

(1897) 07 CAL CK 0033
In the Calcutta High Court

Durga Churn Law and Others

APPELLANT

Vs

Achha Mian Ohowdhry and Others

RESPONDENT

Date of Decision : 06-07-1897

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103, 104(3), 143, 189

Citation : (1898) ILR (Cal) 146

Hon'ble Judges : Francis William Maclean, C.J.; Banerjee, J

Bench : Division Bench

Judgement

Maclean, C.J.—I think we can dispose of these appeals, considering the very full arguments which have been submitted to us by both sides. The real point we have to decide lies in a somewhat narrow compass, and is whether or not the present proceedings are a suit within the meaning of Section 143 of the Bengal Tenancy Act.

Banerjee, J.—I concur with the learned Chief Justice in thinking that this appeal ought to be dismissed with costs. It arises out of certain proceedings instituted u/s 103 of the Bengal Tenancy Act. Upon the proceedings being instituted the Revenue Officer found that the tenants were tenure-holders holding at fixed rates of rent, and he, accordingly, recorded a declaration to that effect. Upon appeal to the Special Judge, that officer in the first instance held that the tenants were occupancy-raiyats, but on the question of fixity of rent he confirmed the decision of the first Court. But upon an application for review of judgment being made, he granted the application, modified his former decision, and came to the conclusion that the defendants were occupancy-raiyats holding at a rent that was enhanceable, and he directed that the rent should be assessed at a certain rate per bigha.

2. Against this last mentioned decision the present appeal has been preferred, and it is contended, on behalf of the appellants, that the decision of the Court below is wrong in law, first, because the learned Special Judge had no power to review his former judgment; and, secondly, because he was wrong in enhancing

the rent without assigning any definite reasons, when under sub-Section 3 of Section 104 of the Bengal Tenancy Act, he was bound to presume, until the contrary was proved, that the existing rent was fair and equitable.

3. Before dealing with the first of these two grounds, it becomes necessary to consider two questions raised by the learned Counsel for the respondents, namely, first, whether it is open to the appellants to raise the first contention when they did not take any objection in the Court below as to its not having any jurisdiction to entertain the application for review of judgment: and, secondly, whether the ground upon which we are asked to interfere is a ground that comes within the scope of Section 584 of the CPC which governs second appeals.

4. As to the first question, I do not think that the mere fact of the appellants not having objected in the Court below to the lower Courts entertaining the application for review of judgment, precludes them from raising the objection now before us, if it is a valid objection. In this view I am supported by the decision of their Lordships of the Privy Council in the case of *Minakshi Naidu v. Subramanya Sastri* (1887) ILR 11 Mad. 26: L.R. 14 I. A. 160. It was there held by their Lordships that where there is an inherent incompetency in the Court below to deal with the question before it, no consent would have conferred upon the Court below that jurisdiction which it did not possess. Here there was no consent; there was merely an absence of objection. Assuming that the contention of the appellants is right, that the Lower Appellate Court had no power to grant the application for review, the mere fact of their not having raised that point in the lower Court, ought not, in my opinion, to prevent them from raising it now.

5. Then, as to the second question, I do not think that the ground raised on behalf of the appellants is outside the scope of Section 584 of the Code. A second appeal is allowed by that section on this, amongst other grounds, namely, that the decision is contrary to some specified law or usage having the force of law; and "specified," as explained by the Judicial Committee in the case of *Durga Chowdhurani v. Jewahir Singh* (1891) ILR 18 Cal. 23, means specified in the memorandum of appeal. The decision that is appealed against in this case is the decision of the 22nd August 1895. It is one and the same decision that holds that the application for review ought to be admitted, and holds, in modification of the former judgment, that the defendants ought to be recorded as raiyats with rights of occupancy, holding at enhanceable rates. The correctness of that decision is called in question on the ground of its being contrary to law, that is, contrary to law for this reason, that the decision, in so far as it grants the application for review, is in contravention of the law regulating the procedure on this subject, and is in excess of the power of the Court. That being so, the two preliminary questions raised on behalf of the respondents ought, in my opinion, to be decided in favour of the appellants.

