APPELLATE CIVIL.

Before Chaudhuri and Ghose JJ.

1920

April 23.

MANINDRA CHANDRA NANDI

v.

UPENDRA CHANDRA HAZRA.*

Record-of-Rights—"Settlement of rent"—Bengal Tenancy Act (VIII of 1885), ss. 105, 106, 113.

A rectification of the record-of-rights under s. 106 of the Bengal Tenancy Act as regards the existing rent cannot be said to be a settlement of rent, so as to preclude a suit under s. 113 of the Act. Sections 105 and 105A of the Act contemplate settlement of rent and not s. 106.

SECOND APPEAL by Maharaja Sir Manindra Chandra Nandi, the plaintiff.

This appeal arose out of a suit for enhancement of rent under section 30 (*a*) and (*b*) of the Bengal Tenancy Act. Record-of-rights had been prepared, under Chapter X of the Act, of the *mehal*, within which the holding in suit was situate, and was finally published on the 25th January, 1908. In that record-of-rights, the rent of the holding in the suit was entered as Rs. 32 odd a year. The plaintiff then brought a suit under section 106 of the Bengal Tenancy Act against the defendant, mainly on the ground that the existing rent was not Rs. 32 odd, but Rs. 63 odd, as stipulated in the *kabuliyat* executed by the defendant in 1301. The plaintiff, therefore, prayed in that suit that the record-of-rights be rectified and that the dispute as regards the rate of rent be decided in his favour in accordance with the *kabuliyat* referred to above. The

* Appeal from Appellate Decree, No. 1724 of 1918, against the decree of M. Yusuf, District Judge of Murshidabad, dated July 31, 1918, reversing the decree of Rajendra Lal Chakravarti, Munsif of Berhampore, dated Sept. 22, 1917.

suit was dismissed by the Assistant Settlement Officer, and that judgment was confirmed by the special Judge. Thereupon the plaintiff brought this regular suit. The defendant contended, *inter alia*, that section 113 of Bengal Tenancy Act was a bar to the suit, rent having been settled under section 106. The contention on behalf of the plaintiff on this point was that the settlement of rent, referred to in section 113 of the Bengal Tenancy Act, was settlement which could be effected only under section 105 of the Act, and that section 106 did not contemplate any settlement of rent, but only decision of disputes of the kind specified in that section. The Munsif overruled this objection and decreed the suit. On appeal, the District Judge upheld the objection of the defendant and held that the suit was not maintainable.

Babu Hemendranath Sen (with him *Babu Saratkumar Mitra*), for the appellant. Section 106 relates to decision of disputes as to existing rate of rent. The scope of the section is limited to disputes. It has nothing to do with settlement of rent. That properly comes under the scope of section 105. If we had applied under section 105, our suit in the ordinary course would have been barred under section 113 of the Bengal Tenancy Act. The effect of section 106 of that Act is a presumption. *Rameswar Singh* v. *Bhubaneshwar Jha* (1), on which the District Judge relied, is really in my favour. See also *Pandab Dowari Das* v. *Ananda Kisun Chakrabulty* (2) and *Berhamdut Misser* v. *Ramji Ram* (3).

Babu Dwarkanath Chakrabarti on the same side, with leave of Court. If you read the whole of Chapter X of the Bengal Tenancy Act you will find that rent

(1) (1906) I. L. R. 33 Calc. 837. (2) 1910) 14 C. W. N. 897, 900-1
(3) (1913) 18 C. W. N. 466.

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cannot be "settled" under section 106. It is only after dispute is "settled" and final publication of record-of-rights thereafter that the time comes for alteration of rent. The expression "settlement of rent" has acquired a technical meaning.

[CHAUDHURI J. The expression "under *this chapter*" occurs in section 113 and not "under section 105."]

Yes, but it is apparent from the successive stages of settlement proceeding laid down in the Act and from Government rules that it would be absurd to hold that rent may be "settled" under section 106. The addition of section 105A clearly shows that. See *Pirthichand Lal Chowdhry* v. *Basarat Ali* (1) on the effect of amendments of the Act.

Babu Mohinimohan Chakrabarti (with him *Babu Bansarilal Sarkar*), for the respondent. My friend's client brought a suit against my client and lost it up to High Court: *Manindra Chandra Nandi* v. *Upendra Chandra Hazra* (2). The date of that judgment was 1st June, 1908. The date of the final publication was 25th January, 1908. We applied under section 105 in the present matter in March, 1908. It was not decided, as the plaintiff's suit under section 106 was pending. The suit under section 106 was decided on the 30th September, 1909. Decision of the application under section 105 was not necessary in view of the High Court judgment, dated the 1st June, 1908, and the decision in the suit under section 106. All these matters taken together make it clear that rent was settled.

Cur. adv. vult.

