(1926) 01 CAL CK 0043

Calcutta High Court

Case No: None

Srimati Basanta Kumari Debi and Another		APPELLANT
	Vs	
Beni Madhab Mahapatra		RESPONDENT

Date of Decision: Jan. 13, 1926

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 105, 109

Citation: AIR 1926 Cal 1058 : 95 Ind. Cas. 788

Hon'ble Judges: Panton, J; B. B. Ghose, J

Bench: Division Bench

Judgement

1. This is an appeal by the defendants Nos. 1 and 4 against a judgment of the Subordinate Judge of Midnapore, affirming a decision of the Munsif of Tarnluk. The point which, has been raised on behalf of the appellants is clearly stated thus: There was a Record of Rights in which the disputed lands were recorded as forming part of one jama. The landlord then made an application for increase of rent u/s 105 of the Bengal Tenancy Act. There was a decision and the rent was increased. The present suit has been brought for a declaration that the Record of Rights recording the two lands in two schedules as appertaining to one jama is erroneous and that the sale held of the lands in question was void.

2. Both the Courts below have passed a decree in favour of the plaintiff. The contention is that the proceedings taken u/s 105 bar the present suit u/s 109 of the Bengal Tenancy Act.

3. It is contended on behalf of the appellants that in order to increase the rent the Settlement Officer was bound to take into account the land for which the rent was sought to be increased and, therefore, it was a matter which was for decision before the Settlement Officer; and further it is urged that the ground on which the Munsif rejected his

plea that the application was made by the landlord is erroneous and this seems to have been supported by the Subordinate Judge. The Subordinate Judge does not state on what grounds he considers that Section 109 is no bar to the present suit. The judgment of the Subordinate Judge must be said to be not satisfactory on this question. He simply refers to the cases cited on behalf of each side and says that the ruling relied on by the respondent was applicable to the case and not those relied on by the appellant. He ought to have stated the facts found by him and the grounds on which he holds that Section 109 of the Bengal Tenancy Act is no bar to the suit. However that may be, it appears that the present suit does not come under the provisions of Section 109 of the Bengal Tenancy Act which provides that "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)".

4. It does not appear that the question whether the lands given in the two schedules of the plaint were included in one jama or not was a matter about which the application was made. It may be that the area of the land for which application was made for increase of rent by the landlord was taken into consideration, But the question at present in dispute cannot by any stretch of language be said to be a matter which was the subject of the application u/s 105.

5. The appeal must, therefore, be dismissed with costs.