

## APPELLATE CIVIL.

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*Before C. C. Ghose and Pearson J.J.*

GOKULCHANDRA LAHA

*v.*

NISTARINI GHOSH.\*

1930

Nov. 25;  
Dec. 11.

*Bengal Tenancy—Proceedings under s. 108 for revising orders in suits covered by ss. 105 and 105A commenced within 12 months from the date of the same without bringing on the record the heirs of a deceased party to the order, if valid—Bengal Tenancy Act (VIII of 1885), ss. 105, 105A, 107, 108, 115C—High Court's power of superintendence—Government of India Act (5 & 6 Geo. V. c. 61; 6 & 7 Geo. V. c. 37 and 9 & 10 Geo. V. c. 101).*

Where, in a case covered by sections 105 and 105A of the Bengal Tenancy Act, the plaintiff-landlord died, after the decision of the revenue officer, and, thereafter, without bringing on the record the heirs of the deceased plaintiff-landlord within 12 months from the date of the said decision, the settlement officer started proceedings under section 108 of the Bengal Tenancy Act :

*held* that the said proceedings under section 108 were invalid.

Under section 107 of the Government of India Act the High Court has power to set aside an order of a Special Judge, even in a case where no appeal lies.

SECOND APPEAL by the plaintiffs-appellants.

The material facts will appear from their Lordships' judgment.

*Narendrachandra Basu and Nalinchandra Pal* for the appellants.

*Bhudhar Haldar* for the respondents.

*Cur. adv. vult.*

GHOSE AND PEARSON JJ. The facts giving rise to these appeals, shortly stated, are as follow: Raja Krishnadas Laha was the owner of certain properties in the district of Jessore. There were settlement proceedings sometime ago and a record-of-rights was

\*Appeals from Appellate Decrees, Nos. 656 to 658 of 1929, against the decree of R. C. Sen, Special Judge of Jessore, dated Aug. 4, 1928, reversing the decrees of Pramadaranjan Das Gupta, Assistant Settlement Officer of Jessore, dated Aug. 28, 1926.

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prepared. Thereafter, there were cases under sections 105 and 105A of the Bengal Tenancy Act at the instance of the landlord, the result of which was that certain lands were held to be *mâl* or rent-paying. The date of the decision in the 105 and 105A cases is the 13th August, 1924. Under section 107 of the Bengal Tenancy Act, the decision in the said cases had the force and effect of a decree of a civil court in a suit between the parties, subject, however, to the provisions of section 108 and section 115C of the Bengal Tenancy Act. Raja Krishnadas Laha died on the 16th November, 1924, but it appears that the fact of his death was not known to the settlement authorities. A proceeding under section 108 was drawn up by the Settlement Officer for revising the orders under sections 105 and 105A of the Bengal Tenancy Act. The date of the initiation of this proceeding is the 29th November, 1924. It appears that the heirs of Raja Krishnadas Laha were not brought on the record when the proceeding was initiated. Now, section 108 of the Bengal Tenancy Act runs as follows :—

“Any revenue officer especially empowered by the  
 “Local Government in this behalf, may, on application  
 “or of his own motion, within twelve months from the  
 “making of any order or decision under section 105,  
 “section 105A, section 106 or section 107, revise the  
 “same, whether it was made by himself or by any  
 “other revenue officer, but not so as to affect any order  
 “passed or decree made under section 115C. Provided  
 “that no such order or decision shall be so revised if  
 “an appeal from it has been filed under section 115C  
 “or until reasonable notice has been given to the  
 “parties concerned to appear and be heard in the  
 “matter.”

