CIVIL REVISION.

Before Suhrawardy and Graham JJ.

CHARUSHEELA DASEE

v.

MOZAFFAR SHAIKH.*

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Sep. 1, 2.

Bengal Tenancy—Application before Settlement Officer to determine rent—Court-fee—Valuation for purpose of court-fee—Bengal Tenancy Act (VIII of 1885), ss. 105, 105A, 106—Court-fees Act (VII of 1870), ss. 7 ii, 7 xi.

When an application is made after the final publication of the record-of-rights, asking the Settlement Officer to enquire into the question what the real rent is and for a declaration in the case of each particular tenant that his rent should not be as recorded in the record-of-rights but according to what is stated in the petition, the relief is one within section 105A(*f*) or 106 of the Bengal Tenancy Act.

Trustu Mandal v. *Midnapur Zemindary Co., Ld.* (1) referred to.

The petitioner must value his case according to the relief he claims against a particular tenant and pay *ad valorem* court-fee in respect of each tenancy in addition to twelve annas for each as provided by the Government notification.

Chethru Mahto v. *Muhammad Karim Nawab* (2) and *Lachman Sahu* v. *Abdul Karim* (3) followed.

The capitalised value of the difference between the plaintiff's and the defendant's claim for the purpose of *ad valorem* fee should be ten times the difference between rents admitted and claimed as indicated under section 7 *ii* of the Court-fees Act and it does not come under section 7, clause xi of the Act.

Badam Suryanarayana v. *Yalla Bullayya* (4) distinguished and dissented from.

K. Rayrappan Kutti Nambiar v. *Kalliyat Thazhathveetil Chathathut Kutti Nambiyar* (5) referred to.

In the matter of court-fee to be paid on such applications, the court is to be guided by the Government notification No. *6954 L.R.* of the 21st July, 1922, published in the "Calcutta Gazette," Part I. Separate court-fee should be put in respect of each tenancy and not on each application. The grouping of several tenancies in one application under sections 105 and 105A of the Bengal Tenancy Act allowed under the Bengal Government Rules, Part III, rule 60 (*4*) is for the purpose of convenience and not for any fiscal or other purposes.

*Civil Revision, No. 287 of 1931, against the order of Atulchandra Ganguli, Special Judge of Birbhum, dated Dec. 19, 1930.

(1) (1928) 32 C. W. N. 999.
(2) (1918) 4 Pat. L.J. 297.
(3) (1919) 4 Pat. L. J. 299.
(4) (1926) 52 Mad. L. J. 323.
(5) [1924] A. I. R. (Mad.) 621.

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Civil Rule obtained by the landlord.

The facts are stated fully in the judgment.

A. K. Fazlul Huq, *Jahnabicharan Dasgupta* and *Jogeshchandra Singha* for the petitioner.

Saratchandra Basak, *Nasim Ali* and *Bijankumar Mukherji* for the opposite party.

Suhrawardy J. This revision petition relates to one of the five applications made by the petitioner under section 105, Bengal Tenancy Act, before the Assistant Settlement Officer, for, as she stated in her petition, settlement of fair and equitable rent claiming *inter alia* "enhancement on the ground of rise in "prices of staple food crops, excess rent for excess area "and for correction of the entries in the record-of-"rights in respect of the *jamâ* by incorporation of the "*hâjat* (or a portion of the rent kept in suspension "out of grace by the landlord) with the *jamâ* recorded." The applications were made as regards 201 tenancies or holdings and were divided into five groups, each application relating to a number of cases. The grouping was done in accordance with rule 60 (*4*) of the rules framed by the Bengal Government under the Bengal Tenancy Act, the several tenancies being in one village. The first application referred to 52 *khatiyâns*, the second to 43, the third to 39, the fourth to 33 and the fifth to 34. This Rule was issued in connection with the third case, and the point with which we are now concerned is what should be the proper court-fee payable on the application by the petitioner.

Under the Government notification, to which reference will be made, the petitioner paid a court-fee of 12 annas upon each *khatiyân* covered by the 5 applications under section 105 presented by her. Taking the case with which we are now concerned, the *khatiyâns* covered by it were, as stated before, 39 in number. The petitioner paid 39 times 12 annas as court-fees on the application. The Assistant Settlement Officer took exception to the amount of court-fee paid by the petitioner and she, thereupon,

paid Rs. 20 more for each application, that is Rs. 100 for the five applications presented by her. The decision of the Settlement Officer was not in favour of the petitioner and she appealed to the Special Judge of Birbhum. At the hearing of the appeal, a preliminary objection was taken on behalf of the respondent that the applications made before the Settlement Officer, as well as the appeals before the Special Judge, did not bear requisite stamp. The learned Special Judge considered the question and was of opinion that the proper court-fee payable on these applications should be 12 annas for each tenancy involved and an *ad valorem* court-fee not exceeding Rs. 20 on the valuation to be put on the relief asked for in respect of each such tenancy.

