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Calcutta High Court

Case No: None

Raja Sati Prosad Gorga Bahadur and Others		APPELLANT
	Vs	
Sanatan Dhara and Others		RESPONDENT

Date of Decision: July 26, 1920

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 105, 105(1), 188

Citation: 61 Ind. Cas. 549

Hon'ble Judges: Panton, J; N.R. Chatterjea, J

Bench: Division Bench

Judgement

1. This appeal arises out of proceeding u/s 105 of the Bengal Tenancy Ant for settlement of rents.

2. In the Record of Rights, which was finally published on the 12th March 1917, Raja Sati Prosad Garga and Raja Gopal Prasad were recorded as the landlords. The family is governed by the Mitakshara School of Hindu Law. The application u/s 105 (Sub-section 1) was made on the 20th April 1917 by Raja Sati Prosad, Raja Gopal Prasad, and an infant son of Raja Sati Prasad, who was born prior to the date of the final publication of the Record of Rights, It appears that on the 15th April 1917 a son was born to Raja Gopal Prasad, and an application was made on the 9th June 1917 for amendment of the original application (presented on the 20th April 1917) by the addition of the infant who may be sailed as the plaintiff No. 4.

3. Objections were raised on behalf of the defendants on the ground that the application was time--barred so far as the plaintiff No. 4 was concerned, as an application u/s 105 had to be made within two months, of the date of the certificate of final publication of the Record of Rights which, as stated above, was the lath March 1917 and the application for amendment was not made until the 9th June 1917, and the application u/s 105 was, therefore, bad by reason of the omission to

join the plaintiff No. 4. The Court of first instance disallowed the objections. On appeal the learned District Judge allowed the objections, and the plaintiffs have appealed to this Court.

4. The family being governed by the Mitakshare, there is no doubt that the plaintiff No. 4 acquired right to the estate on his birth, and was, therefore, one of the landlords. Having regard to the provisions of Section 188 of the Act, an application u/s 105 for settlement of fair and equitable rent must be made by all the landlords and can not be maintained by some of the joint landlords See Behari Lal v. Priya Nath 28 Ind. Cas. 508 : 21 C.L.J. 305 Krishna Das Law v. Girija Nath Roy Poresh Sardar)3 ind. Cas. 472 : 10 C.L.J. 485. It is contended, however, on behalf of the appellants that as only the names of Raja Sati Prasad and Raja Gopal Prasad were recorded as the landlords in the Record of Rights they alone were competent to make the application u/s 105. It is true that u/s 103 B, entries in the Record of Rights shall be presumed to be correct until they are proved by evidence to be incorrect. But the plaintiff themselves joined the infant son of Raja Sati Prasad in the original application made on the 20th April 1917 and in the application of the 9th June 1917 for amendment they wanted to add the infant son of Raja Gopal Prasad as plaintiff, thereby admitting which they could not but admit) that these two infants were also the landlords. The contention that only the persons entered in the Record of Rights have the right to make an application u/s 105 cannot be supported. If the right of the landlords be transferred to other persons within two months of the date of the final publication of the Record, the latter surely become the landlords, and would be entitled to make the application, as Section 105 does not lay down that the application is to be made only by the persons whose names are entered in the Records as the land, lords. In the ease of Upendra Nath Ghosts v. Jamini Moliun Pal 21 Ind. Cas. 37 : 18 C.W.N. 268 it was held that the mere fact that the name of a person does not appear in the Record of Rights as the owner of a tenure is no ground for holding that he is not entitled to applu6:48 PM 3/17/2008 u/s 105 of the Bengal Tenancy Act.

5. It is contended, however, that either a new cause of action accrued to the plaintiff No, 4 at his birth on the 15fch April 1917, in which case the application (for adding him as plaintiff) made on the 9th June 1917 was in time, or that no fresh cause of nation accrued on his birth, and in that case he was not a necessary party, and the application for adding him as a party was a mere surplus age.

