

(1922) 06 CAL CK 0024
In the Calcutta High Court

Roy Jatindra Nath Choudhury and Another	APPELLANT
Vs	
Azizarrahaman Shana and Others	RESPONDENT

Date of Decision : 13-06-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106, 107
Civil Procedure Code, 1908 (CPC) — Section 13

Citation : AIR 1923 Cal 433 : 71 Ind. Cas. 307

Hon'ble Judges : Pearson, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. These appeals arise out of three suits to eject the defendant from the holdings in suit, the plaintiff's case being that the tenant who held the lands under them had no transferable interest in the same and abandoned the holdings after selling them to the defendant, and that the latter, therefore, had acquired no right under his purchase but was merely a trespasser on the land.
2. The defence was, that the defendant was a tenant and could not be ejected as a trespasser. Among other things, the defendant relied upon a decision in a proceeding u/s 106 of the Bengal Tenancy Act in his favour.
3. It appears that the defendant was entered in the Record of Rights as tenant of the lands and this was after the purchase of the holding by the defendant. The plaintiff thereupon brought a suit u/s 106 of the Bengal Tenancy Act for the correction of the entry, on the ground that the defendant was not a tenant. The Revenue Officer, u/s 106, decided that the defendant was a tenant and that the entry in the Record of Rights was correct.
4. Now, the present suit is based upon the ground that the defendant is not a tenant but a trespasser and is, therefore, liable to be ejected. As stated above, the question whether he was a tenant or not was directly raised and decided in the proceedings u/s 106. The Court below in the present case has held that the decision operated as res judicata.

5. The plaintiff has appealed to this Court, and has relied upon the case of *Dharani Kanta Lahiri v. Gaber Ali Khan* 30 C. 339 at p. 364 : 7 C.W.N. 33 where, at page 364 Page of 30C.--(Ed.), it is stated that, although the decision of the Revenue Officer u/s 105 (it was a case u/s 105) has the effect of a decree of a Civil Court u/s 107 of the Bengal Tenancy Act, it does not operate as *res judicata* u/s 13, Civil Procedure Code. It is to be observed that that was a decision under the Tenancy Act as it stood before the amendment of 1898.

6. Section 107 of the Bengal Tenancy Act provides that in all proceedings under Sections 105, 105A and 106, the Revenue Officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the CPC for the trial of suits, and his decision in every such proceeding shall have the force and decree of a Civil Court in a suit between the parties, and subject to the provisions of Sections 108 and 109A, shall be final.

7. Now, these words "subject to the provisions of Sections 105 and 109A shall be final" were added by Act III B.C. of 1898. They were not in the section when the case of *Dharani Kanta Lahiri v. Gaber Ali Khan* 30 C. 339 at p. 364 : 7 C.W.N. 33 was decided. That is the ground upon which that case has been distinguished, by the Patna High Court in the case of *Mahendra Narayan Ray v. Girish Chandra Kar* 46 Ind. Cas. 125 : 3 P.L.J. 379. There it was pointed out that the words "shall be final" were imported into Section 107 with a view to give finality to a decision arrived at by a Revenue Court or by the Special Judge on appeal.

8. Then, Section 109 of the Bengal Tenancy Act lays down that, subject to the provisions of Section 109A, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, sent, instituted or proceedings taken under Sections 105 to 108 (both inclusive).

9. There can be no doubt that the question whether there was a relation of landlord and tenant between the parties was a question which was within the jurisdiction of the Court of the Revenue Officer to decide u/s 106 of the Bengal Tenancy Act. In fact, the section clearly lays down that a dispute as to whether the relation of landlord and tenant exists may be decided by the Revenue Officer.

10. We may refer, to the case of *Kamlanand Singh v. Pram Lal Ganesh* 16 Ind. Cas. 935 : 16 C.L.J. 67 Second Appeal No. 539 of 1909 decided by Woodroffe and Carnduff, JJ., on the 20th February 1911) in which it was laid down that when proceedings have been taken before a Settlement Officer in respect of any matter u/s 106 of the Bengal Tenancy Act, a Civil Court is precluded from entertaining a suit concerning such matter.

11. Reference may also be made to the case of *Sheodhani Pandev v. Bent Pershad Keori* 16 Ind. Cas. 935 : 16 C.L.J. 67.

12. Apart from this, the Court below finds upon the evidence that the jama was transferable. The appeals accordingly fail and are dismissed without costs as the

respondent does of appear.