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Calcutta High Court

Case No: Appeal from Appellate Decree No. 1798 of 1913

Upendra Nath Ghosh	APPELLANT
Vs	
Jamini Mohan Pal and Others	RESPONDENT

Date of Decision: Aug. 12, 1913

Judgement

1. This Appeal arises out of an application under sec. 105 of the Bengal Tenancy Act. The Appellant, who was the applicant before the Settlement Officer, is the proprietor of an estate and it appears that he purchased within that estate a tenure within which the holding of the opposite parties is situated. The application was rejected by the Settlement Officer and that order has been confirmed on appeal by the Special Judge. The Petitioner has appealed to this Court. The first ground upon which the learned Judge proceeded was that as the Appellant was not the recorded landlord he could not maintain the application. It does not appear that any objection was raised by the opposite parties that the applicant had not acquired the interest of the recorded landlord. As we have already stated, the applicant had purchased a tenure (in execution of a decree for arrears of rent) in an estate of which he himself is the proprietor and the mere fact that his name does not appear in the khatian as owner of the tenure is no ground for holding that he is not entitled to apply under sec. 105, Bengal Tenancy Act. We are accordingly of opinion that the first ground upon which the learned Judge proceeded has no substance in it.

2. The second ground was that an application under sec. 105 could not be maintained where any question impugning the correctness of the record-of-rights was raised and that, at any rate, such an application could not be maintained by the landlord. We are of opinion that the learned Judge was wrong in the view he took of the provisions of sec. 105 and sec. 105 A of the Bengal Tenancy Act. Sec. 105 provides :--"When either the landlord or the tenant applies within two months from the date of the certificate of the final publication of the record-of-rights under sec. 103A, sub-sec. (2), for a settlement of rent, the Revenue Officer shall settle a fair and equitable rent in respect of the land held by the tenant." The application under sec. 106 must, therefore, be made within two months of the final publication of the record-of-rights. A party dissatisfied with any entry in the

record-of-rights may proceed under the provisions of sec. 105 of the Bengal Tenancy Act within three months of the final publication : but if he adopts the procedure prescribed in sec. 106, it is practically impossible for him to avail himself of the provisions of sec. 105 for the settlement of fair rent, because the application under this latter section must be made within two months of the final publication of the record-of-rights and a suit under sec. 106 is not likely to be disposed of within two months. Most of the matters which can be gone into under sec. 106 are dealt with in cls. (a) to (f) of sec. 105A and it seems to us that the obvious intention of enacting sec. 105A was that, where a party without resorting to the provisions of sec. 106 applies for the settlement of fair rent under sec. 105 and the issues mentioned in sec. 105A are raised, they shall be tried and decided by the Revenue Officer and rent under sec. 105 will be settled accordingly. It is, we think, sufficient to refer to the provisos to secs. 105 A and 106 to show that the issues mentioned in sec. 105A can be tried in a proceeding for settlement of rent under sec. 105. The proviso to sec. 105A runs thus :--"Provided that the Revenue Officer shall not try any issue under this section which has been or is already directly and substantially in issue between the same parties or between parties under whom they or any of them claim and has been tried and decided or is already being tried by a Revenue Officer in a suit instituted before him under sec. 106." Similarly the proviso to sec. 106 lays down that the Revenue Officer in a suit under that section shall not try any issue which has been tried and decided or is being tried under sec. 105A. It is obvious therefore that any of the issues mentioned in sec. 105A can be tried in a proceeding under sec. 105 provided such an issue has not been tried and decided or is not being tried in a suit under sec. 106.

3. Then, we do not see any reason for holding that an issue under sec. 105A can be raised only by the tenant. For instance, cl. (b) says "whether the land although entered in the record-of-rights as being held rent-free is liable to the payment of rent." Now, an entry in the record-of-rights that the land is held rent-free is an entry in favour of the tenant, and therefore it is the landlord who would challenge the correctness of such entry. Some of the issues mentioned in the other clauses may be raised by the landlord, others by the tenants, and some again by either of them. We are accordingly of opinion that the issues mentioned in sec. 105A can be tried in a proceeding under sec. 105. The judgment and decree of the Courts below must be set aside and the case sent back to the Court of first instance for trial on the merits. We make no order as to costs.