
(1925) 12 CAL CK 0030
In the Calcutta High Court

Raja Reshee Case Law

APPELLANT

Vs

Kedarnath Marik and Others

RESPONDENT

Date of Decision : 21-12-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 108

Citation : AIR 1926 Cal 849 : 95 Ind. Cas. 971

Hon'ble Judges : Panton, J;Ewart Greaves, J

Bench : Division Bench

Judgement

Greaves, J.—The short point that arises in this appeal is with regard to the construction to be put on certain words appearing in Section 108 of the Bengal Tenancy Act. That section provides that any Revenue Officer specially empowered by the Local Government may, on an application or of his own motion within 12 months from the making of any order or decision under the sections therein mentioned, revise the same, and the point is whether the revision must be within the period of 12 months from the order sought to be revised or it is sufficient if the application at the instance of a party interested is made within 12 months, even if the order is passed subsequent to the expiry of the 12 months from the application. The material facts are as follows:---In October 1916 the Record of Rights was finally published. The suit was commenced, u/s 106 of the Bengal Tenancy Act, on the 19th January 1917. On the 8th April 1918 the decree in that suit was passed. On the 3rd December 1922 more than 4 years after the decree, an application for revision was made u/s 103 of the Bengal Tenancy Act. It ported to have been made under Order IX Rule 13, but in fact it must have been made u/s 108. On the 16th April 1923 the application was granted and are-trial was ordered. On the 14th March 1924, that is to say, within 12 months of this previous order the present appellant applied u/s 108 to revise the order of the 16th April 923 as having been passed without jurisdiction. The matter was heard on that same date and orders were to have been passed on the ensuing 22nd April, but owing to the exigencies of the Court work the passing of the order was deferred until the 25th April 1924, when the application was granted and the

order of the 16th April 1923 was set aside as barred as having been made after the prescribed time.

2. Against this order an appeal was preferred to the Special Judge who reversed the order of the 25th April 1924 as the order had not been, passed within one year from the 16th April 1923 which according to the Special Judge was necessary on the wording of Section 103 of the Bengal Tenancy Act. Here we think he was wrong. We think it is sufficient for the application to be made within 12 months even if the passing of the order takes place more than 12 months after the passing of the order sought to be revised. It is urged by the respondents that this will create an anomaly, for if the order is revised at the instance of the officer himself it is said that this must be done within 12 months according to the wording of the section and that if the appellant's contention is correct there will be then two different periods of limitation, one within 12 months from the date of the order itself and the other possibly extending to a longer period from the order. We think that the decision of the Special Judge on the wording of Section 108 was not correct and that it is sufficient if the application was made within the period of 12 months even if the order was not passed until more than 12 months had expired from the date of the order sought to be revised and we think that upon the true reading of Section 108 this is the correct construction of the words of that section.

3. The result is that the appeal is allowed with costs in all Courts, hearing-fee in this Court being assessed at one gold mohur.

Panton, J.

4. I agree.