

(1916) 08 CAL CK 0014
In the Calcutta High Court

Jogendra Mohan Das and Another

APPELLANT

Vs

Janaki Nath Saha and Panchanon Saha and Others

RESPONDENT

Date of Decision : 26-08-1916

Acts Referred:

Citation : 36 Ind. Cas. 795

Hon'ble Judges : Smither, J;Richardson, J

Bench : Division Bench

Judgement

1. The appellants before us are landlords, who applied u/s 105 of the Bengal Tenancy Act for the settlement of fair and equitable rents in respect of lands held by tenant-respondents. Three such applications were tried together in the first Court One of the cases Was compromised in the lower Appellate Court The other two cases have come before us in second appeal. As the principal point which arises is the same in both we shall follow the course which has been adopted in the Courts below and deliver only one judgment.

2. The tenant respondents are entered in the Record of Rights as tenure-holders. The landlords disputed the correctness of these entries and asserted that the tenants were raiyats and liable to pay rent as such. Upon this question an issue was raised which prima facie was triable in these proceedings under the provisions of Section 105 A, Clause (e). The Revenue Officer refused to try this issue on the ground that for that purpose the under-tenant, or the sub tenants of the respondents were necessary parties. The learned District Judge concurred in this view and the applications have been dismissed by both Courts mainly on this ground sf non-joinder.

3. Now Section 107 directs that the Revenue Officer in proceedings under Sections 105, 105A and 10 3 shall subject to any rules made by the Local Government under the Act adopt the procedure laid down in the CPC for the trial of suits order I, Rule 13, of the Code requires that all abjections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity. In the cases before us the objection which has found favour below

was not taken or at any rate was not clearly or expressly taken in the written statements. It is not mentioned among the points for decision set out in the Revenue Officer's judgment. Even if these points for decision"" were not regularly framed as issues before the trial it would appear that the objection was first suggested at the end of the trial when arguments were heard.

3. Apart however from the delay in bringing forward the objection, we are of opinion that it ought not to have been allowed to prevail. The point is nearly if not quite one of first impression. In the case of *Jogendra Nath Singh v. Secretary of State* 17 Ind. Cas. 921 : 16 C.L.J. 385 : 17 C.W.N.835, tenants who had been entered as tenure-holders in a Record of flights and whose rent had been settled under Part II of Chapter X of the Bengal Tenancy Act, brought a suit against the Secretary of State as landlord u/s 101H for the reduction of the rent settled, on the ground that they should have been entered in the record as occupancy-raiyats and not as tenure-holders. It was held distinguishing the cases of *Digambar Nandav. Secretary of State* 17 Ind. Cas. 917 : C.L.J. 381, and *Pajir-uddin v. Secretary of State* 17 Ind. Cas. 919 : 16 C.L.J. 383, that the under-tenants of the tenants who in that case be it noted, were plaintiffs were not necessary parties. In our opinion the reasoning by which that conclusion was reached applies equally in the present case. It is true that Section 104H contemplates, as appears from Clause (4) the attestation of the rent entered in the record and does not contemplate or at any rate does not expressly contemplate the attestation of any other entry, though Clause (9) requires the Civil Court to notify its decision to the Collector. Among the grounds however on which the rent may be altered is that specified in Sub-clause (e) of Clause (3), namely that the tenant belongs to a class different from that to which he is shown in the Record of Rights as belonging." Section 105 A is somewhat differently worded but is to the same effect. Under the latter section, where the issue arises (e) whether the tenant belongs to a class different from that to which he is shown in the Record of Rights as belonging, the Revenue Officer is to try and decide such issue and settle the rent u/s 105 accordingly". It is true that the catena of provisions beginning with Section 105 exclude the provision contained in Section 107, Clause (2), and Section 109D. These further provisions briefly require that a note of rent settled and issues and disputes decided (including the issues u/s 105(A) shall be made in the Record of Rights and lays down that such note shall be considered as part of the record. But that does not mean that the note is to affect third parties who are strangers to the proceedings or suits in which the rents were settled or the issues or disputes were decided or that any consequential amendments are to be made in the entries relating to such third parties. Such third parties cannot be bound or affected by such proceedings or suits, nor can the entries relating to them be altered as the result of such proceedings or suits. This observation applies to the under-tenants in the cases before us. We do not say that if they had been joined as parties they would not have been proper parties but we are of opinion that they are not necessary parties in the sense that the proceedings must fail in their absence. The question

cannot be considered from the point of view of the under-tenants only. The landlords, as it seems to us are entitled to have the issue raised decided as between them and their immediate tenants. It will be easy to word any note which may be made hereafter in the Record of Rights in such a way as to put it beyond all doubt that the note does not prejudice the under-tenants. The note, it may be added, does not prejudice the interest of third parties not bound by the proceedings in which the issue or decision noted was arrived at. Moreover even from the point of view of the under-tenants it seems undesirable that the question of their status should be discussed until it actually arises. With the suggested addition to the note, their position would be the same as that of under-tenants in a case u/s 104H.

3. The result is that the issue raised by the landlords in these cases should have been tried on the merits and the applications should not have been in effect rejected on the ground of non-joinder. We agree with the learned District Judge that the Revenue Officer properly refused to consider whether the rent of the tenants was enhanceable on the footing that they were tenure-holders. That alternative case was put forward too late. If however the landlords succeeded in showing that the tenants are raiyats they (the landlords) may be entitled to the enhancement of rent which they claimed u/s 30 of the Act.

4. In both cases the landlords also claim additional rent for some additional area said to be in the possession of the tenants. In the case to which Second Appeal No. 20 relates it has been found, and the (hiding is not now disputed, that the tenants are not in possession of any additional area. In the other case the landlords claimed additional rent not only u/s 52 of the Act, but also on the ground that they were entitled under the terms of the lease or of the kabuliat executed by the tenants, to rent for the whole area actually in the possession of the tenants. It seems to have been held below that this latter question was not triable u/s 105 and Section 105A because it turned on a written contract. Here again we are of opinion that the Courts below are in error. In settling a fair rent u/s 105, though Clause 4 says he is to have regard to the rules laid down in the Act, there is nothing to prevent the Revenue Officer and the Court from taking into consideration the terms and conditions embodied in the lease or other written document by which the rights of the parties are regulated.

5. With these observations the judgment and decree of the Court below are set aside and the cases are remanded to the lower Appellate Court in order that the appeals to that Court may be disposed of in accordance with law. In disposing of the appeal the lower Appellate Court will be at liberty so far as it may be necessary and practicable to exercise any of the powers conferred on the Appellate Court by Rules 23 to 29 of Order XLI of the Civil Procedure Code.

6. The costs of se appeals will abide the result. We assess the hearing fee in Second Appeal No. 20 at two gold mohurs and in Second Appeal No. 76 at three gold mohurs.