(1925) 05 CAL CK 0048

Calcutta High Court

Case No: None

Becharam Choudhuri and Others		APPELLANT
	Vs	
Puran Chandra Chatterji and Others		RESPONDENT

Date of Decision: May 6, 1925

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 105

Citation: 88 Ind. Cas. 637

Hon'ble Judges: Suhrawardy, J; Hugh Walmsley, J; C.C. Ghose, J; Babington Newbould, J; B.B. Ghose, J

Bench: Full Bench

Judgement

Hugh Walmsley, J.
The question referred is as follows: "When an application under: Section 105 of the Bengal Tenancy Act for settlement of rent is withdrawn with liberty to bring a fresh suit, whether a suit for enhancement of rent is barred by the provisions of Section 109 of the Bengal Tenancy Act."

2. There have been several conflicting decisions on the question but I do not think it would serve any useful purpose to discuss them or even to enumerate them. It is enough to say that one set of decisions favours the view that an application u/s 105 (or Section 105) of the Tenancy Act, if withdrawn by permission of the Court, is to be regarded as not having been made, while the other set proceeds on the footing that the making of an application under either of those sections, whatever be its fate afterwards, brings into operation the prohibition contained in Section 109 of the Tenancy Act.

3. The words of Section 109 are these: "Subject to the provisions of Section 109A 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)."] The provisions of Section 109A have no bearing on the present matter.

4. The words ''subject of an application made'' seem to me so clear as to admit of only one interpretation, and that is that once an application is made, the Civil Court cannot entertain an application or suit in respect of the same matter. It is of no consequence what happens to the application: it may be prosecuted to a conclusion, or abandoned, or dismissed for default, or withdrawn by leave of the Court or without the leave of the Court. It is the fact of the application being made, and not the manner, of its disposal that has to be considered. The view that the presiding officer can prevent the making of the application from producing the result by permitting its withdrawal, involves the necessity of adding a gloss to the words of the section, and offends against the principle that the words of a Statute must be understood in their plain and ordinary meaning.

5. In my opinion, therefore, it is the making of the application that brings into play the prohibition of Section 109, and the, answer that I would give to the reference is to that effect, namely, that if an application is made u/s 105 of the Bengal Tenancy Act, and subsequently withdrawn whether with or without the permission of the Court, a suit on the same subject-matter is barred by the provisions of Section 109 of the Tenancy Act; and as concerns the appeals which have given rise to the reference, I would allow them and dismiss the suits as not maintainable. The plaintiffs must pay the costs of the other side in all the Courts. The hearing fee in this Court for all the hearing is assessed at ten gold mohurs for the two appeals.

Newbould, J.

6. [May 6, 1925].-I agree that the question referred to this Full Bench should be answered in the affirmative for the reasons given by my learned brother Walmsley, J. in the judgment which he has just delivered.

7. I was one of the Judges who held in the case of Mohammed Ayejuddin Mia v. Prodyot Kumar Tagore 61 Ind. Cas. 503 : 48 C. 359 : 25 C.W.N. 13., that a suit lies to correct an entry in a finally published Record of Rights and that the fact that an application u/s 106 of the Bengal Tenancy Act was withdrawn does not bar the jurisdiction of the Civil Court to deal with the matter. In the judgment in that case no reasons are given for that decision. I have no doubt that the reason is that, at the time of hearing, the decisions of this Court were all one way. In the case of Chiodith v. Tulsi Singh 18 Ind. Cas. 130 : 40 C. 428 : 17 C.W.N. 487, it had been held that an application tinder Section 105 which had been withdrawn must be treated as non-existent. That decision appears to have been followed without question until doubt was thrown on it by the judgment in the case of Abeda Khatun v. Majubali Chowudhury 59 Ind. Cas. 760 : 48 C. 157 : 24 C.W.N. 1020 : 33 C.L.J. 304. This case was decided a short time before the hearing of the case of Mohammed Ayejuddin Mia v. Prodyot Kumar Tagore 61 Ind. Cas. 503 : 48 C. 359 : 25 C.W.N. 13. and had not

been reported. Had we been aware of that decision our judgment would certainly have contained some reference to the law on this point. The point is mentioned as subsidiary to the question whether a civil suit lies to correct an entry in the Record of Rights. It was contended on behalf of the appellant in that appeal that Section 106 of the Bengal Tenancy Act provided an exclusive remedy. After discussing the rulings on this point we decided it against the appellant without any further mention of the subsidiary question which is identical with the subject of the present Full Bench Reference. Now that 1 have considered this question more carefully and am no longer bound by the authority of previous decisions I have no doubt as to the meaning of Section 109 of the Bengal Tenancy Act. It clearly bars a suit for enhancement of rent in a Civil Court after an application has been made u/s 105 of the Bengal Tenancy Act for settlement of rent even though that application has been withdrawn with liberty to bring a fresh suit.