The petitioner contends that the view taken by the Special Judge is not correct and before us she even goes to the length of urging that the court-fee levied by the Assistant Settlement Officer was not also according to law. Her contention is that her case is not one which falls under section 106 or 105A, and that, therefore, the court-fee put by her is sufficient. In the second place, she contends that, if the case falls under section 105A or is considered a suit under section 106, the additional court-fee of Rs. 20 put by her on each application is sufficient.

Before considering the merits of the petitioner's contention, it is necessary to consider the nature of the application and to determine under what provision of the law it falls. As is said in her application, she prays for settlement of fair and equitable rent, claiming enhancement on the ground of the rise in prices of staple food crops and additional rent for additional area. So far as this relief is concerned, it comes wholly within the scope of section 105. She then prays for correction of the entries in the record-of-rights in respect of the *jamâs* by incorporation of the *hâjat*. Her case is that the amounts of rent mentioned in the *khatiyâns* are not correct, because such amounts do not include *hâjats* or portions of rent

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which the landlord remitted for some reason or other, but which really form part of the rents. This relief is one which may fall under section 106 and may also be considered to be within section 105A (*f*) : *Trustu Mandal* v. *Midnapur Zemindary Co., Ld.* (1). It is not a relief which can be said to be one which the landlord or tenant can claim under section 105 in respect of settlement of rent. The petitioner invites the Settlement Officer to enquire into the question as to what the real rent is and not for settlement of a fair and equitable rent on the grounds mentioned in sections 30 and 52, Bengal Tenancy Act. It must, therefore, come under sections 105A or 106 and we assume, according to the above decision, and for our present purposes, that this relief is one within section 105A (*f*).

With regard to the court-fees to be paid on the applications under sections 105 and 105A, we have to be guided by the Government notification on the subject, irrespective of the provisions of the Court-fees Act. The notification No. 6954 L.R. of the 21st July, 1922, published in the "Calcutta Gazette" of 26th July, 1922, Part I, is in these words.

> * * * * The Governor-in-Council is pleased to direct that an application made under the said section (section 105, Bengal Tenancy Act) for a re-settlement of rent during the preparation of a record-of-rights under Chapter X of the Bengal Tenancy Act, shall bear (*a*) a stamp of 12 annas for each tenant making or joining or joined in an application and (*b*) if any time during the hearing of the application, an issue is raised by the applicant under section 105A of the said Act, in addition, a stamp to the amount of an *ad valorem* fee chargeable under Article I, Schedule I of the Court-fees Act, 1870 (VII of 1870), as amended by the Bengal Court-fees (Amendment) Act, 1922 (IV of 1922), subject to a maximum of twenty rupees.

The plain meaning of the notification is that if an application is made, in which several parties join or have been joined, a stamp of 12 annas should be put for each tenant, which has been interpreted to mean each tenancy : *Sachhidananda Thakur* v. *Mahes Chandra Das* (2). But if an issue is raised, as it is raised here, under section 105A, then, in addition to the above stamp, a stamp of the amount of *ad valorem* fee

(1) (1928) 32 C. W. N. 999. (2) (1923) I. L. R. 50 Calc. 903.

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chargeable under the Court-fees Act should be put subject to a maximum of Rs. 20 in respect of each tenant, as mentioned in clause (*a*) and not on each application as contended for by the petitioner. This notification fixing the amount of court-fee to be put upon an application under section 105A, is more for the benefit of the parties than of the Government. An *ad valorem* fee chargeable on the applications under section 105A may be much more than Rs. 20 but, by the notification, the Government fixes a maximum payable in case of each tenancy. It should be noted again that the grouping of several tenancies in one application under sections 105 and 105A has been done under the Bengal Government Rules, Part III, Rule 60 (*4*) and such grouping is allowed only when a number of tenants under the same landlord in the same village make a joint application for settlement of rent or are joined as defendants in the same proceeding under a similar application by the landlord. This grouping is allowed for the purpose of convenience and not for any fiscal or other purposes. The Government notification contemplates one tenancy and is intended to levy a court-fee of annas 12 in case of one tenancy irrespective of whether it forms the subject of one application or is one of a group of tenancies covered by one application. This finds support from the view taken by Mitter J. in *Gopal Chandra Biswas* v. *Guru Charan Kirtania* (1).

If the matter be considered to come within section 106, the Government notification under that section is to the effect that the fee chargeable on an application under section 106 is not to be calculated under clause 3, Article 17, Schedule II of the Court-fees Act, which fixes the amount of court-fee for suits for declaration, but should be the amount of *ad valorem* fee chargeable under Article 1, Schedule I of the Act. In a case, where the amount of such *ad valorem* fee

(1) (1928) 32 C. W. N. 1136

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is less than Rs. 10 (now Rs. 20), it is to be stamped according to valuation put on the relief sought subject to the above maximum.