CHAUDHURI AND GHOSE JJ. This appeal, which arises out of a suit for enhancement of rent under clauses (*a*) and (*b*) of section 30 of the Bengal Tenancy

(1) (1909) I. L. R. 37 Calc. 30. (2) (1908) I. L. R. 36 Calc. 604.

Act, illustrates the shortcomings and difficulties of the enactment. The plaintiff is the appellant. The lands in suit belong to his *mehal* Beldanga. In the time of his predecessor-in-interest there were disputes between her and the tenants as to the rent and area of the holdings. The Magistrate of the district then intervened and the disputes were settled, the principal tenants executing *niriknamahs* at certain rates. Among them the defendant executed *furdis* in respect of 68 bighas 17 kattas and odd in his possession, agreeing to pay rent at Rs. 63-5-9 on the basis of the *niriknamah*. He also executed a *kabuliyat* in favour of Maharani Swarnamoyi, the predecessor, on the basis of which he paid rent up to 1308. On default made, the plaintiff instituted rent suits on the strength of the *kabuliyat*, which was held invalid by this Hon'ble Court as being in contravention of section 29 of the Tenancy Act. During the pendency of the appeals in the High Court, record-of-rights was prepared in respect of that *mehal* which was finally published on the 24th January, 1908. In such records the defendant was entered as a settled *raiyat* and the rent at Rs. 32-10-3 and the area was found to be 69 bighas 4 kattas and odd. Thereupon, the tenants made an application under section 105 of the Bengal Tenancy Act on the 28th March, 1908, anticipating the plaintiff's objections. The plaintiff made an application on the 24th April, 1908, under section 106 of the Bengal Tenancy Act to rectify the record. His application was rejected. He claimed rectification on the ground that he was entitled to the *kabuliyat* rent, and if not so, to an enhancement of the original rental to the extent of two annas in the rupee. The High Court decision in the rent suits was given on the 1st June, 1908, whereupon the tenant withdrew his application under section 105, on the 23rd June, 1908. In August

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of that year the Revenue Officers disallowed the plaintiff's application, whereupon this suit was instituted. It was urged by the defendant before the learned Munsif that sections 37 and 113 of the Bengal Tenancy Act barred the present suit. He held against such contention.

The learned District Judge, on appeal, agreed that section 37 was not a bar, but held that section 113 clearly barred the present suit. Hence this appeal.

It has been contended before us, as it was contended before the first Appellate Court, that the record-of-rights merely dealt with the existing rent of the land and that the Settlement Officer was not competent to settle a fair and equitable rent until an application under section 105 was made to him. Section 106 deals with the rectification of record and that is what was sought by the plaintiff; he did not in that application, as he could not, apply to have a fair and equitable rent settled. He did not make any application under section 105 for settlement of rent. During the proceedings under section 106, the tenants who had applied under section 105 withdrew their applications, as the High Court had decided in their favour. It was urged on behalf of the tenant that the present suit was barred under section 113. He contends that the rent of his holding was "settled" under Chapter X, when the plaintiff's application under section 106 was rejected and the entry in the record was maintained: that it settled the dispute about rent and must be considered as a settlement of the rent. The wording of section 113 is capable of that interpretation, but it involves an absurdity. Section 102 lays down what particulars are to be put down in the record. One of such particulars to be put down is "the rent payable at the time the record-of-rights is being prepared." Section 102, clause (*e*). It cannot be contended that the

Settlement Officer can at that time settle what ought to be assessed as fair and equitable rent. The section undoubtedly empowers the Settlement Officer to settle the existing rent cutting down illegal exactions, if any, and disallowing any amount imposed in contravention of the Act. The expression used in clause (*e*) is "rent payable" which is certainly loose. The Tenancy Act was amended and section 105A was added by Bengal Act I of 1907. Section 106 which was a substitution for the original as contained in Bengal Act I of 1903, was again amended in 1907 by an additional provision—namely, the last clause. Section 105A was added to include decisions on certain questions arising during the course of settlement of rent under Chapter X; but we think, having regard to the scheme of the preparation and publication of the record, it cannot be contended that a rectification of the record of the nature sought by the plaintiff can be considered as settlement of rent precluding a suit. No claim for settlement of rent under section 30, clauses (*a*) and (*b*), was made in the application before the Settlement Officer under section 106 and could not have been made. Section 105 is a special provision. It cannot be said that a person who does not make an application under that section is debarred from bringing a suit. It is unnecessary to refer to the cases cited which do not deal directly with the point, but deal with the distinction between sections 105 and 106. We do not think that the learned Judge was right in holding that the present suit was barred. We hold it is maintainable. As the learned Judge has not dealt with the other points in the appeal before him, we think the appeal should be remanded for further hearing. The defendant will pay the plaintiff his costs of this appeal.

S. M. *Appeal allowed; case remanded.*