

1929.

AHAMADAR  
RAHAMAN  
CHAUDHURI

v.

JAMINI-  
RANJAN  
BARUA.

In our opinion, the circumstances of the case are such as would justify us in interfering with the order passed by the learned District Judge in so far as it relates to the question of interest.

The result, therefore, is that the appeal will be allowed to this extent that the decree of the learned District Judge will be modified by deleting from it the direction as regards the payment of interest and that the plaintiff will get a decree for recovery of Rs. 319 from defendant No. 4 with interest at 6 per cent. per annum from the date of suit till realization. Each party will bear his own costs in this Court.

*Appeal allowed: decree modified.*

G. S.

---

## PRIVY COUNCIL.

---

### RESHEE CASE LAW

v.

### SATISCHANDRA PAL

P. C.\*

1929

Feb. 21;  
Mar. 5.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA].

*Civil Suit—Civil suit after application to revenue court—Application withdrawn by leave—Whether suit maintainable—Bengal Tenancy Act (VIII of 1885), ss. 105, 106, 109.*

Section 109 of the Bengal Tenancy Act, 1885, prohibits a civil suit in any matter, which is or has been the subject of an application under sections 105 to 108, even if the application has been withdrawn, whether with or without the leave of the court.

*Purna Chandra Chatterjee v. Narendra Nath Chowdhury* (1) approved.

Decrees of the High Court affirmed.

CONSOLIDATED APPEAL (No. 16 of 1928) from two decrees of the High Court (January 26, 1926) affirming two decrees of the Subordinate Judge of Midnapur.

The appellant brought two suits in the civil court, alleging that the record-of-rights of certain villages, published in 1916, recorded that his tenant,

\* Present: Lord Carson, Lord Atkin and Lord Salvesen.

the first respondent-defendant, was in possession of a greater area than that included in two *pattas* granted to him; the plaintiff claimed possession of the excess area with mesne profits, or, alternatively, that the rent should be fixed. He had previously made, in the case of the land to which the first suit related, applications to the revenue courts under the Bengal Tenancy Act, 1885, section 105, for the settlement of rent of the excess area and, under section 106, for a decision of the dispute so arising on the entry in the record. All three applications had been withdrawn, two with leave to bring fresh suit. With regard to the land to which the second suit related, he had made an application under section 105, and an application under section 106; one had been allowed to be withdrawn, and the others had been dismissed for default in payment of the court fees.

The High Court, affirming decrees of the trial judge, dismissed the suits. The learned Judges (Chatterjea A. C. J. and Page J.) held, upon the authority of the Full Bench in *Purna Chandra Chatterjee v. Narendra Nath Chowdhury* (1), that, having regard to the previous applications, section 109 of the Bengal Tenancy Act, 1885, prevented the suits from being maintained, whether the applications were or were not withdrawn.

*DeGruyther K. C.* (with *Dube*), for the appellant. Section 109 does not apply when the previous application has been withdrawn, at any rate if it is withdrawn with leave to bring a fresh suit. The section applies only if a decision of the revenue court has been given, or is in course of being given. By section 107, the Code of Civil Procedure applies, and consequently Order XXIII, rule 1, which enables a plaintiff to withdraw his suit and empowers the court to give him leave to bring a fresh suit. Section 109 of the Act of 1885, in effect, merely reproduces sections 10 and 11 of the Code. The decision in *Purna Chandra*

1929  
 RESHEE CASE  
 LAW  
 v.  
 SATISCHANDRA .  
 PAL.

(1) (1925) I. L. R. 52 Calc. 894.

1929

RESHEE CASE  
LAW  
v.  
SATISCHANDRA  
PAL.

*Chatterjee v. Narendra Nath Chowdhury* (1) was erroneous.

*Graham-Dixon*, for the first respondent, was not called upon.

The judgment of their Lordships was delivered by

LORD SALVESEN. These appeals have been brought to settle a question, which has been frequently discussed before Indian tribunals and has resulted in conflicting decisions. So far as India is concerned, the law was finally settled by a decision of the Full Bench of the High Court of Bengal, *Purna Chandra Chatterjee v. Narendra Nath Chowdhury* (1). In the present case, the judgment followed the decision of the Full Bench, and the object of the present appeals is, in effect, to bring that decision under review.

As the facts are not in controversy, it is unnecessary to recapitulate the summary of these contained in the judgment appealed from. It is sufficient to say that the appellant, who is the owner of a large area of ground, of which the first respondent (who alone appeared before the Board) holds a lease, had presented three applications in the court of the revenue officer, one under section 106 and two under section 105 of the Bengal Tenancy Act of 1885. The latter were withdrawn without any express leave being granted to bring a fresh suit, while in the former such permission was granted. Thereafter, the present suits (two) were filed by the appellant in the court of the Subordinate Judge of Midnapur, dealing admittedly with the same subject matter as was contained in the previous applications in the court of the revenue officer. The respondents pleaded that the suits were barred under section 109 of the Bengal Tenancy Act and this plea has been sustained in all the courts below.

(1) (1925) I. L. R. 52 Calc. 894.

Section 109 is in these terms :—

“Subject to the provisions of sections 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 argument for the appellant, which had the support of Suhrawardy J. in the Full Bench case cited, was that, when a suit is allowed to be withdrawn with leave to bring a fresh suit, it should be regarded as never brought, and that the same result should be reached in the case where a suit is simply withdrawn before evidence has been heard, although no permission has been asked or granted by the court of the revenue officer to institute a fresh suit in a civil court. This argument did not commend itself either to the Judges who decided the present case or to the other members of the Full Bench. Walmsley J. said—

“In my opinion, 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 under section 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.”

Their Lordships are in entire agreement with this view. They think that the language of the section admits of no other construction and that such an exception as the appellant contends for cannot be implied. The policy of section 109 of the Act is to prevent multiplication of procedures by enacting that, where an application is made in one or other of the competent courts, it shall be prosecuted in that court and in no other.

They will, therefore, humbly advise His Majesty that the appeals should be dismissed with costs to the respondent who appeared.

Solicitors for appellant : • *Watkins & Hunter.*

Solicitor for respondent : *H. S. L. Polak.*

A. M. T.

*Appeal dismissed.*

1929

RESHEE CASE.  
LAW  
v.  
SATISCHANDRA  
PAL.