
(1923) 07 PAT CK 0050
In the Patna High Court
Case No : S.A. No. 1288 of 1921

Hazari Lal Sahu and another	Vs	APPELLANT
Ambica Gir and others		RESPONDENT

Date of Decision : 23-07-1923

Acts Referred:

Citation : (1923) 07 PAT CK 0050

Final Decision : Allowed

Judgement

Kulwant Sahay, J.—This appeal arises out of an application for settlement of fair rent under S. 105 of the Bengal Tenancy Act in respect of the holdings of certain tenants having occupancy rights and paying money rents to the proprietors. The application purported to be made by the entire body of landlords holding 16 annas proprietary interest in mouza Rampur bearing Touzi No. 841 and the application was really for enhancement of rent under S. 30 (b) of the Bengal Tenancy Act on the ground of rise in the average local price of staple food crops during the currency of the rent. The tenant defendants filed written statements taking various objections to the enhancement of the rent.

2. One of the objections related to the maintainability of the application on the ground that all the proprietors had not joined in making the application, nor had it been filed with the consent of all of them and therefore it was not maintainable under S. 188 of the Bengal Tenancy Act.

3. The learned Revenue Officer held that all the co-sharer landlords jointly interested in Touzi No. 841 had joined in the application and that it was filed with their express or implied consent and the application was therefore maintainable. Upon the merits he enhanced the rent to the extent of 1-6 in the rupee and settled the rent so enhanced to be the fair rent of the holdings in dispute.

4. Against the decision of the Revenue Officer the tenants went in appeal before the Special Judge, and the only ground taken by them in appeal was that the application under S. 105 could not succeed because all the landlords had not

joined as plaintiffs, and that therefore the provisions of S. 188 of the Bengal Tenancy Act had been contravened.

5. The application under S. 105 contained the names of all the recorded proprietors of the Touzi but the verification of the application was not signed by all of them individually, some of the applicants having signed the same for themselves as well as for some of the other applicants. Sheonandan Singh signed it for himself and for his brother Ram Parsan Singh Panchoo Singh signed it for himself and for Sabha Singh and Surajnath Singh; Singhasan Singh signed it for himself and for Bishundeo Singh, Sheodhari Singh and Tej Bahadur Singh and Ram Chandra Singh. On the 8th and 17th September 1920 Sheonandan Singh, Ramparsan Singh, Sabha Singh, Surajnath Singh and Ramchandra Singh filed two applications before the Revenue Officer to the effect that the application had been filed without their knowledge and permission and that they were not parties to it. The learned Revenue Officer held that the original application under S. 105 had as a matter of fact been filed with the express or implied consent of these co-sharers, and that the applications of the 8th and 17th September were subsequently filed by them because they had been pressed by the tenants defendants, who were their co-villagers and the majority of whom were their castemen, to retire from the case. He referred to the fact that on a previous date all the applicant landlords including those who had filed the petitions on the 8th and 17th of September 1920, had appeared before him and the case was proceeded with in their presence and no objection was then raised by them that the application had not been filed with their knowledge and under their authority.

6. On appeal the learned Special Judge agreed with the Revenue Officer that so far as the applicants other than Sabha Singh and Surajnath Singh were concerned, they had authorised the filing of the application and the verification thereof by the other applicants named above; but as regards Sabha Singh and Surajanath Singh he held that Panchoo Singh who had signed the application for them had no authority to do so. He held that an application for settlement of rent under S. 105 was a suit, and that according to S. 141 of the Code of Civil Procedure, the procedure provided in the Code applied to proceedings under S. 105 of the Bengal Tenancy Act and that therefore the provisions of Order VI Rule 14 of the Code relating to the signing of pleadings by parties must be observed in filing an application, and a person signing the application for another must be duly authorised by him to sign it. He referred to a statement made on behalf of the applicants under S. 105 to the effect that Sukram Singh, father of Sabha Singh and Surajnath Singh, authorised Panchoo Singh to sign the application on their behalf, and he held that if Sukhram Singh was the managing member of the joint family consisting of Panchoo Singh, Sabha Singh and Surajnath Singh, and as such managing member gave authority to Panchoo then Sukhram himself was a co-sharer landlord and should have been one of the applicants, and as in any event no authority had been obtained by Panchoo Singh from Sabha Singh and Surajnath Singh to institute the proceedings in their behalf the provisions of S. 188 of the Bengal Tenancy Act had been contravened and the application was not

maintainable.

