
(1924) 07 CAL CK 0049
In the Calcutta High Court

Kumar Jogendra Narain Singha and Others

APPELLANT

Vs

Mohamed Ismail Choudhury and Others

RESPONDENT

Date of Decision : 04-07-1924

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1

Citation : 86 Ind. Cas. 1035

Hon'ble Judges : Suhrawardy, J; Duval, J

Bench : Division Bench

Judgement

1. These eleven appeals arise out of as many suits u/s 105, Bengal Tenancy Act for settlement of fair and equitable rent on the grounds of additional area, the present rents being lower than the prevailing rate and rise in the price of staple food crops.

2. The facts are that the appellants along with five others form the entire body of landlords and the suits were purported to have been brought by and on behalf of all these persons. Kiran Bala Devi was plaintiff No. 5 and the appellant Kali Charan Singha, plaintiff No. 6. The suit proceeded to a hearing and a large number of witnesses were examined and a large number of documents filed on behalf of the plaintiffs. While the defendant's case was in progress Kiran Bala Devi who was described as plaintiff No. 5 filed an application on the 8th September 1920 to have her name "struck out" from the category of the plaintiffs on the ground that the suits were not instituted with her knowledge and consent and that she did not want to prosecute the suits. This application in spite of the other plaintiffs' objection was granted, and Kiran Bala's name was ordered to be removed from the category of the plaintiffs. The other plaintiffs then applied to make plaintiff No. 5 a pro forma defendant and this was allowed. They also wanted to prove separate tenancy of the defendants under them but though opportunity was allowed them they did not attempt to prove it. In these circumstances the Assistant Settlement Officer dismissed the suits on the ground that the suits are not maintainable in the absence of one of the joint landlords u/

s 188, Bengal Tenancy Act, and that the other landlords failed to prove a separate tenancy. On appeal by the remaining plaintiffs the learned Special Judge affirmed the order of the Court below. These second appeals from the decrees of the Special Judge came on for hearing before Chatterjea and Chotzner, JJ., who directed the lower Court to enquire by taking fresh evidence as to whether the person who had signed Kiran Bala's name in the complaints had the authority to do so, but retained the cases on the file of this Court. The records went back to the lower Court but as it was represented to it that the parties were going to settle the matter amicably that Court did not proceed further. An application was then made to this Court before the same Judges to call up the records from the lower Court for the purpose of recording the compromise. The records came to this Court and a petition of compromise between plaintiffs Nos. 1 and 4 and the tenant defendants Was filed. The negotiations for a compromise with the present appellant Kali Charan Singha fell through and he applied to the Court to proceed with the hearing of this appeal. The learned Judges thereupon permitted the appellant to examine in this Court a witness to prove the authority of Kali Das Dutta, who had signed the name of Kiran Bala Devi on the complaint's as her am mukhtear or general agent and also to file certified copies of complaints and decrees in which it appeared that Kali Das had acted as the lady's agent. The cases have come before us on transfer and we have examined a witness Ramesh Chandra Sanyal and received certified copies of a number of complaints and decrees filed by the appellant.

3. We understand that by the order of the learned Judges above referred to that we have to determine the question, though one of fact, as to whether or not Kali Das Dutta had the authority to sign Kiran Bala Devi's name on the complaint. The learned Vakil for the respondent objects that we are not entitled to determine in second appeal a question of fact in view of the finding of the lower Appellate Court that the complaints were filed without the knowledge and consent of Kiran Bala Devi. We feel bound by the order to which reference has been made and which is intended to minimise cost and time of this protracted litigation. Besides, the point which we are called upon to determine was not directly raised or decided by either of the Courts below. The authority of Kali Das Dutta was not questioned in the Courts below and the absence of the knowledge or consent of Kiran Bala, which was the only point decided, is not, as is contended, enough to dispose of the point raised u/s 188, Bengal Tenancy Act, if it is found that the complaints were signed on her behalf by her am mukhtear by whose acts and deeds she is bound under the power-of-attorney executed by her.

4. We accordingly proceed to determine the question of the authority of Kali Das Dutta. The appellant had examined a witness Ramesh Chandra Sanyal who is one of the several am mukhtears of the lady Kiran Bala Devi. He may be said at present to belong to the opposite camp. He admits that Kali Das Dutta holds a general-power-of-attorney from the lady and that he is a senior officer in her employ. He was asked in cross-examination by the respondent as to whether the writing on the complaints was in the handwriting of Kali Das. He said that he did not

think that it was in Kali Das hand. It was not the respondent's case up till now that the plaints were not signed by Kali Das, the only question raised by them was that the plaints were not filed with the knowledge or consent of the lady. Besides, the enquiry before us is limited to the authority of Kali Das and does not extend to the genuineness or otherwise of his signature. We are, moreover, not inclined to believe the witness on this point. A notice was served upon the lady through this Court directing her to produce the power-of-attorney executed by her appointing Kali Das her am mukhtear and she has appeared before us by a Pleader and states not that there was no such power but that the am mukhtear-namah has been lost. The appellant has filed a copy of the authentication by the Sub-Registrar of the general power-of-attorney which authorizes the agents one of whom was Kali Das to act for her in all suits in all Courts. We accordingly hold that Kali Das Dutta was an am mukhtear of Kiran Bala Devi and had the authority to sign her name on the plaints. In fact, it is not now denied that Kali Das was am mukhtear and by the enquiry which we have held we have not decided any disputed question of fact.

5. The learned Vakil for the respondents argued, however, that in view of the wording of Section 188 each landlord must personally make the application u/s 105 or one common agent of the entire body of landlords must do so. We cannot accept this contention. Section 187 appears to us to govern all cases of application by landlords whether as individuals or as a joint body and we hold that u/s 187 the am mukhtear duly empowered can represent a landlord for the purpose of the application, a view supported to by the rules passed by the Bengal Government for procedure in suits u/s 105 of the Act.

