

(1913) 04 CAL CK 0031

Calcutta High Court

Case No: Appeal from Appellate Decree No. 2301 of 1911

Ramdas Mukerjee and Others

APPELLANT

Vs

Biprodas Pal Choudhery

RESPONDENT

Date of Decision: April 24, 1913

Judgement

1. This appeal arises out of a case under sec. 105, Bengal Tenancy Act. The learned Special Judge has enhanced the rent of a tenancy on the ground that it is below the prevailing rate. The tenant appeals. A preliminary objection has been taken by the Respondent that, having regard to the provisions of sec. 109A of the Bengal Tenancy Act, as the decision of the learned Special Judge was one settling a rent, no appeal lies. As the appeal has been argued, the question that we have to decide is, not whether the rent was rightly settled, but whether the learned Special Judge had jurisdiction to settle rent at all. We are of opinion that sec. 109A is no bar to an appeal in a case of this kind in which a question of jurisdiction is definitely raised.

2. The first ground taken in appeal is that the learned Special Judge had no jurisdiction, inasmuch as the tenancy was not governed by the provisions of the Bengal Tenancy Act. This was the view taken by the Settlement Officer. It is clear that the reasons which the learned Special Judge gives for over-ruling the decision of the Settlement Officer on this point are based upon a misconception. He proceeds on the assumption that the tenant had been entered in the record as a raiyat. The tenant has not in fact been entered in the record as a raiyat. The entry is korfa, a word which certainly does not mean. "raiyat."

3. We have endeavoured to ascertain what meanings the word korfa can bear. We have only been able to find one, namely, "under-raiyat." Now the tenant was manifestly not an "under-raiyat." The entry was therefore clearly wrong in that respect.

4. Now the entry describes the purpose of the tenancy as residential. This appears to accord also with the facts and with the view of the Settlement officer. This being so, we hold that the Tenancy Act did not apply. The learned Special Judge had no

jurisdiction.

5. We have had regard to the provision in sec. 103A of the Act to the effect that the publication of the record shall be conclusive evidence that the record has been duly made under the Chapter. But we understand this provision to mean only that a Court is precluded from going into the question whether the procedure under the Chapter has been followed. It does not preclude a Court from enquiring whether the resultant entry is correct. The result is that the decree of the Special Judge is set aside and that of the Settlement Officer is restored. The Appellant is entitled to his costs in all Courts.