

(1897) 07 CAL CK 0016
In the Calcutta High Court

Mathura Mohun Lahiri and Others

APPELLANT

Vs

Uma Sundari Debi and Others

RESPONDENT

Date of Decision : 16-07-1897

Acts Referred:

Bengal Tenancy Act, 1885 — Section 104, 106, 108

Citation : (1898) ILR (Cal) 34

Hon'ble Judges : Macpherson, J;Ameer Ali, J

Bench : Division Bench

Judgement

Macpherson and Ameer Ali, JJ.—This is an appeal against the decision of the Special Judge u/s 108 of the Tenancy Act, and a preliminary objection is taken that no appeal lies, as the proceeding in which the decision was given was one u/s 104, and not a proceeding in which a dispute within the meaning of Section 106 was decided. It appears that in the course of a proceeding for the preparation of a record of rights, the landlords applied for a settlement of the rent, alleging inter alia that the tenants were holding land in excess of what they paid rent for, and that the rod of 18 inches to the cubit was the standard rod of measurement.

2. The defendants put in written statements, alleging that the standard rod was one of 20 inches to the cubit. They denied that they held any excess land, and stated that they held their holding at a consolidated rent.

3. The Settlement Officer proceeded to deal with these allegations of the parties treating the application of the landlords as a plaint and the proceeding as one in which the landlords were plaintiffs and the tenants defendants. Issues were framed, three of which were (1) as to the prevailing standard of measurement; (2) as to whether the defendants held their holdings at a consolidated rent; and (3) as to whether the excess land, if any, could be assessed. He dealt with and decided those issues, and then there was an appeal by the plaintiff to the Special Judge, in which the correctness of his decisions was questioned.

4. It is difficult to say, having regard to the confused terms of Sections 104 to 106, under what precise section the proceeding was held. There are oases in this Court in which it was held that there could be no dispute, and no decision of a dispute, u/s 106 until the draft record was prepared, as, until then, there, was no entry with reference to which a dispute could be said to arise. These cases were made the subject of a reference to a Full Bench, and it was substantially decided that the exact point of time at which the dispute arose was immaterial, and that a dispute within the meaning of Section 106 might arise with reference to an entry which the Settlement Officer proposed to make in the draft record of right, although no such record had been prepared [(1897) *Dengu Kazi v. Nobin Kissori Chowdhurani* ILR 24 Cal. 462. In this case we find the landlords on one side, and the tenants on the other, making certain conflicting allegations as to the area of the land, the standard of measurement, and the liability of the tenants to pay any rent on account of the alleged excess area, and we find the Settlement Officer laying down issues on those points and deciding them. It would, we think, be difficult to conceive anything more nearly approaching a dispute and the decision of a dispute to which Section 106 would be applicable. The appeal does not raise any question as to what the fair and equitable rent is, but it does raise questions as to matters which must be decided before the Settlement Officer could settle the amount of rent payable, and we must hold that under the terms of Section 108 a second appeal does lie on those questions from the decision of the Special Judge.

5. Turning to the appeal itself, the objection of the appellants, who are the landlords and the plaintiffs in the proceeding, is that the Special Judge has not decided but ought to have decided the length of the measure used in measurement, whether the defendants hold excess land, and whether they are liable to pay rent for the same. The Settlement Officer, we may add, decided that the measure was one of 18 inches to the cubit, but that the plaintiffs had failed to prove that the defendants were in possession of any land in excess of what they had been paying rent for, and he also found that they held at a consolidated rent. The Special Judge declined to go into those questions, considering that they were not properly raised in the plaint of the plaintiffs, which did not state what the original area of the holding of the tenants was, and the excess area in respect of which they wanted additional rent. The landlords in their original application u/s 104 distinctly asserted that the tenants had been found by the survey then made with the measure of 18 inches to the cubit to be in possession of excess lands which ought to be assessed with the rent. If it was necessary to get from them any particulars as to the original area of the holdings or other matters, this might have been done, or if additional evidence was required it might have been called for.

6. The questions were raised, put in issue, and decided by the Settlement Officer; they were the material questions, and the Special Judge was bound, we think, to decide them one way or the other. We, therefore, set aside his decision in so far as it relates to the matters referred to above, and the case must go

back in order that lie may dispose of them. The costs will abide the result.