6. The result of the above view is that it must be held that the applications u/s 105, Bengal Tenancy Act, were made by the entire body of landlords including Kiran Bala Devi. This disposes of the ground on which the judgments of the Courts below are founded. This further leads us to the consideration of the question of the effect of the subsequent withdrawal of one of the plaintiff landlords from the suit. It is argued by the appellant that it will not invalidate proceedings validly started while the respondents maintain that the inability imposed by Section 188, Bengal Tenancy Act on fractional landlords continues through- out the suit up to its final stage. In order to appreciate the point at issue it may be profitable to examine the scheme of the Bengal Tenancy Act. The Act aims at codifying the law governing the relation between the landlord and tenant and their mutual rights and liabilities. With a view to avoid multiplicity of suits and harassment to the tenant it contemplates that acts done and rights exercised must be done and exercised in concert by the entire body of landlords if there are more than one. Section 188 is enacted to secure that object. An application u/s 105 is one of the acts which a landlord is authorised to do under that Act. Section 188 read with Section 105 makes it obligatory that such application must be made by all the landlords jointly, if there are more landlords than one. Apparently if the application u/s 105 is made by all the landlords, the requirement of the law is satisfied. Should it be made infructuous by the sub

sequent act of one of the landlords? We have not been shown any provisions of the law or any authority which vitiates proceedings legally started on account of all the landlords not prosecuting the application subsequently. After the application is properly made u/s 105, its subsequent progress is regulated by the rules of procedure provided by the C.P.C. (Section 107); the matter then passes from the control of the Bengal Tenancy Act to the domain of the C.P.C. It is not contended that the present frame of the suits if in any way defective according to the Code. In our judgment when an application u/s 105 is made by the entire body of the landlords there is sufficient compliance with the provision of Section 188, Bengal Tenancy Act, and the subsequent withdrawal from the proceedings of one of the landlords does not render them invalid. There is no precedent of this Court but the view of the law we have adopted has been taken by the Patna High Court in the case of *Hazari Lal Sahu v. Ambica Gir* 79 Ind. Cas. 5 : (1923) Pat. 273 : AIR (1924) (Pat.) 104 : 3 Pat. 67 : 2 Pat L.R. 169 : 5 P.L.T. 591, where the facts are similar to those of the present case.

7. The learned Vakil for the respondents has referred us to Section 105(5) and Section 109A, Bengal Tenancy Act to show that it was the intention of the Legislature that the concert among the landlords should continue till the end of the litigation. u/s 105(5) the Revenue Officer may offer to the landlord such rent as he considers fair. It does not necessarily mean that the offer must be made to all the landlords and cannot be made to some of them who may be present before the Revenue Officer; for if the view urged is correct, the entire proceeding should drop if one of the plaintiff landlords were absent at the time of the offer. Section 109A allows an appeal in proceedings u/s 105. It is urged that as the right of appeal is conferred by Section 109A of the Bengal Tenancy Act, all the landlords must join in the appeal by operation of Section 183, and a fortiori all the landlords must jointly continue the suit till its final decision. This argument is ingenious but overlooks the fact that an appeal is a stage in the suit and Section 109A expresses the law that in proceedings u/s 105 an appeal will lie. The act authorised by the Tenancy Act is the making of the application u/s 105 and Section 109A does not authorise a new act but merely provides that in a case u/s 105 any party aggrieved by the decision of the Revenue Officer will have right of appeal. None of these provisions, therefore, helps the respondents. If the intention of the law is what it is stated to be, it should have been stated in clear language and not veiled in ambiguous sections of the Act. Reference is made in this connection to the decision of the Judicial Committee in *Jatindra Nath Choudhury v. Prasanna Kumar Banerji* 8 Ind Cas. 842 : 38 Cal. 270 : 15 C W.N. 74 : 9 M.L.T. 1 : 13 C.L.J. 51 : 8 A L.J. I ; 13 Bom. L.R. 1 : 21 M.L.J. 92 : (1911) 2 M.W.N. 149 : 38 I.A.I. (P.C.). That case lays down what we have already slated, viz., all the landlords must join in bringing a suit for enhancement of rent as it is a right which is conferred by the Bengal Tenancy Act, unlike a suit for rent the right to bring which arises under the general law. The question now before us was not before their Lordships and there is no observation there which supports the respondents' contention.

8. The appellant has raised two other points, (1) that the Assistant Settlement Officer acted illegally under Order XXIII, 1(4) in allowing the plaintiff Kiran Bala to withdraw from the suit without the consent of her co-plaintiffs, (2) that the Courts below have erred in holding that separate tenancy under the appellant has not been proved. As to the allegation that there were separate tenancies their findings of fact are against such a contention. On the other point, however, as we find that the C.P.C. applies to these cases, it appears to us that this objection is well founded and the Assistant Settlement Officer should not have permitted plaintiff No. 5 to withdraw without the consent of the other co-plaintiffs and his doing so wrongly Cannot prejudice the co-plaintiffs in the prosecution of these cases. In fact the Assistant Settlement Officer struck off the name of the plaintiff No. 5 on the ground that she was made a plaintiff without her consent without enquiring into the authority of her agent. We hold that he should not have done so.

9. In the result the appeals are allowed. The decrees of the Courts below are set aside and the cases remitted to the First Court for trial on the merits. Costs will abide the result including the costs of the examination of the Witness in this Court.

10. We assess the hearing fee in S.A. No. 2029 of 1921 at three gold mohurs. In all the other 10 appeals we assess the hearing fee at one gold mohur each.