
(1909) 08 CAL CK 0074
In the Calcutta High Court

Pirithi Chand Lal Chowdhury

APPELLANT

Vs

Sheikh Basarat Ali
 Kirti Chandra Chatterjee Vs
Mohesh Dutt Jha

RESPONDENT

Date of Decision : 28-08-1909

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 115, 50

Citation : 3 Ind. Cas. 449

Hon'ble Judges : Lawrence Jenkins, C.J.;Stephen, J.;Mookerjee, J.;Coxe, J.;Chatterjee, J

Bench : Full Bench

Judgement

Chatterjee, J.—In this case the Record-of-Rights under Chapter X of the Bengal Tenancy Act was finally published on the 18th February 1907 and the defendant was recorded in the Khatian as a mere occupancy raiyat. On the 8th of April following the landlord made an application for settlement of rent u/s 105 of the Bengal Tenancy Act. The defendant pleaded that he was a raiyat at a fixed rent which was not liable to enhancement. The Settlement Officer overruled the plea of the tenant and enhanced his rent by 1 1/2 annas in the rupee. On appeal by the tenant the special Judge held that as he proved payment of rent at a uniform rate for more than 20 years he was entitled to the benefit of the presumption u/s 50 of the Bengal Tenancy Act and that presumption not having been rebutted, his rent was not liable to enhancement. The landlord appealed to this Court and it was contended on his behalf that as the status of the tenant had been finally published u/s 102 Clause (b) and there had been no suit u/s 106, the provisions of Section 115 of the Bengal Tenancy Act barred the presumption u/s 50. As there was a conflict between the decision of Mr. Justice Brett in Second Appeal No. 520 of 1907* and that of Mr. Justice Lal Mohan Doss reported in Maharaja Radha Kishore Manika Bahadur v. Umed Ali 12 C.W.N. 904 the following question was referred for the decision of the Full Bench : whether when an application is made u/s 105 of the Bengal Tenancy Act for settlement of rent after the final publication of the Record-of-Rights, the tenant is entitled, in view

of the provisions of Section 115 of the Bengal Tenancy Act, to the benefit of the presumption u/s 50 ". A reference was also made to the case of the Secretary of State for India v. Kajimuddi 26 C. 617 as supporting the view of Mr. Justice Doss, Chapter X of the Bengal Tenancy Act has undergone several amendments and it cannot be said that the successive amendments have made the law clearer of comprehension or easier of practical application. The Chief difficulty in answering the question referred arises from the fact that Section 115 has remained the same as it was under the original Act VIII of 1885, while the previous sections of the Chapter have undergone repeated and varied changes. Reading the Chapter as it stood before amendment by Act III B. C. of 1898, the Revenue Officer was u/s 103 to ascertain and record the particulars required by Section 102 and, when so desired by the landlord or the tenant, make a settlement of fair and equitable rent u/s 104 Clause (2). When he had completed his record under the previous section, he was u/s 105 to publish a draft record for a month and receive and consider any objection to any entry in the record. u/s 106 he was also to hear and decide any disputes regarding any entry in or omission from the record and then finally frame the record and publish it locally, such publication being conclusive evidence that the record had been duly made under the Chapter. The parties, therefore, had opportunities of watching and objecting to the proceedings (1) by objections u/s 105 which were decided summarily and subject to an appeal to the special Judge, (2) by disputes u/s 106 which were subject to an appeal to the special Judge and a second appeal to the High Court except in the case of rents settled under Clause 2 of the Section 104. u/s 109 only undisputed entries were presumed to be correct and finally Section 115 provided that the presumption u/s 50 shall not thereafter apply. Under the law, then, as it stood before Act III of 1898, the tenant would be entitled to the benefit of the presumption u/s 50 in a proceeding u/s 105 or 106. Under the Amending Act of 1898 the old Section 105 was altered into Section 103A which provided for the publication of the draft record and the receiving and consideration of objections to entries in or omissions from the record, and after the disposal of such objections the final framing of the record and final publication thereof, such publication being conclusive evidence that the record had been duly made under the Chapter. Section 103 B provided that a certificate by the Revenue Officer that the record had been published under Chapter X would be conclusive evidence of such publication and every entry in a Record-of - Rights should be presumed to be correct until the contrary is proved. The changes, therefore, were (1) that objections not only as to entries but also as to omissions from the record might be considered u/s 103A, (2) that the final publication would follow the disposal of the objections as to entries and omissions and need not wait for the decision of disputes u/s 106 which are for the first time called suits and required to be initiated by complaints upon stamp-paper and to be filed within 2 months from the date of the certificate of final publication. Section 105 provided for the settlement of a fair and equitable rent in respect of the land held by the tenant; Clause 4 of this section provided that the existing rent was to be presumed to be fair and equitable and the rules laid

