

(1925) 02 CAL CK 0001**Calcutta High Court****Case No:** None

Satindra Mohun Tagore

APPELLANT

Vs

Ramsundar Das and Others

RESPONDENT

Date of Decision: Feb. 6, 1925**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 105

Citation: AIR 1926 Cal 239**Hon'ble Judges:** Suhrawardy, J; Cuming, J**Bench:** Full Bench**Judgement**

Cuming, J.

This is an appeal by the landlord against an order of the Special Judge dismissing his application u/s 105, Bengal Tenancy Act, for assessment of fair and equitable rent for a certain tank. The case of the defendant was that in the finally published record of rights it was noted that the holding was liable to be assessed but that no rent was actually being paid. The holding in question in this case was a tank which was recorded in Khatian No. 14. The case of the defendants-respondents was that this tank was included in a jama which they held under a service tenure granted by the appellant. The Assistant Settlement Officer came to the finding that this tank formed part and parcel of the jama which the defendants held for more than 30 years under the chakrandar. On appeal the learned Special Judge has held that this tank was not included in the jama which the defendants held under the chakrandar; and he has held that as it has been in the possession of the respondents for a much longer time, it could not be said that it was included in the jama held directly under the appellant. He then went on to say that as the tank was not included in the chakran and as no rent was being paid for it, he was entitled to have the rent assessed. He, however, finds that an application for assessing rent on a tank only is not maintainable u/s 105 as a tank is not leased for agricultural purposes. From this I take the learned Judge to mean not that this particular tank was not leased for

agricultural purposes but that in no case can a tank be leased for agricultural purposes. This view appears to me to be not well-founded. Obviously a tank can be leased for agricultural purposes; for instance for irrigating adjacent lands or watering the cattle used for cultivation, The learned Special Judge, therefore, was not correct in holding that a tank can in no instance be leased for agricultural purposes.

2. The result, therefore, is that this appeal is allowed, the decree of the lower appellate Court set aside and the case sent back to that Court to determine whether the lease of this tank was or was not for agricultural purposes. If it was for agricultural purposes, the case is clearly one governed by Section 105 and in that case the learned Judge will have to consider whether rent can be assessed on it and, if so, how much. If, on the other hand, he finds that the tank was not leased for agricultural purposes, then there can be no application of Section 105. Costs will abide the final result. We assess the hearing fee at two gold mohurs.

3. The cross-objection is not pressed and is, therefore, dismissed without costs.

Suhrawardy, J.

4. I agree.