

## Brojo Mohun Pal Vs Darsan Pal and Others

**Court:** Calcutta High Court

**Date of Decision:** Feb. 1, 1929

**Citation:** 120 Ind. Cas. 155

**Hon'ble Judges:** Mukerji, J; Mitter, J

**Bench:** Division Bench

### Judgement

1. This appeal arises out of a suit for recovery of possession on declaration of title. The plaintiff's case was that he purchased the lands in suit from

the defendant No. 3 in August. 1906, that in the kabala under which he purchased there was no mention of there having been any tenants on the

land, that in the Settlement Record of the khas mehal finally published in 1910 the plaintiff was recorded as occupancy raiyat in respect of the land,

that subsequently in the Record of Rights finally published in 1918, the lands were recorded in the names of the defendants Nos. 1 and 2 under the

defendant No. 3. The plaintiff alleged that he had instituted a suit u/s 106 of the Bengal Tenancy Act for correction of the entry in the Record of

Rights but withdrew from the suit with liberty to bring a fresh suit. He averred that he was dispossessed by the defendants in July, 1922. The

prayer for declaration of title was based on the purchase as also on adverse possession for the statutory period. There was a prayer for recovery

of possession and it was further prayed that if it be found that defendant No. 3 had maliki right, the plaintiff might be given a decree for possession

on declaration of his jote right to the land.

2. It is unnecessary to set out the defence because the only plea on which the suit has been dismissed is that Section 109, Bengal Tenancy Act

operates as a bar to the maintainability of the suit.

3. In support of the contention that the present suit is not barred by reason of the provisions contained in Section 109 of the Bengal Tenancy Act a

number of decisions has been drawn to our notice many of which deal with the question whether a previous application u/s 105 of the Bengal

Tenancy Act did or did not bar a subsequent suit. We do not propose to deal with those decisions because we are of opinion that in the present

case we have really to consider only two questions: first, what in fact was the scope of the suit u/s 106, Bengal Tenancy Act as framed and

second, how much of that suit was triable by the Revenue Officer acting under the provisions of that section. Section 109 of the Bengal Tenancy

Act would operate as a bar only to the extent that the suit laid u/s 106, fell within the purview of the Revenue Officer's functions under that section.

Having examined the plaint in the suit u/s 106 we find that it asked for correction of the entry in the Record of Rights by inserting the name as

niskar-dar in respect of the lands on a declaration that the plaintiff's title by purchase from the defendant No. 3 had been established and also a

correction of the said entry by expunging the names of the defendants Nos. 1, 2 and 3 on a declaration that they had no right to or possession in

the lands. It has been urged before us on behalf of the appellant that the prayer for possession which there is in the present suit was not and could

not be included in the suit u/s 106. This contention cannot be refuted. [See e g. Pran Krishna Saha v. Trailakya Nath Chowdhuri 27 Ind. Cas. 883

: 19 C.W.N. 911, Kali Sunderi Debya v. Girija Sankar Sanyal 11 Ind. Cas. 184 : 15 C.W.N. 974 . But then it will not be possible to give him any

relief in respect of this prayer unless he obtains a declaration of his title to the lands It has been urged on behalf of the appellants that the Revenue

Officer could not have gone into the question of his title as against the defendant No. 3. In support of this contention reliance has been placed upon

several cases which will now be noticed. The first case relied upon is that of Padmalav v. Lukmi Rani 12 C.W.N. 8. In this case there is no doubt

a passage in the judgment of Woodroffe, J. which would seem to indicate that the question of possession alone should be considered in a suit u/s

106; but Coxe, J., observed that ""it is evident that in proceedings under the Bengal Tenancy Act no disputes of title between rival proprietors,

considered merely as proprietors, can legitimately arise (page 13 pages of 12 C.W.N.--[ed.]) and again, that suits u/s 106 are ""suits between

tenant and tenant, or between landlord and tenant in which questions other than that of possession may legitimately arise (page 15 pages of 12

C.W.N.--[ed.]) The observations of Woodroffe, J., therefore, should be taken as limited to" the peculiar facts of the case itself namely that the

dispute concerned two rival proprietors without any question arising as between any of them and the tenants The case of Ram Chandra v. Nanda

Nandananda Deb 20 Ind.cas. 298 : 19 C.L.J. 197 : 19 C.W.N. 938 in which Padmalav's case 12 C.W.N. 8 was referred to does not really

help the appellant because there the question of possession had not at all been investigated and while remanding the case for an investigation of that

question, it was observed that the Bengal Tenancy Act deals with relations of landlord and tenants and it is not part of its purpose to regulate

disputes between rival proprietors, except in so far as such disputes affects their relations with their tenants and the view of Coxe, J. in Padmalav's

case 12 C.W.N. 8 was adopted and affirmed by the learned Judges. The view of Coxe, J., in Padmalav's case 12 C.W.N. 8 was agreed in by

Carnduff, J. in Ensar Ali v. Yakub Ali 13 Ind. Cas. 311. That such a dispute does not fall within the purview of Section 108 has also been held in a

recent decision of this Court, namely, in Mt. Asrufannessa Khatun and Another Vs. Hem Chandra Chaudhury, . Another case upon which some

reliance has been placed on behalf of the appellants is that of Aswini Kumar Aich v. Sarada Charan Basu 37 Ind. Cas. 253 : 24 C.L.J. 79. In that

case there was an observation to the effect that these matters (meaning prayer for declaration of title and recovery of possession) are entirely

foreign to the jurisdiction of the Revenue Officer u/s 106. The fact of that case in so far as it appears from the report was that the suit was between

two rival proprietors; but whatever that may be not much weight was attached to these observations in the later case of Apurba Krishna Roy v.

Atarmani Dassi 64 Ind. Cas. 889, in which all these cases were reviewed and it was Baid that in a suit u/s 106 of the Bengal Tenancy Act for

correction of the Record of Rights when the Revenue Officer proceeds to decide the dispute he has to determine not merely whether certain words

should or should not remain unchanged in the records but also whether the facts described by those words are correct, and the contention that the

scope of the suit should not extend to questions of title was overruled. We are of opinion that the appellant's argument, that the scope of the suit

u/s 105 in the present case was or should be confined to questions of possession, must fail.

4. At the same time we think that the present suit should not be thrown out altogether. The plaintiff's title in so far as it is based upon his allegation

of adverse possession for the statutory period was not, in fact, within the scope of the plaint in the suit u/s 106 of the Bengal Tenancy Act. Ha is

fully competent to agitate this part of his title in the present suit and get in it such reliefs, if any, against the defendants as the law may entitle him to.

5. We accordingly allow the appeal and setting aside the decisions of the Court below remand the suit in the limited form indicated above to the

trial Court for trial. All costs incurred up till now (including the costs in this appeal) will be costs in the cause.