

(1912) 11 CAL CK 0014
In the Calcutta High Court

Sashi Bhusan Hazra

APPELLANT

Vs

Aswini Comar Samanta and Others, Kali Das Samanta and Others, Haradhan Pal and Jogendra Nath Samanta and Others

RESPONDENT

Date of Decision : 28-11-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105

Citation : 28 Ind. Cas. 981

Hon'ble Judges : Holmwood, J; Champan, J

Bench : Division Bench

Judgement

1. We are of opinion that these appeals must succeed, on the simple ground that it is impossible to get behind the statutory bar raised by Section 109 to the rent fixed in proceedings u/s 105 so far as these proceedings have been properly conducted. Even if we accept the contention raised before this Court in the case of Pandab Dowari Das v. Ananda Kishun Chakravarti 7 Ind. Cas. 102 : 14 C.W.N. 897 : 12 C.L.J. 195 there is nothing in that decision which militates against the decision of the Chief Justice and Mr. Justice Giedit in this very Court reported as Shambu Chandra Hazra v. Purna Chandra Pal 35 C. 176 : 7 C.L.J. 103 : 12 C.W.N. 122. In that case the Chief Justice laid down very clearly that even if the Settlement Officer had gone wrong in deciding the question u/s 106 which did not arise, his decision, so far as it was a decision settling rent could not be interfered with, and on such a point no second appeal can lie. The Court followed this up by reversing the erroneous and incompetent decision of the Settlement Officer u/s 106 or which purported to be u/s 105, but it declined to interfere with the rent fixed and that rent, which was taken fixed, is the very subject of this appeal, so that the learned Doctor who appeared for the appellant says that it is immaterial to him whether the tenants chose to call themselves settled raiyats or raiyats at fixed rates or by any other name they choose. All he wants is his Rs. 113 and odd of rent, and that he must have.

2. The learned Subordinate Judge has gone behind the decision u/s 105 and so

far as he has done so, his judgment and decree cannot be supported. We see that the Appellate order was that the entire decree of the Munsif was set aside and the suits were remanded to the Court below for decision on the merits along with the question of limitation. But it appears to us that the question of rent being finally settled no remand is necessary, inasmuch as we have already said that the parties are agreed that the plaintiffs-respondents can call themselves by any name they please. It does not seem, therefore, necessary to further waste the time of the Courts in arguing what their particular status is. It has already been held by this Court that their rent cannot be enhanced and, therefore, they are at liberty to call themselves anything they like.

3. There is no substantial question remaining to be decided and the appeals are, therefore, decreed; the rent as fixed by the Settlement Officer is upheld and the Munsif's decision that the suits are incompetent by reason of Section 109 is restored. The suits will, therefore, stand dismissed.

4. The appellant is entitled to his costs in this Court. Both the parties will bear their own costs in the lower Courts.