6. It becomes necessary then to consider the first ground of appeal on its merits. The contention of the appellants is that the Code of Civil Procedure, subject to

certain modifications, applies only to suits between landlord and tenant under the provisions of Section 143 of the Bengal Tenancy Act: that proceedings u/s 103 of that Act are not suits, but are initiated by applications; and that a distinction is made between suits and applications in the Act as will appear from Section 144. It is further contended that Sections 107 and 108, which make the provisions of the CPC applicable to proceedings under Chapter X of the Act, such as the one out of which this appeal has arisen, make them applicable only to a limited extent, that is, as regards the trial in the first Court, the appeal to the Special Judge, and a second appeal to this Court. And it is argued that the inference to be drawn from these several provisions of the Bengal Tenancy Act, is that the provisions of the CPC relating to review of judgment do not apply to proceedings like these.

7. On the other hand, it is contended, in the first place, that every Court has an inherent power, unless there is any express provision of the law to the contrary, to correct its own errors by review of judgment; and in support of this contention reference is made to certain decisions of this Court and of the Judicial Committee. It is further contended that proceedings under Chapter X, at any rate, in certain cases, and the present case is one of them, should be treated as suits under the Bengal Tenancy Act, as provided by paragraphs 27 and 32 of the rules made by the local Government u/s 189 of the Bengal Tenancy Act.

8. The question has been very fully discussed on both sides; and after giving my best consideration to the arguments advanced, I am of opinion that the appellant's contention is not sound, and that the view contended for by the learned Counsel for the respondents that proceedings like these should be regarded as suits is correct.

9. The local Government is, by Section 189 of the Act, given authority to make rules to regulate the proceedings to be held by Revenue Officers in pursuance of any duty imposed upon them under this Act. Chapter X of the Act, under which this proceeding was instituted, relates to proceedings to be conducted by Revenue Officers under this Act; and in regulating their procedure, the local Government has, under the provisions of Section 189, made the two rules to which reference has just been made, which provide that the proceeding shall be dealt with as a suit under this Act. If, then, as regards procedure, and the question before us is one of procedure, the proceeding is to be dealt with as a suit under this Act, is there any reason why the proceeding should not be treated as a suit within the meaning of Section 143 of the Act, and therefore governed by the Code of Civil Procedure? It was argued that if the Legislature had intended the CPC to apply to proceedings under Chapter X, the language of Section 143, instead of being qualified as it is, would have been to the effect that the CPC shall apply to suits and proceedings between landlord and tenant under this Act.

10. I do not think that this argument is valid. These proceedings could not have been treated as suits, and could not, so far as this ground of decision goes, have been treated as governed by the review provisions of the Code of Civil

Procedure, if the local Government had not thought it fit, in the exercise of the power vested in it by Section 189 of the Act, to declare that they should be dealt with as suits. The Legislature, in enacting Section 143 in the way it has done, has left it to the local Government to say, whether certain proceedings which are by the Act to be initiated by applications, should be treated as suits or not. In this particular case, the local Government has determined to say that these proceedings should be treated as suits. In the absence then of any definition of the terra " suit " any where in the Act, I think it is only right and proper to hold that a proceeding like this comes within the description of a suit between landlord and tenant u/s 143 of the Act.

11. I may add that it would have been somewhat anomalous if it had been otherwise; for then we should have had the CPC governing the proceedings down to final judgment in the first Court, and the same CPC governing the case so far as the first appeal and also the second appeal were concerned, but not so far as an application for review of judgment went. Proceedings like these are not summary proceedings. Decisions passed in them have the force of a decree. An appeal and a second appeal are allowed against those decisions. But if no power of correcting its error by review of judgment were given to the Court, then notwithstanding the provisions as to appeal, grave and irremediable injustice might sometimes result. I think, therefore, that it is consistent with reason and justice to hold that these proceedings ought to be treated as suits within the meaning of Section 143 of the Bengal Tenancy Act, and if they are to be so treated, the CPC applies to them, and there can be no objection to the Judge entertaining an application for review.

12. As to the second point, it is enough to say that no second appeal is allowed by Section 108 of the Bengal Tenancy Act upon a point like this. For Sub Section 3 of Section 108 of the Act allows an appeal to this Court from the decision of a Special Judge only in cases coming u/s 106, and this last mentioned section relates only to disputes arising as to the correctness of any entry, not being an entry of a rent settled under Chapter X, and evidently the second objection relates to an entry of the rent so settled in this case.