

(1920) 05 CAL CK 0035
In the Calcutta High Court

Janada Gobinda Choudhury and Others	APPELLANT
Vs	
Bonomali Saha and Others	RESPONDENT

Date of Decision : 14-05-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105

Citation : 57 Ind. Cas. 989

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—These two appeals arise out of a single suit for recovery of arrears of rent from six defendants. The suit was decreed by the first Court and against that decree two separate appeals were filed by different defendants, and as these appeals were decreed, two second appeals have been filed by the plaintiffs in this Court. The question to be determined is the amount of rent payable by the defendants for a certain tenure In the Record of Rights the rent was originally recorded at Rs. 21.13. Then in a case u/s 105 of the Bengal Tenancy Act the Settlement Officer increased the rent to Rs. 39. In the proceedings before the Settlement Officer four of the defendants filed a petition of compromise by which they agreed to pay rent at the higher rate. The order pf the Settlement Officer was in the following terms: "The claim is decreed on the basis of the solenama against defendants Nos. 1, 3, 5 and 6 and ex parte against the other defendants. The rent is settled at Rs. 39. I consider this rent fair and equitable in view of the assets as shown in the solenama. Parties to bear their own costs of the suit." This decree was attacked in the lower Courts on the ground that the solenama was obtained by coercion and undue influence from those defendants who joined in the compromise. Both the Courts have found that this defence has not been substantiated. The lower Appellate Court has, however, held that this decision of the Settlement Officer is vitiated because he did not comply with the provisions of the sections of the Bengal Tenancy Act which relate to the duties of a Settlement Officer when recording an enhanced rent agreed to between the parties. I am unable to agree with all that has been said in the judgment of the

learned Subordinate Judge and more particularly, I cannot accept his decision that it lay on the plaintiff to show that all the requirements of the Bengal Tenancy Act were fulfilled when the Settlement Officer passed this decree. Several of the criticisms on the action of the Settlement Officer might be justified if I were hearing on appeal from that officer's decision, but they are not good grounds for holding that his jurisdiction was affected. Had all the defendants been parties to the compromise, I should have held that the decision u/s 105 was binding on them. But it is unnecessary to discuss this aspect of the case, since it appears to me that there was a fatal defect in the ex parte decree against those defendants who did not join in the compromise. Section 107 of the Bengal Tenancy Act provides that the Revenue Officer shall adopt the procedure laid down in the CPC for the trial of suits. It was, therefore, necessary, before passing an ex parte decree against the defendants, to take some evidence to support that decree. The tenure in question was recorded in the Record of Rights as a mokarrari tenure. Therefore, before the Settlement Officer could enhance the rent, there must be before him some evidence either to rebut the presumption arising from the entry in the Record of Rights or evidence that the defendants held excess land which would make them liable to an enhanced rent on the ground of an alteration in the area of the tenure or holding within the provisions of Section 50 of the Bengal Tenancy Act. The only evidence taken by the Settlement Officer was the petition of compromise. This would have been evidence against the co-tenants if the question for decision had been arising u/s 7 of the Act, that is to say, if it had been shown that the rent was liable to enhancement. The fact that the co-tenants had agreed to a certain enhancement would be good evidence that that enhancement was reasonable. But a statement of the co-tenants in a petition of compromise that they were willing to pay a higher rate of rent would be no evidence against the tenants who were no parties to that document that the rent was liable to enhancement. The Settlement Officer having decided the case against the absent defendants without following the procedure laid down in the CPC as required by Section 107 of the Bengal Tenancy Act, his order could not have the force and effect of a decree of a Civil Court in a suit between the parties. If this decision of the Settlement Officer was inoperative against those defendants who did not appear, it is conceded that it cannot take effect against the other defendants since all are joint tenants. On this ground, therefore, I uphold the decision of the lower Appellate Court and dismiss the appeals with costs.