6. We are of opinion that neither of these contentions has any force. No new cause of action accrued to the infant on his birth. The right to make an application u/s 105 arose on the date of final publication of the Record. The application must be made within the time limited, and any person who acquired an interest on his birth would have to be made a party to such an application. It is urged that no right to make an application can exist unless there is a person in being who can make the application, and the infant not having been born at the date when the certificate of final

application was made, and from which the period of limitation for the application contemplated by Section 105 was to run, the infant could not be a necessary party nor could any question of limitation arise in such a case, But in a Mitakshara family, if there is a cause of action for a suit with respect to the family estate, although a son subsequently born acquires an interest in the estate on his birth, and, therefore, has to be made a party to such a suit (if instituted after his birth), the period of limitation runs from the date of the cause of action when it originally accrued, even though the infant was not born when such cause of application. The principle applicable to a suit would apply to an application u/s 105, Bengal Tenancy Act, which, as will be presently shown, must be dealt with as a suit. We think, however, that no question of cause of action rally arises in the present case, The right of the landlord to enhance the rent of tenants is one which can be enforced in the Civil Courts, and such right is not affected by the period of limitation laid down by Section 103 of the Act, Section 105 is an enabling section, It enables the landlord or tenant, if he chooses, to adopt a scissile procedure do get a settlement of the rent in the proceedings for Record of Right, and special facilities are given to them far the purpose, it does not take away their rights which may be enforced in the Civil Courts, If, however, they wish to avail themselves of the appeal procedure for settlement of rents, they mast some within the period prescribed, via,, two months from the date of the certificate of final publication of the Record of Rights. That period is not affected by the subsequent devolution of the interest of the landlord, although the parson in whim sash interest has devolved would be a necessary party to the application u/s 103, and the omission to join him within the period prescribed may render the application incompetent having regard to the provisions of Section 188 of the Act.

7. It is contended that the plaintiffs Nos. 1 and 2, as managers of a Mitakahara family, may maintain the application, and that Section 188, Bengal Tenancy Act, does not affect the rights of managers in a Mitakshara family, But the question of the power of a manager of a Mitakshara family must--be considered with reference to statutory provision, if any, applicable to any particular case. Section 188 provides that where two or mire persons are joint landlords anything which the landlord is under the Act required or au horized to do, must be done either by both or all the persons acting together or by an agent authorized to act on behalf of both or all of them. In the case of Sati Prosad v. Radha. Nath 18 Ind. Cas. 197 : 16 C.L.J. 427 at PP. 430 : 431 the learned Judges observed ; '' It is clear, therefore, that the legislature has expressly provided for the performance of an act, not only by the entire body of the joint landlords, but also by their representative. Bat the Legislature contemplated that, where such representative is allowed to act, he must be a single individual; in other words, the act must be done by a single agent authorised to act on behalf of the entire body of had lords. In the case before us, the suit has been instituted by two members of the joint family; it cannot, therefore, be contended that they had instituted this suit as agents authorised to at on behalf of all the

landlords. It is, moreover, doubtful whether a member of a joint Mitakshara family, even if he happens to be the bead of the family, can be said to be an agent authorised on behalf of other members of the family; the legislature apparently contemplated acts done by a common manager appointed under the Bengal Tenancy Act. We are consequently of opinion that the suit has been improperly constituted and cannot be maintained,

8. The same observations apply to the present case. Here, not only the two adult members but also an infant member (the plaintiff No. 3) made the application, and they themselves applied to have the newly born infant joined as a party to the application. It cannot, therefore, possibly be said that the application was made either by the karta of the family or an agent authorised to an on behalf of all the landlords.

9. The last contention if, that it is open to the Court to amend the original defective application by the addition of the plaintiff No. 4 under Order I, Rule 10 (2), and that the proceeding not being a suit, the provisions of Section 22 of the Limitation Act do not apply.

10. But Rule 63(I), Part III of the Rules framed by the Local Government under the Bengal Tenancy Act, lays down that proceedings for settlement of a fair rent shall be dealt with as suits and subject to the directions contained in this Rule, the Revenue Officer shall adopt, as far as it is practicable, the procedure laid down in the CPC for the trial of suits." The case of Kalmand Singh v. Chandra Krithore Jha 7 Ind. Cas. 19 : 14 C.W.N. 97 : 12 C.L.J. 192 relied upon cannot apply to the present case, as the application there was an application for execution of decree, and it was held that the substitution of the heirs of the deceased judgment debtor was a continuation of the original application. In the present case the application u/s 105 is to be dealt with as a suit, and if all the landlords did not join in the application as required by the Act, we do not think that the Court has the power to amend the application by adding a person as party to the application after the expiry of the period fixed by the Act. The Act prescribes a special period for applications made by the whole body of landlords within a period of two months and we do not see how the Court can allow an amendment which would have the effect of extending the period of limitation.

11. We are accordingly of opinion that the application originally made was defective and the application for joining the infant, having been made after the expiry of the period prescribed, was barred by limitation.

12. The appeal is, therefore, dismissed with cots, one gold mohur.