down in the Act for the guidance of Civil Courts in increasing or reducing rents must be followed. The same time (2 months) was allowed for a suit u/s 106 or an application for settlement u/s 105. Section 107 provided that the decision of the Settlement Officer in all proceedings for the settlement of rents and all proceedings u/s 106 should have the force and effect of a decree between the parties and should be final subject to a revision u/s 108 or appeal u/s 109A, and further directed that a note of all rents settled and of all decisions of disputes should be made in the record-of-rights finally published u/s 103A and such note considered a part of the record. The wording of Section 115 remained the same as before.

2. There was a further amendment of Section 106 by Act I of 1903 and the time limit for the suit was raised to 3 months from the date of the final publication, but the other alterations are not material to the present discussion. The law as it stood after these amendments of 1898 and 1903 is the one that would apply to the present case. The wording of Section 115 is plain enough and might without anything else lead to the conclusion that as soon as the final record is framed u/s 103A Clause (2), the particulars mentioned in Section 102 Clause (b) should be taken to have been recorded and the presumption u/s 50 should cease to apply thereafter to that tenancy. From a consideration of the history of the Chapter, however, it would appear that from 1885 to 1898 the tenant had the benefit of the presumption u/s 50 in all proceedings under Sections 105 and 106. By the Act of 1898 these proceedings were to commence within two months of the final publication so that if the final publication were to be the point of time after which the presumption was not to apply, the tenant would necessarily lose the benefit of the presumption in these proceedings without any opportunity having been given to him to avail himself of it in a regular contest coming up to the Highest Court. This presumption, although it might in one sense be considered a rule of evidence, is to the tenant in this province a cherished right granted to him so long ago as 1859 in consideration it may be of his general ignorance and incapacity to cope with the superior intelligence and ways and means of his landlord. It can hardly be supposed that the legislature meant to take away this right by implication. On the other hand it is quite conceivable that the Legislature thought the wording of Section 115 which is "[recorded under this Chapter]" and not "finally published" was wide enough to embrace proceedings under Sections 105 and 106 as parts of the final record as expressly provided by Section 107. It is not necessary to consider in this case whether "recorded" means "recorded after all chances of an amendment of the record under any other provision of the Chapter are over, including a suit as contemplated by Section 111."

3. In this case the application by the landlord was u/s 105 and it has been contended before us that the tenant not having brought a suit u/s 106 was not entitled to the advantages of such a suit in the proceeding and plead fixity of rent. He has, however, pleaded it and both the lower Courts have considered it without apparently any objection by the appellants. It appears that sufficient attention has not always been paid to the distinction between a suit u/s 106 and

a proceeding for settlement u/s 105 and cases initiated by an application headed u/s 105 have often come up in second appeals which have been entertained as competent notwithstanding the provisions of Section 109A, Clause 3. In the case of *Mothura Mohan Lahiri v. Umasundari Debi* 25 C. 34 it was held that when the lower Courts decided a question with regard to the prevailing standard of measurement, the area of lands in the possession of tenants or the liability of the tenants to pay excess rent for excess lands upon an application for a settlement of rent, a second appeal lay to the High Court

