
(1930) 12 CAL CK 0004
In the Calcutta High Court

Kumar Gocool Chandra Law and Another	APPELLANT
Vs	
Matilal Ghose and Others	RESPONDENT

Date of Decision : 11-12-1930

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 105A, 108

Citation : AIR 1931 Cal 553

Judgement

1. The facts giving rise to these appeals, shortly stated, are as follows : Raja Krishna Das Law was the owner of certain properties in the district of Jessore. There were settlement proceedings some time ago and a Record-of-Bights was prepared. Thereafter there were cases under S3. 105 and 105-A, Ben. Ten. Act, at the instance of the landlord the result of which was that certain lands were held to be trial or rent-paying. The date of the decision in Sections 105 and 105-A cases is 13th August 1921. u/s 107, Ben. Ten. Act, the decision in the said cases had the force and effect of a decree of a civil Court in a suit between the parties subject however to the provisions of Section 108 and Section 115 C, Ben. Ten. Act. Raja Kristodas Law died on 16th November 1921 but it appears that the fact of his death was not known to the settlement authorities. A proceeding u/s 108 was drawn up by the Settlement Officer for revising the orders u/s 105 and 105-A, Ben. Ten. Act. The date of the initiation of this proceeding is 29th November 1924. It appears that the heirs of Raja Kristodas Law were not brought on the record when the proceeding was initiated. Now Section 108, Ben. Ten. Act, runs as follows:

Any Revenue Officer especially empowered by the Local Government in this behalf may on application, or of his own motion, within 12 months from the making of any order or decision u/s 105 and Section 105-A, Section 106 or Section 107, revise the same, whether it was made by himself or by any other Revenue Officer, but not so as to affect any order passed or decree made u/s 115-C. Provided that no such order or decision shall be so revised if an appeal from it has been filed u/s 115-C or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

2. For certain reasons recorded in his order dated 8th January 1925 Mr. Fawcus, the Settlement Officer, revised the order under Sections 105 and 105-A and sat aside the same. This was done as stated above without bringing on the record the heirs of Raja Kristodas Law. The matter then came before the Special Judge on appeal by the heirs of Raja Kristodas Law. The Special Judge held by his order dated 29th April 1926 that the Settlement Officer's order dated 8th January 1925 was entirely ultra vires as it was passed without notice to the parties referred to in Section 108, Ben. Ten. Act. The Settlement Officer thereupon remanded the case to the lower Court for rehearing after due notice to the parties interested. The matter then came before the Assistant Settlement Officer on 28th August 1926. The heirs of Raja Kristodas Law had not even then been brought on the record in place of the deceased and the Assistant Settlement Officer held that the time mentioned in Section 108 having long elapsed and no steps having been taken to bring the heirs of the deceased on the record, the proceeding u/s 108 must fail and that the original order or orders under Sections 105 and 105-A, Ben. Ten. Act, must stand. There was a further appeal to the Special Judge of Jessore and that officer has now hold that the proceeding u/s 108, Ben. Ten. Act, having been started on the initiative of the Settlement Officer, it is sufficient if such proceeding has been started within a period of 12 months from the date of the order or orders under Sections 105 and 105-A. The Special Judge observed as follows:

It is nowhere laid down that a case u/s 108, Ben. Ten. Act, is to be treated as a suit. I therefore think that it is enough for the purpose of Section 108, Ben. Ten. Act, if the proceedings for the revision of the decision are started (either on the application of the party or on the motion of the Settlement Officer himself) within 12 months from the date of the decision. The question of bringing parties on record hardly arises. All that is required by the section is that a reasonable notice is to be given to the parties and for that there is no law of limitation. In the present case whichever date may be taken as the date of the inception of the proceedings u/s 108, Ben. Ten. Act, whether it was 29th November 1924 when the Assistant Settlement Officer decided to send up the case to the Settlement Officer or the date of the decision of the Settlement Officer himself it was within 12 months from the date of the decision under Sections 105 and 105-A, Ben. Ten. Act. Cases u/s 108, Ben. Ten. Act, are not in my opinion suits at any stage.

3. On behalf of the appellants who are the heirs of the late Raja Kristodas Law (and who it may be noted have not yet been substituted on the record of the original case) it has been contended by Mr. Bose that in circumstances such as these although the Settlement Officer may initiate a proceeding u/s 108, Ben. Ten. Act, without bringing on the record the heirs of a deceased party, he must bring on the record such heirs within the period mentioned in the section itself. In other words it is contended that where the Settlement Officer is unaware of the death of a party interested, he may no doubt start the proceeding u/s 108 without bringing on the record at the moment the heirs of the deceased party, but he must in order to make the proceeding effective against the parties

interested bring on the record the heirs of the deceased party within 12 months from the date of the original order under Sections 105 and 105-A. In this case, this not having been done, Mr. Bose contends that the entire proceedings u/s 108 are, having regard to the events which have happened, entirely invalid and that the original order or orders under Sections 105 and 105-A, Ben. Tan. Act, cannot be questioned and that they should retain the force and effect of a decree of a civil Court in a suit between the parties.

4. We are of opinion that on the facts appearing on the record Mr. Bose's contention is sound and must be given effect to. The proceedings must be instituted within 12 months as required by Section 108 out that means valid proceedings must be instituted within that period. Now it is elementary that proceedings against a do-id man are not valid. It follows therefore that in this case at no point of time within the said period of 12 months were any valid proceedings instituted u/s 108.

5. We are not inclined to hold that there is no appeal in this case as has been contended by the respondents. But be that as it may, it is not necessary to pursue the matter because this is clearly a case where in the exercise of our powers of superintendence u/s 107, Government of India Act, we can set aside the order of the Special Judge dated 4th August 1928 and restore the order of the Settlement Officer dated 28th August 1926 and we accordingly do so. The result is that these appeals are allowed with costs.