7. In the first place it is doubtful whether a proceeding under S. 105 of the Bengal Tenancy Act is a suit. In *A.B. Chiodith Vs. Tulsi Singh*, it was held by a Division Bench of the Calcutta High Court that an application under S. 105 of the Bengal Tenancy Act cannot be regarded as a suit. In the second place S. 141 of the CPC provides that the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil Jurisdiction. The proceeding in the present case was initiated in a Revenue Court before a Revenue Officer and not in a Court of Civil jurisdiction, and in my opinion S. 141 of the Code has no application to applications under S. 105 of the Bengal Tenancy Act. It has however, been pointed out by the learned Vakil for the respondents that S. 107 of the Bengal Tenancy Act provides that in all proceedings under Ss. 105, 105 (A) and 106 the Revenue Officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the CPC for the trial of suits. Now this section makes the procedure for the trial of suits laid down in the CPC applicable to proceedings under S. 105 of the Bengal Tenancy Act, and not to applications initiating the proceedings. In my opinion it does not make the provisions contained in the CPC relating to the verification of a plaint applicable to such proceedings. But even assuming that the provisions contained in Order VI rule 14 of the Code relating to the signing of the plaint are applicable, I think the provisions have been materially complied with in the present case. There can be no doubt that Sabha Singh and Surajnath Singh did authorise Panchoo Singh to sign the application on their behalf as was found by the learned Revenue Officer. The conduct of those two persons before they filed their applications on the 8th and 17th September 1920 makes this point clear. As has been pointed out by the Revenue Officer, these persons appeared before him on the 26th July 1920 and proceeded with the trial in the usual way without raising any objection. If that is so, then any formal defect in signing or verifying the application will not make the application incompetent. As was pointed out by the Privy Council in *Mohini Mohan Das v. Bungsi Buddhan Saha Das* [1890] 17 Cal. 580 (P.C.) there is no rule that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint. S. 188 of the Bengal Tenancy Act provides that where two or more persons are joint landlords, any thing which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together, or by an agent authorised to act on behalf of both or either of them." Here all that was necessary was that the application under S. 105 should be filed by or on behalf of all the joint landlords, this was the thing which the landlords were authorised by the Act to do. The application appears to have been filed by all of them and the subsequent conduct of some of the joint landlords in repudiating the authority of the others to sign the application on their behalf and retiring from the case will not attract the provisions of S. 188 so as to defeat the application if the other joint landlords choose to proceed with it.

8. As regards the observation of the learned Special Judge that if Sukhram Singh

is the managing member of the joint family consisting of himself, Panchoo Singh, Sabha Singh and Surajnath Singh, he was a necessary party to the application, it is to be noted that it is admitted by both parties before us that Sukhram Singh is not a recorded proprietor. All the recorded proprietors of the Touzi are named as applicants in the application and the absence of the name of Sukhram Singh even if he be the managing member, will not make the application illegal if the persons who are recorded as proprietors are all joined in the application I am therefore of opinion that the learned Special Judge was wrong in holding that the application under S. 105 could not be maintained by reason of the provisions of S.188 of the Bengal Tenancy Act. It appears from his judgment that no ground was taken before him as regards the merits of the case, the only ground upon which the decision of the Revenue Officer was assailed before him was that the application could not be maintained under the provisions of S. 188 of the Bengal Tenancy Act This ground having failed, the decision of the Revenue officer must be confirmed.

9. The result is that the appeal succeeds, the decision of the Special Judge is set aside and that of the Revenue Officer is restored. The appellants are entitled to their costs in this appeal and in the Court of appeal below. The order for costs made by the Revenue officer will stand.

Dawson Miller, C.J.

10. I agree.