
(1918) 03 CAL CK 0042
In the Calcutta High Court

Sailaja Nath Roy Chaudhury and Others	APPELLANT
Vs	
Chandi Charan Laha and Others	RESPONDENT

Date of Decision : 11-03-1918

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106
Court Fees Act, 1870 — Article 17(3)

Citation : 48 Ind. Cas. 552

Hon'ble Judges : Syed Shamsul Huda, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the plaintiffs against the decision of the learned Subordinate Judge of Khulna, dated the 16th September 1915, confirming the decision of the Munsif of the same place. The suit was brought u/s 106 of the Bengal Tenancy Act. Though the case was transferred to the Civil Court for the purpose of trial, still the suit was a suit instituted under the provisions of Section 106 of the Bengal Tenancy Act. Now, what is the proper Court-fee in a suit instituted u/s 106 of the Bengal Tenancy Act? There is a clear decision of this Court in the case of Satis Chandra Giri v. Gopal Chandra Rai 7 Ind. Cas. 627 : 12 C.L.J. 638 : 15 C.W.N. 110 that a suit u/s 106 of the Bengal Tenancy Act is a suit for a declaratory decree within the meaning of Article 17, Clause (3) of Schedule II of the Court Fees Act and that, therefore, the plaint in such a suit does not require an ad valorem stamp. On the other hand, the learned Judges of the Courts below have relied on the decision of this Court in the case of Chandi Charan Laha v. Manoranjan Chattopadhyaya 18 Ind. Cas. 275 : 17 C.L.J. 416, where it was held that a suit brought u/s 106 of the Bengal Tenancy Act, which was transferred to the Civil Court and in which there were claimed other reliefs, might be valued on an ad valorem basis. The judgment in that case made certain remarks and amongst them we find this: "No general rule governing all the cases," that is, all the cases u/s 106 of the Bengal Tenancy Act, "can be laid down; but the question must be decided on the facts of each special case." If there is no general rule--and in the view of the learned Judges who decided the

case of Satis Chandra Giri Gopal Chandra Rai 7 Ind. Cas. 627 : 12 C.L.J. 638 : 15 C.W.N. 110 there is no general rule, and in the view of the learned Judges in the case of Chandi Charan Laha v. Manoranjan Chattopadhyaya 18 Ind. Cas. 275 : 17 C.L.J. 416 there is a general rule--I may say so without disrespect that the learned Judges who decided the case of Satis Chandra Giri v. Gopal Chandra Rai 7 Ind. Cas. 627 : 12 C.L.J. 638 : 15 C.W.N. 110 were bound by the decision in the case of Chandi Charon Laha v. Manoranjan Chattopadhyaya 18 Ind. Cas. 275 : 17 C.L.J. 416 and, as they said that there was no general rule but that each case must be decided on the facts of that particular case. I think we should follow the earlier authority and go back to the rule that has been clearly and definitely laid down, namely, that a suit instituted under the provisions of Section 106 of the Bengal Tenancy Act--notwithstanding these badly drawn up complaints that come from the Moffussil--is in fact a suit for a declaration that the Record of Rights is wrong and that the mere fact that a plaint has been inartistically drawn up does not alter the nature of the suit and that such a suit, as laid down in the case of Satish Chandra Giri v. Gopal Chandra Rai 7 Ind. Cas. 627 : 12 C.L.J. 638 : 15 C.W.N. 110, is in fact a suit for a declaration and not chargeable with an ad valorem fee. In that view, I think the present appeal must be allowed and the case must be remitted to the primary" Court for trial on the merits. Costs will abide the result.

Shamsul Huda, J.

2. I agree.