4. In the case of *Kali Kishore Pal v. Gopi Mohun Boy Chowdhury* 5 C.L.J. 34n it was held that if matters properly coming under Sections 105 and 106 are not kept separate, a second appeal lies in respect of matters properly coming within Section 106. In the case of *Raja Kumar Partap Sahay v. Ram Lal Singh* 5 C.L.J. 538 it was held that when in a proceeding u/s 105 the Special Judge holds that there was no excess land and, therefore, no rent to be settled, a second appeal lay to the High Court. In the case of *Babu Preobarat Narain Singh v. Murat Rai* (1909) 2 Ind. Cas. 263 : 13 C.W.N. 104 where in a proceeding u/s 105 the Special Judge held that the claim for assessment of rent had been barred by limitation, it was held that the decision was not one settling a rent and, therefore, a second appeal lay. In the case of *Naimuddin Shaikh v. Ram Rangini Dasi* 13 C.W.N. 220 it was held that no second appeal lay against an order settling rent although the question of the status of the tenant was raised and decided in the Court below : it does not appear whether the case was governed by the law as it stood before the amendment of 1907. It shows, however, that the tenant was allowed to plead the presumption u/s 50. There are many unreported cases also holding that a second appeal would lie if the Settlement Officer decided any matter which would properly come u/s 106 but which came in inadvertently or as an ancillary issue in a proceeding u/s 105. It is quite possible that the same Officer having to deal with proceedings u/s 105 and suits u/s 106, matters coming under either section are indiscriminately dealt within the same proceeding even if it is headed as one u/s 105. In the present case also although the proceeding was one u/s 105, a second appeal has been entertained probably without objection and in fact the appellant would be out of Court on his own admission if he were to contend that the decision as to status was ultra vires in a proceeding u/s 105 and, therefore, no second appeal lay. Considering, therefore, the practice that has prevailed for a series of years, I think the tenant in this case was entitled to the benefit of the presumption u/s 50 and in this view of the matter I would answer the question referred in the affirmative. The case of *the Secretary of State for India v. Kajimuddi* 26 C. 617 was a case of a tenant claiming the benefit of the presumption u/s 50 in a suit to contest the correctness of an entry in the Record-of-Rights and has no direct application to the facts of this case except so far as it rests on the view that Section 115 seems to contemplate a case in which a raiyat is seeking to get the benefit of the presumption for a period subsequent to the time when the Record-of-Rights was framed." With this view I am unable to agree, for, in my opinion, it disregards the

plain terms of the section, which are general in expression and contain nothing to justify the limited construction that has been placed on them. The case was one governed by the law as it stood before the amendment of 1898: there can be no doubt that a suit of the nature brought then would lie as being within the contemplation of Section 111, but after the tenant had omitted to appeal to the Special Judge or to take proceedings u/s 106, he could not be heard to complain that he had been deprived of a cherished right, when his claim for the benefit of the presumption u/s 50 was confronted by the provisions of Section 115.

5. The result is that the Appeal No. 1477 of 1908 is dismissed with costs before the Division Bench and this Bench.

6. The Letters Patent Appeal No. 118 of 1907 is dismissed and the judgment of Brett, J. affirmed. The respondent is entitled to his costs before the Division Bench and this Bench.

Coxe, J.

7. I have had the advantage of reading the judgment of Mr. Justice Chatterji and I agree generally that in proceedings u/s 105 of the Bengal Tenancy Act, the tenant is entitled to the benefit of Section 50. This particular case fell under the Tenancy Act as amended by the Act of 1898. u/s 107 (2) of that Act a note of all decisions of disputes u/s 105 became a part of the Record-of-Rights and it seems to me a reasonable inference that the particulars in respect of a tenancy, which were the subject of a dispute u/s 105, were not regarded as finally recorded within the meaning of Section 115 until that note had been made. It seems reasonable to suppose that the Legislature, which as Mr. Justice Chatterji points out, cannot have wished to hamper the tenants in obtaining a revision of the record by the Revenue Officer, left Section 115 unaltered, after the alteration of Sections 105 and 106, because it was supposed that Section 107, subsection 2, would have the effect of keeping the tenant's right to plead Section 50 alive, until cases under Sections 105 and 105 were disposed of.

