

(1928) 03 CAL CK 0014

Calcutta High Court

Case No: None

Jamiraddin

APPELLANT

Vs

Khadejanessa Bibi and Others

RESPONDENT

Date of Decision: March 26, 1928

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 105, 107

Citation: AIR 1929 Cal 685 : 114 Ind. Cas. 407

Hon'ble Judges: Mukerji, J

Bench: Division Bench

Judgement

Mukerji, J.

The plaintiffs who are dar-ijaradars of a mahal instituted this suit for recovery of arrears of rent at the rate of Rs. 38 6-6 for the years 1327 to 1330 B.S. for a certain holding. The defendant alleged that the rent was Rs. 26 and was recorded as such in the settlement khatian and that as a result of proceedings u/s 105, Ben. Ten, Act, the said rent was enhanced to Rs. 29 10-6 the enhancement operating from 1328. There was also a plea of deduction which, however, was given up. The Munsif decreed the suit at the rate of Rs. 38-6-6 for the year 1327 B.S. and at the rate of Rs. 29-10-6 for the years 1328 to 1330 B. S. The Subordinate Judge on appeal by the plaintiffs gave them a decree for all the years at the rate of Rs. 38-6-6. The defendants have then appealed to this Court.

2. The Subordinate Judge has found the following facts : The mahal in which the holding in suit is situate is in the hands of a receiver who lets it out in ijara for terms, and the ijaradar in his turn also sub-lets it in darijara for similar terms, that although there was abundant evidence in the shape of contested decrees, etc., for rent showing that the rent of the holding was Rs. 38-6-6 the darijadar who preceded the plaintiffs in collusion with the defendants got the rent of the holding to be recorded in the settlement khatian as Rs. 26 and also collusively got a decree for rent passed for the years 1325 and 1326 B.S. at that, rate, that the receiver being

ignorant of the real facts took the said rent as recorded in the khatian to be real rent and on the footing of that entry instituted proceedings u/s 105, Ben. Ten. Act, and an order was passed by the Assistant Settlement Officer in the said proceedings allowing enhancement at the rate of 2 annas 3 pies in the rupee and thus the rental was enhanced from Rs. 26 to Rs 29-10-6, the said enhancement to take effect from 1328. Being of opinion that the decision of the Assistant Settlement Officer was vitiated by fraud and collusion the learned Subordinate Judge decreed suit at the real rate, namely, of Rs. 38-6-6.

3. The contentions urged in support of the appeal are that there was no duty cast upon the defendants to bring the real rate of rent to the notice of the Assistant Settlement Officer who dealt with the proceedings u/s 105, Ben. Ten. Act, and there was no fraud or collusion in those proceedings, that the decision u/s 105, Ben. Ten. Act cannot be challenged collaterally in the present suit for rent and that effect must be given to the said decision as contemplated by Section 107, Ben. Ten. Act.

4. Reading the decision of the Assistant Settlement Officer u/s 105, Ben. Ten. Act, it appears that the question as to what was the then existing rent of the holding was never put in issue before him, but that all that was decided by him was what the rate of enhancement should be. Quite apart from any question of fraud or collusion the decision u/s 105, therefore, will not operate as a bar to the investigation of the question as to what was the rate of rent at the date of the khatian for no such question was raised or decided in the proceedings u/s 105 Nawab Bahadur of Murshidabad v. Ahmad Hossain [1917] 44 Cal. 783 and [Srimati Priyambada Debi Vs. Priya Nath Banerjee and Others](#), : . The present suit being one in which the plaintiffs have asked for a decree at the old rate of rent, and they having succeeded in establishing by evidence notably, contested decree for rent previously obtained against the defendants which in the opinions of both the Courts below was sufficient and satisfactory what that rent was and in thus proving that the entry in the khatian was incorrect the decision u/s 105 cannot stand in the way of their getting a decree at the correct rate. This conclusion, in my opinion, is sufficient for the disposal of the appeal.

5. I shall now turn to the line of reasoning upon which the learned Subordinate Judge has proceeded and deal with the grounds upon which that reasoning has been assailed. In the proceedings u/s 105, Ben. Ten. Act, there may not have been a duty cast upon the defendants to tell the Assistant Settlement Officer what the real rent of the holding was when the receiver had asked that officer to proceed on the footing of the rent as recorded in the khatian but it is clear beyond doubt that the collusion between the outgoing dar-ijaradar and the defendants which was productive of the erroneous entry in the khatian had also for its object the perpetration of a fraud, the laying in of a trap in which the defendants' opponent, whoever it may happen to be, would fall and by keeping the opponent as well as the Court in ignorance of the real facts by means of a mediated contrivance secure to

the defendants an unfair advantage which would bring about an erroneous decision when the question would arise as to what the real rent was. This sort of collusion and fraud is quite different from mere production of perjured evidence and satisfies the requirements of the decision in the case of *Nanda Kumar v. Ramjiban* [1914] 41 Cal. 990 and is, in my opinion, sufficient to vitiate the order of the Court that is procured thereby. When a subsisting judgment, order or decree is set up by one party as a bar to the claim of the other party, it is not necessary for the latter to bring a separate suit to have the same set aside but it is open to him in the same suit in which it is sought to be used against him to show that it was obtained by fraud or collusion. *Rajib Panda v. Lekhan Sendh* [1900] 27 Cal. 11 *Nistarini Dassi v. Nundo Lall Bose* [1899] 26 Cal. 591 *Aswini Kumar Samuddar v. Banamali Chakrabarty* 21 C.W.N. 594 *Bansi Lal v. Dhapo* [1902] 24 All. 242 and *Rangnath Sakharam v. Govind Narasivu* [1904] 28 Bom. 639. That the same principle is applicable to decisions of Settlement Courts has been held in the case of *Hare Krishna Sen v. Umesh Chandra Butt* AIR 1921 Pat. L.J. 193. The case of [\(Hazi Munshi\) Fazlu-uddin Mohammad Vs. Khetra Ghorai and Others,](#) : and the line of cases upon which it proceeds is entirely distinguishable from the present case because the plaintiff in this case was not a party or privy to the settlement proceedings, and he has acquired from the receiver who was a party to the decision u/s 105, Ben. Ten. Act, not the right to realise the particular rent of the holding. Once collusion and fraud is established the decision loses all its force and effect which otherwise it would have of a decree of a civil Court and the finality that Section 107, Ben. Ten. Act, attaches to it. The appellant's contentions, therefore, are not well founded.

6. The appeal fails and is accordingly dismissed with costs.