

(1920) 05 CAL CK 0015
In the Calcutta High Court

Srimati Abeda Khatun and Others

APPELLANT

Vs

Majubali Chowdhury and Others

RESPONDENT

Date of Decision : 14-05-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 109, 109A

Citation : AIR 1921 Cal 455 : 59 Ind. Cas. 760

Hon'ble Judges : Asutosh Mookerjee, Acting C.J.; Ernest Fletcher, J

Bench : Division Bench

Judgement

Ashutosh Mookerjee, Acting C.J.

1. This is an appeal by the tenants defendants in a suit for enhancement of rent of a tenure and for recovery of rent at the enhanced rate.
2. The Court of first instance refused the claim for enhancement and made a decree for arrears at the existing rate.
3. Upon appeal the Subordinate Judge has granted an enhancement and made a decree for arrears at the enhanced rate.
4. In support of the present appeal, it has been contended that the claim for enhancement was not maintainable, in view of the provisions of Section 109 of the Bengal Tenancy Act. In our opinion, this contention is well founded.
5. Section 109 provides as follows, "subject to the provisions of Section 109A. (which relates to appeals from decisions of Revenue Officers), 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, suit instituted or proceedings taken under Sections 105 to 108 (both inclusive)." It appears that on the 14th May 1907 the plaintiffs made an application u/s 105 for enhancement of the rent of the tenure, on the grounds that the rent payable was lower than the prevailing rate of rent; that the defendants had made considerable profit out of the property; that the fertility of the soil had considerably increased; that, the price

of the staple food-crops had advanced, and that there was an increase of area. On the 9th June 1909, the agent for the plaintiffs appeared and stated that the plaintiffs did not wish to prosecute the proceeding u/s 105. Thereupon, the proceeding was dismissed for non prosecution. The tenants-appellants contend that the plaintiffs cannot now in view, of the provisions of Section 109, put forward a claim for enhancement on the ground of increase of area, which is one of the grounds mentioned in the proceeding u/s 105. In our opinion, there is no answer to this contention.

6. On behalf of the respondents reliance, however, has been placed upon the decisions of this Court, in *Chiodith v. Tulsi Singh* 18 Ind. Cas. 130: 40 C 428 : 17 C.W.N. 187. and *Kamini Suniari Chowdhurani v. Abdul Halim Moulvi* 47 Ind. Cas. 420 : 28 C.L.J. 254. In those cases, applications had been made u/s 105 of the Bengal Tenancy Act and subsequently withdrawn without liberty reserved to make fresh applications. This Court held that an application made u/s 105 of the Bengal Tenancy Act but withdrawn was to be treated as one never made. In our opinion, those cases are clearly distinguishable, even if we assume that they were correctly decided. An application which has been made, whether it is withdrawn or whether it is dismissed for non prosecution, is nevertheless an application made within the meaning of the provisions of Section 109. We are clearly of opinion that the provisions of that section should be strictly enforced and not whittled down, as appears to be the effect of the two decisions mentioned. In any event, so far as the present case is concerned, there can be no doubt that the Civil Court has been invited to entertain a suit concerning a matter, namely, a claim for enhancement of rent on the ground of an increase in area, which was the subject of an application previously made u/s 105 of the Bengal Tenancy Act. Consequently, Section 109 is an effective bar to the claim.

7. The result is, that this appeal is allowed, the decree of the Subordinate Judge set aside, and that of the Court of first instance restored with costs both here and before the Subordinate Judge.

Ernest Fletcher, J.

8. I agree.