order 23, Civil Procedure Code, it should be regarded as never brought. It is available for no purpose. It does not save or give fresh start to limitation; nor does it afford a fresh cause of action.

45. Now, Section 109, Bengal Tenancy Act/shows, as it has been held, that the aggrieved party has under the law two alternative remedies. He can apply under Sections 105 to 108 before the Revenue Officer or he can bring a civil suit for the same purpose. By obtaining leave to make a fresh application, he has lost none of these remedies. He can, therefore, if he does not exercise his right to apply to the Revenue Officer, have re-course to the civil Court.

46. The policy of the law seems to be that a party should not have two co-existing rights; he may either apply to the Revenue Officer or bring a civil suit. Where both the rights exist and the former right is not exercised, there is no reason why the latter right should be denied to him. In my opinion the answer to the Reference should be in the negative. The second appeal should accordingly be dismissed.

B.B. Ghose, J.

47. I agree with my learned brother Mr. Justice Walmsley that the answer to the question referred to us should be in the affirmative. I had expressed my opinion previously in the case of Sasi Kanta Acharjya Vs. Salim Sheikh, , that the plain meaning of the words in Section 109 of the Bengal Tenancy Act should be given effect to, and the argument addressed to us has not convinced me that I should alter my opinion and that the ordinary rule of construction of a statute should be departed from in this instance.