8. I also agree with my learned brother Walmsley, J. that the appeals, should be allowed and the order of remand set aside.

C.C. Ghose, J.

9. [May 6, 1925].--The facts of the case giving rise to this Full Bench Reference are set out in the judgments of Mr. Justice Walmsley and Mr. Justice Suhrawardy dated the 22nd November, 1923, and it is, therefore, unnecessary for me to set out the same again. The learned Judges differed as to the proper construction of Section 109 of the Bengal Tenancy Act and thereupon there was an appeal u/s 15 of the Letters Patent. The learned Judges who heard the Letters Patent appeal were of opinion that having regard to the conflict of decisions on the question of the proper interpretation of Section 109 of the Bengal Tenancy Act, the following question should be referred to the Full Bench: "When an application u/s 105 of the Bengal Tenancy Act for settlement of rent is withdrawn with liberty to bring a fresh suit, whether a suit for enhancement of rent is barred by the provisions of Section 109 of the Bengal Tenancy Act:" This Reference came on for hearing before us on the 27th April. There is no doubt that there has been a conflict of decisions on the question: [see the cases mentioned in the order of the referring Judges and the case of Sasi Kanta Acharjya v. Salim Sheikh 74 Ind. Cas. 1001 : 50 C. 626 : 27 C.W.N. 987 : AIR (1923) (C.) 624.]

10. The question depends on the proper construction of Section 109 of the Bengal Tenancy Act which runs as follows:

Subject to the provisions of Section 109A, 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).]

11. Now, it is settled law that in construing the words of a Statute one must give to them their plain, grammatical, natural and ordinary meaning and, in my opinion,

construing this section according to the rule indicated above, it would follow that once a matter is or has been the subject of an application made u/s 105 of the Bengal Tenancy Act a Civil Court cannot entertain an application or suit in respect of the same matter. In my view, it is wholly immaterial for the purposes of construction of Section 109 whether the application referred to above has been withdrawn with or without the leave of the Revenue Officer u/s 105 or whether the application has been disposed of on its merits by the Revenue Officer. I, therefore, agree with Mr. Justice Walmsley in the answer which he proposes to give to the question referred to the Full Bench and in the order made by him.

Suhrawardy, J.

12. [May 6, 1925].--I have the misfortune to differ from my learned brothers in the answer proposed to be given to the Reference.

13. The sole question before us is, where an application under Sections 105 to 108, Bengal Tenancy Act, is made before the Revenue Officer and withdrawn with leave to bring a fresh suit, can the matter in dispute form the subject of a civil suit. I am not concerned with cases of withdrawal without leave or dismissal for non-prosecution of such application. I shall, therefore, confine myself to the consideration of the law as applicable to the facts of the present suit.

14. By giving liberty to bring a fresh ''suit'' I take it that the Revenue Officer meant to permit the applicant to present a fresh application before him. What is the effect of such an order? When a suit is allowed to be withdrawn with leave to bring a fresh suit under Order XXIII, C.P.C. it should be regarded as never brought. It is available for no purpose. It does not save or give fresh start to limitation; nor does it afford a fresh cause of action.

15. Now, Section 109, Bengal Tenancy Act, shows, as it has been held, that the aggrieved party has under the law two alternative remedies. He can apply under Sections 105 to 108 before the Revenue Officer or he can bring a civil suit for the same purpose. By obtaining leave to make a fresh application, he has lost none of these remedies. He can, therefore, if he does not exercise his right to apply to the Revenue Officer, have Recourse to the Civil Court.

16. The policy of the law seems to be that a party should not have two co-existing rights; he may either apply to the Revenue Officer or bring a civil suit. Where both the rights exist and the former right is not exercised, there is no reason why the latter right should be denied to him. In my opinion the answer to the Reference should be in the negative. The second appeal should accordingly be dismissed.

B.B. Ghose, J.

17. [May 6, 1925].--I agree with my learned brother Mr. Justice Walmsley, that the answer to the question referred to us should be in the affirmative. I had expressed my opinion previously in the case of Sasi Kanta Acharjya v. Salim Shaikh 74 Ind. Cas.

1001 : 50 C. 626 : 27 C.W.N. 987 : AIR (1923) (C.) 624, that the plain meaning of the words in Section 109 of the Bengal Tenancy Act should be given effect to, and the argument addressed to us has not convinced me that I should alter my opinion, and that the ordinary rule of construction of a Statute should be departed from in this instance.