

(1918) 05 CAL CK 0042

Calcutta High Court

Case No: None

Gangadhar Nanda and Others
and The Secretary of State for
India

APPELLANT

Vs

Srimati Janakimoni Dasi and
Others

RESPONDENT

Date of Decision: May 22, 1918

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 104H
- Civil Procedure Code, 1908 (CPC) - Section 80
- Limitation Act, 1908 - Section 15(2)

Citation: 47 Ind. Cas. 524

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

Bench: Division Bench

Judgement

Fletcher, J.

The question raised in these two appeals is whether the suit was competent. That arises on a consideration of the terms of Section 104H of the Bengal Tenancy Act. First of all, it is quite clear that, as against the Nandas, that is, one set of defendants who has preferred one of these appeals,, namely, Appeal No. 2072 of 1916, the suit was brought eight months after the final publication of the Record of flights. There does not seem to be any ground why as against them the period should be extended. As against the Secretary of State for India in Council, the reason why the suit was brought beyond six months is this; The Secretary of State was entitled to two months" notice under the provisions of Section 80, Code of Civil Procedure, and the plaintiff's view is that he was entitled under the provisions of Section 15, Sub-section (2) of the Indian Limitation Act, to exclude the period during which the notice to the Secretary of State was, current. That, of course, depends on this : Does the provision of Section 15, Sub-section (2) of the Indian Limitation Act, apply to a

suit instituted under the terms of Section 104H of the Bengal tenancy Act? The decisions of this Court are clear that it does not. There is, first, in support of it the decision in the case of Secretary of State v. Gangadhar Nanda 45 Ind. Cas. 228 : 27 C.L.J. 374. That case, it is admitted, is directly in point. That decision was followed and approved of in Secretary of State v. Shib Narain Hazra 47 Ind. Cas. 502 : 22 C.W.N. 802 by Mr. Justice Richardson and Mr. Justice Walmsley. It is; quite clear that we are bound by those two considered judgments of this Court, unless we see reason to disapprove them and send them to a full Bench. It has been suggested in this case that these two oases ought to be sent for consideration to a Full Bench. I do not think so. I think that both these oases were rightly decided. The only case that has been suggested as having any value as against these two decisions is the case of Behari Loll Mukerjee v. Mungolanath Mukerjee 5 C. 110 : 4 C.L.R. 371 : 2 Ind. Dec. (N.S.) 681. That decision is not consistent with the decision of the Full Bench case in Nagendra Nath Mullick v. Mathura Mahun Parhi 18 C. 368 : 9 Ind. Dec. (N.S.) 246 (F.B.). We cannot send two considered judgments, the terms of which we approve, for consideration by a Full Bench on the doubtful authority of the decision reported as Behari Loll Mukerjee v. Mungolanath Mukerjee 5 C. 110 : 4 C.L.R. 371 : 2 Ind. Dec. (N.S.) 681.

2. It seems to me quite clear that a suit u/s 104H of the Bengal Tenancy Act must be brought in any event within the six months specified in that section. As against the Nandas, there is absolutely no reason why the time should on any account be extended. It is only in the case of the Secretary of State, if at all, that the plaintiff can say that he should get an extension of time. But on the decisions already referred to, in a suit u/s 104H of the Bengal Tenancy Act, the parties are not entitled to exclude the time during the currency of the notice to the Secretary of State.

3. Then, another point is taken which seems to be a point that has got no force in it. It is said that this is not a suit u/s 104H but is a suit u/s 111A of the Bengal Tenancy Act. That is a most extraordinary proposition to put forward in the Court here. In the lower Court, it was expressly objected by the Government that the suit was not maintainable, it not being a suit u/s 104H of the Bengal Tenancy Act. Thereupon, the plaintiff applied to the Court for leave to amend and amended his plaint so as to bring it u/s 104H of the Bengal Tenancy Act. How can he be now heard to say that the suit is a suit u/s 111A when he deliberately applied to the Court to make such amendments as would bring it under the provisions of Section 104H. That is a position that cannot possibly be taken.

4. Finally, an appeal has been made that we should permit the plaint at this stage to be amended or rather re-amended so that the plaintiff, having once made amendments which he said were necessary to bring the case u/s 104H of the Bengal Tenancy Act but which he now urges were not sufficient for that purpose, might further amend his plaint by taking back shelter u/s 111A. It is quite clear that he cannot be allowed to shift his case between the two sections as he finds most

convenient. He must stick to one case and having made his case u/s 104H, it is quite clear that on the decisions of this Court already referred to, the present suit, was instituted beyond the period of limitation mentioned in Section 104H, Sub-section (2) of the Bengal Tenancy Act. In my opinion; the suit was incompetent for the Court to deal with at the Very outset. The present appeals must, therefore, be allowed and the plaintiff's suit dismissed. In Appeal No. 2072, the Nandas will get costs only in this Court and will bear their own costs in the lower Courts. In Appeal No. 2082, the Secretary of State for India in Council will get his costs in this Court as well as in the; Courts below.

Syed Shamsul Huda, J.

5. I agree.