

(1933) 06 CAL CK 0038
In the Calcutta High Court

Hrishikesh Chatterjee and Others

APPELLANT

Vs

B. Naba Krishna Roy Chowdhury and Others

RESPONDENT

Date of Decision : 15-06-1933

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 105A

Citation : AIR 1934 Cal 122

Judgement

1. What has happened in this case is this: In the Record of Rights the defendant was described as being an occupancy raiyat. Thereafter the landlord brought a suit under the provisions of Section 105, Ben. Ten. Act., for the settlement of fair and equitable rent. In that suit the defendant made an application u/s 105-A, Ben. Ten. Act, for the decision of the issue, namely: "What is the status of the defendant?" and under orders of Court he paid ad valorem court-fee on the value of the suit. The landlord wanted to withdraw the application u/s 105, Ben. Ten. Act, with liberty to bring a fresh application. The application of the landlord was refused and thereafter the application u/s 105 filed by the landlord was not proceeded with and the application was dismissed for default in prosecution. No orders were passed deciding the issue raised by the tenant defendant and the position therefore was that unless there was an application for the settlement of fair and equitable rent u/s 105, Ben. Ten. Act, the tenant defendant would not have any opportunity whatsoever of having the issue which he had raised determined. In reality, looking into the substance of the thing, there were in effect two suits rolled into one before the Court below; and if that was the position of affairs there was no reason whatsoever why the issue raised by the defendant should not have been determined seeing that the condition precedent, namely, the institution of a proceeding u/s 105, Ben. Ten. Act, was already before the Revenue Officer. In our view, the nondetermination of the issue raised by the tenant defendant was a failure to exercise jurisdiction vested in the Revenue Officer by law. In that view of the matter, the Rule is made absolute and there will be a direction that the matter do go back to the Revenue Officer in order that he should determine the issue raised by the tenant defendant. Costs

of this Rule will abide the result. We assess the hearing-fee at two gold mohurs.