

(1914) 03 CAL CK 0015
In the Calcutta High Court

Behari Lal Mallik

APPELLANT

Vs

Priya Nath Sardar and Others

RESPONDENT

Date of Decision : 24-03-1914

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103, 105, 188

Citation : 28 Ind. Cas. 508

Hon'ble Judges : Beachcroft, J;Asutosh Mokerjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against an order by which a Special Judge, under Chapter X of the Bengal Tenancy Act, has in concurrence with the Settlement Officer dismissed an application by a landlord for settlement of fair and equitable rent u/s 105 of the Bengal Tenancy Act. The applicant in his petition u/s 105 stated that he had a one-fifth share in the revenue-paying estate of which eight other persons, who were joined as co-sharer defendants in these proceedings, held the remaining four-fifths share. The petitioner alleged that the tenant defendant had been recorded in the record-of-rights, which had been finally published on the 15th May 1913, as a mourasi mokarari, tenant in respect of a certain area, thus the tenant was really in occupation of a larger quantity of land than what was comprised in his tenancy, and that the rent was enhance able. The petitioner further stated that his co-sharers had refused his invitation to join him in the application, because they were in collusion with the tenant defendant and were anxious to have improper gain. On these allegations, the petitioner prayed that the Settlement Officer might settle fair and equitable rent payable by the tenant u/s 105 of the Bengal Tenancy Act. The Settlement Officer dismissed the application on the ground, that it was barred u/s 188 of the Bengal Tenancy Act which provides that where two or more persons are joint laud-lords, anything which the landlord IN, under the Act, authorised to do must be done either by both or all those persons acting together or by as agent authorised to act on behalf of both or all of them. This order has been continued on appeal by the Special Judge. On the present appeal, the decision of the Special Judge has been

assailed substantially on three grounds, namely, first, that inasmuch as the appellant had taken proceedings u/s 103 of the Bengal Tenancy Act, he was competent alone to maintain a proceeding u/s 105; secondly, that as the Settlement Officer was invited to settle fair and equitable rent after determination of the question, of the status of the defendant and of the area of the land in his possession, the proceeding was not in substance one u/s 105 but rather fell within the scope of Section 106; and, thirdly, that as the co-sharer landlords had acted in collusion with the tenant and had refused to join the plaintiff in the institution of: a proceeding u/s 10(5) there had been a severance of the co-tenancy by operation of law, and that the parties occupied the position of separate landlords.

2. As regards the first contention, it may be conceded that Section 103, as it stands in its amended form, authorises one or more of several proprietors to apply to a Settlement Officer to ascertain and record all or any of the particulars specified in Section 102 with respect to the estate of which he is a proprietor. But it is worthy of note that although the Legislature has amended Section 102 so as to make Section 188 no longer applicable to bar an application under that section by one or" more of several joint proprietors, there has been no corresponding change in Section 105. Section 105 speaks of an application for settlement of fair and equitable rent by either the landlord or the tenant. If the application is by the landlord, it must obviously be presented by the entire body of persons who are joint landlords. It has been argued that this view is likely to cause hardship to innocent landlords, who are not able to obtain the concurrence of obstructive co-sharer landlords in the matter of an application u/s 105. This, however, is a matter for the Legislature to consider. It is plain that there is a fundamental difference between the scope of Section 103 and Section 105. Section 103 contemplates a record of existing facts, while Section 105 contemplates an alteration of existing facts; the Legislature may well have thought that while a record of existing facts may be permitted to be made at the instance of one or more of several joint landlords, the existing facts should not be allowed to be altered at the instance of a co-sharer landlord. But whatever the reason may be for the obvious distinction between Section 103 and Section 105, it is plain that, as pointed out in the case of *Maharaj Kumar Krishna Das Law v. Girija Nath Roy Sardar* 3 Ind. Cas. 472 : 10 C.L.J. 458 they do not stand on the same footing and, that, notwithstanding the amendment of Section 103, the rule still holds good that an application u/s 105 for settlement of fair and equitable rent cannot be maintained at the instance of one out of several joint landlords.

3. As regards the second contention, it is plain that the question is not affected by the circumstance that in the particular case the landlord challenges the entry in the Record of Rights both as regards the status of the defendant and the area of the land comprised in his holding. u/s 105A the Revenue Officer is competent to try and decide such an issue before the settlement of fair and equitable rent under Section 105. Consequently, the proceeding is in essence what it purports

to be, namely, a proceeding under Section 105 for settlement of fair and equitable rent.

4. As regards the third contention, we are unable to appreciate the argument that there has been a severance of joint tenancy amongst the landlords, because one or more of them has acted in collusion with the tenant. Reliance has been placed upon a familiar class of cases, of which the decisions in *Panchanan Banerji v. Raj Kumar Guha* 19 C. 610; *Matungini Dassi v. Ram Das* 7 C.W.N. 93 *Sailendra Nath v. Karali Charn Singh* 2 C.L.J. 534 and *Bhabatarini Dasi v. Ekabbar Malita* 5 C.L.J. 235 : 2 M.L.T. 155 may be taken as examples" which it was held that where a tenant has agreed to allow one of several co-sharer landlords to deal with him as if that co-sharer was his sole landlord, without regard to the interest of the other co-sharers, the effect is to create a separate tenancy under such a fractional co-sharer so as to render Section 188 inapplicable. This principle is of no assistance to the applicant before us. It may also be conceded that joint landlords may cease to be joint as laid down in *Rojnarain v. Ekadasi* 27 C. 479 : 4 C.W.N. 494. But the mere circumstance that one of his co-sharers is not willing to join the plaintiff in his application for settlement of fair rent u/s 105, does not dissolve the relationship of joint landlords amongst themselves all though it need not be disputed that the relationship can be severed, by a partition of the superior interest amongst the landlords or by the creation of independent contractual obligations between each member of the body of landlords on the one hand and the tenant on the other; We are consequently of opinion that the plaintiff and his co-sharer landlords are still joint landlords within the meaning of Section 188 of the Bengal Tenancy Act. This, indeed, is the view upon which the present proceedings are founded. If it had been the case of the plaintiff that he was the sole landlord of the tenant defendant, the presence of the persons described as co-sharer defendants would be meaning less, and the explanations volunteered as to why they did not appear as co-plaintiffs would be equally superfluous. The obvious remedy of the plaintiff is either to effect a partition with his co-sharers or to have a common manager appointed but till this has been done, he cannot maintain a proceeding u/s 105.

5. The result is that the decree of the Special Judge must be affirmed and this appeal dismissed.

6. This judgment, if it is conceded, will govern the other appeals (Nos. 72 to 120 of 1914), which are accordingly dismissed.