For certain reasons, recorded in his order, dated the 8th January, 1925, Mr. Fawcus, the Settlement Officer, revised the order under sections 105 and 105A and set aside the same. This was done as stated above, without bringing on the record the heirs of Raja Krishnadas Laha. The matter then came before,

the Special Judge, on appeal by the heirs of Raja Krishnadas Laha. The Special Judge held, by his order, dated the 29th April, 1926, that the Settlement Officer's order, dated the 8th January, 1925, was entirely *ultra vires*, as it was passed without notice to the parties referred to in section 108 of the Bengal Tenancy Act. The Settlement Officer, thereupon, remanded the case to the lower court for re-hearing after due notice to the parties interested. The matter then came before the Assistant Settlement Officer on the 28th August, 1926. The heirs of Raja Krishnadas Laha had not even then been brought on the record in place of the deceased and the Assistant Settlement Officer held that the time mentioned in section 108 having long elapsed and no steps having been taken to bring the heirs of the deceased on the record, the proceeding under section 108 must fail and that the original order or orders under sections 105 and 105A of the Bengal Tenancy Act must stand. There was a further appeal to the Special Judge of Jessore and that officer has now held that the proceeding under section 108 of the Bengal Tenancy Act having been started on the initiative of the Settlement Officer, it is sufficient if such proceeding has been started within a period of twelve months from the date of the order or orders under sections 105 and 105A of the Bengal Tenancy Act. The Special Judge observed as follows :—

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“ It is nowhere laid down that a case under section 108, Bengal Tenancy Act, is to be treated as a suit. I, therefore, think that it is enough, for the purpose of section 108 of the Bengal Tenancy Act, if the proceedings for the revision of the decision are started (either on the application of the party or on the motion of the Settlement Officer himself) within 12 months from the date of the decision. The question of bringing parties on record hardly arises. All that is required by the section is that a reasonable notice is to be given to the parties and for that there is no law of limitation. In the present case, whichever date may be taken as the date of the inception of the proceedings under section 108 of the Bengal Tenancy Act, whether it was 29th November, 1924, when the Assistant Settlement Officer decided to send up the case to the Settlement Officer or the date of the decision of the Settlement Officer himself, it was within 12 months from the date of the decision under sections 105 and 105A of the Bengal Tenancy Act. Cases under section 108 of the Bengal Tenancy Act are not, in my opinion, suits at any stage.”

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On behalf of the appellants, who are the heirs of late Raja Krishnadas Laha (and who it may be noted have not yet been substituted on the record of the original case) it has been contended by Mr. Basu that, in circumstances such as these, although the Settlement Officer may initiate a proceeding under section 108 of the Bengal Tenancy Act without bringing on the record the heirs of a deceased party, he must bring on the record such heirs within the period mentioned in the section itself. In other words, it is contended that where the Settlement Officer is unaware of the fact of the death of a party interested, he may no doubt start the proceeding under section 108 without bringing on the record at the moment the heirs of the deceased party, but he must, in order to make the proceeding effective against the parties interested, bring on the record the heirs of the deceased party within 12 months from the date of the original order under sections 105 and 105A. In this case, this not having been done, Mr. Basu contends that the entire proceedings under section 108 are, having regard to the events which have happened, entirely invalid and that the original order or orders under sections 105 and 105A of the Bengal Tenancy Act cannot be questioned and that they should retain the force and effect of a decree of a civil court in a suit between the parties.

We are of opinion that, on the facts appearing on the record, Mr. Basu's contention is sound and must be given effect to. The proceedings must be instituted within 12 months, as required by section 108, but that means valid proceedings must be instituted within that period. Now, it is elementary that proceedings against a dead man are not valid. It follows, therefore, that, in this case, at no point of time within the said period of 12 months, were any valid proceedings instituted under section 108.

We are not inclined to hold that there is no appeal in this case, as has been contended by the respondents. But be that as it may, it is not necessary to pursue the matter, because this is clearly a case, where, in the

exercise of our powers of superintendence under section 107 of the Government of India Act, we can set aside the order of the Special Judge dated the 4th August, 1928, and restore the order of the Settlement Officer, dated the 28th August, 1926, and we, accordingly, do so. The result is that these appeals are allowed with costs.

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*Appeals allowed.*

A. K. D.