8. It may perhaps be open to doubt whether the words "a note of all rents settled and of all decisions of disputes by the Revenue Officer u/s 105," in Section 107 Sub-section (2), necessarily include a note of a decision by a Revenue Officer that the tenants are raiyats at fixed rates, and, that their rents, therefore, were not open to settlement. Rents settled u/s 105 are not incorporated by the Act in the Record-of-Rights like rents settled u/s 104 F. If then a tenant were recorded in a Record-of-Rights as an ordinary occupancy raiyat, and the landlord subsequently applied for a settlement of rent u/s 105, then it may be argued that even if the tenant succeeded in showing that he was a raiyat at fixed rates, no change would be necessary in the entries of recorded rents, and consequently the particulars referred to in Section 115 should be regarded as final, even before the decision of the landlord's application. And it may perhaps be doubted whether a decision that the tenant was a raiyat at fixed rates could, strictly speaking, be said to be a settlement of a rent or a decision of

a dispute u/s 105, such as should be incorporated in the Record u/s 107 (2) of the Act. But there can be no doubt that decisions of this kind do virtually affect the record, and are, as a matter of practice, incorporated in it. And it has been the practice of this Court for a long time, even before the last amendment of the Act, to regard points of this nature as capable of determination in proceedings u/s 105, and as justifying second appeals in such proceedings. I think, therefore, that a decision by a Revenue Officer in a proceeding u/s 105, that a tenant is a raiyat at fixed rates, may reasonably be regarded as a matter that should have been incorporated in the Record u/s 107(2) of the Act, as amended in 1898; and, therefore, while such proceedings were pending, the Record might well have been regarded as incomplete u/s 115 and the tenant is entitled to plead the benefit of Section 50.

* Second Appeals Nos. 520 and 562 to 565 of 1907 decided on the 24th March 1909. (Unreported).

The material portion of the judgment is as follows:

Brett, J.-These five appeals arise out of 5 suits brought by the plaintiffs-respondents for enhancement of rent. The ground on which the enhancement was sought was, as stated in the plaint, that the rate at which rent was being paid was below the prevailing rate in respect of lands of similar description and with similar advantages held by tenants of the same class. In fact the grounds for enhancement were those stated in Section 30 of the Bengal Tenancy Act. A Revenue Officer was appointed as Commissioner under the provisions of Section 31 of the Bengal Tenancy Act and, after his report had been received, the suits were taken up and disposed of on the basis of that report. It was found by the Court of first instance that the plaintiffs were entitled to recover rent at the rates ascertained by the Commissioner and, accordingly, decrees at those rates were given to them. On appeal to the lower Appellate Court, the judgment and decrees of the Court of first instance were confirmed. The tenant defendants have appealed to this Court.

In support of the appeals, it has been urged that the lower appellate Court has erred in law in holding that the appellants in Appeal No. 565 are not entitled to get the benefit of the presumption under Section 50 of the Bengal Tenancy Act....

As regards the first point, I find that the lower Appellate Court has carefully gone into the question whether the appellants in Appeal No. 565 are entitled to the benefit of the presumption u/s 50 of the Bengal Tenancy Act. What that Court has found is that, since the Record-of-Rights has been prepared, Section 115 is a bar to the defendants taking the benefit of that presumption. In my opinion, the view which it has taken is correct. It is not as if in this case the entry in the Record-of-Rights itself was in question, in which case, no doubt, it would have been open to the defendants to prove that they had held their lands at a uniform rate of rent for twenty years prior to the settlement so as to raise a presumption u/s 50 of the Act. I think the view taken by the lower Appellate

Court is correct, that since the status of the defendants has once been ascertained and entered in the khatian, it is not open to them in a suit like the present to rely on the presumption raised u/s 50 of the Bengal Tenancy Act.