The learned advocate for the petitioner argues that it is to be considered as a suit for a declaration against a large number of tenants that their rents were wrongly recorded in the record-of rights and that they should include the *hâjats* also and hence each of the applications filed by the petitioner should bear a stamp of Rs. 20 only. This argument has no substance. If it were a suit for a declaration against a large number of persons brought in a civil court for a mere declaration that the rents should include the *hâjat* also, probably the court-fee put upon the application in this case would have been sufficient: *Dhakeshwar Prosad Narain Singh* v. *Iswardhari Singh* (1). But here the petitioner asks for separate reliefs against a number of tenants and mentions certain amounts which ought to be added to their respective rents. In fact she seeks for a declaration in the case of each particular tenant that his rent should not be as recorded in the record-of-rights, but according to what she stated in her petition. Such being the case, she must value her case according to the relief she seeks against a particular tenant. This would be obvious if we take the converse case. If the 39 tenants bring a suit against the landlord for a declaration that they are not liable to pay the *hâjat* and that the rent of each tenant is what he claims it to be, it would be unreasonable to hold that such application can be made on a court-fee of Rs. 20 only, for each tenant claims a separate relief against the landlord. If in a case like that, each application is to be valued and stamped according to the relief sought by each tenant, there is no reason why a different mode of calculation of court-fee should be adopted in a case where the landlord brings a similar suit against a number of tenants.

(1) (1914) 22 C. L. J. 57.

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Cases similar to this came up for consideration before the Patna High Court, *Chethru Mahto* v. *Muhammad Karim Nawab* (1) and *Lachman Sahu* v. *Abdul Karim* (2), where it was held that, where a number of tenants bring a suit against a landlord for a declaration that the rents entered in the *khatiyân* are higher than the rents actually paid or that the lands are held under a *batâi* system, a court-fee of Rs. 10 (which was then the fixed court-fee for a declaratory suit) should have been paid in respect of each set of tenants. The Patna cases may have been decided on the rules framed by that Government, but they lay down a general law which has not been altered by the above notifications of the Bengal Government. In my judgment, the view taken by the learned Special Judge that the petitioner should pay an *ad valorem* court-fee in respect of each of the 39 tenancies involved in this case in addition to 12 annas for each tenancy is correct.

The next question that has to be determined is how to value the relief for the purposes of court-fee. The learned Special Judge has relied upon a certain scale adopted by the Settlement Officer, probably of that district under the Government sanction and that is that the value of the application under section 105A or 106, where it seeks for an alteration of the rent as recorded in the record-of-rights should be 20 times the difference between the rent recorded and the rent claimed. It is not an authority which we should follow and we have to see for ourselves as to what should be the proper valuation to be put in such a matter. Looking at the case from a general point of view, it would appear that what the petitioner prays in this case is a declaration and some consequential alteration in the record-of-rights. But the Government notification says that the court-fee should be put on such an application not as it were a declaratory suit, but an *ad valorem* court-fee on the valuation put upon the relief sought. The petitioner has not valued her

(1) (1918) 4 Pat. L. J. 297. (2) (1919) 4 Pat. L. J. 299.

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relief in respect of each tenant in this case. There is no express provision in the law to enable us to determine the proper valuation in a case like the present. But the principle adopted by the learned Special Judge is not wholly unreasonable. A question similar to this came up for consideration before the Madras High Court in *K. Rayrappan Kutti Nambiar* v. *Kalliyat Thazhathveetil Chathathut Kutti Nambiyar* (1) where the suit was for a declaration that the plaintiff was liable to pay a kind of royalty payable to the hill owner at a rate lower than that claimed by the defendant. It was held that it was a proper declaratory suit without any consequential relief and that the value of the subject matter in dispute should be the capitalized value of the difference between the plaintiff's and defendant's claims. What the capitalized value should be is not stated in that case. Without any rule framed by the Government in this respect, I am not inclined to accept the valuation that the capitalized value should be 20 times the difference, because of the provisions of section 7 ii of the Court-fees Act. There it is said that where a sum is payable periodically, the valuation should be 10 times the amount payable for one year. The amount of rent may be said to be a sum payable annually to the landlord and the valuation should be 10 times the rent or, in such cases, the difference between the rent admitted and the rent claimed. If the matter in dispute does not come under that clause, I think, justice will be done by holding that the capitalized value should be 10 times the difference between rents admitted and claimed.

It has been argued, on behalf of the petitioner, that applications or suits of this nature should be valued according to the mode of valuation indicated in section 7, clause xi of the Court-fees Act, and for this purpose reliance has been placed on *Badam Suryanarayana* v. *Yalla Bullayya* (2). There the question came for determination in connection with the

(1) [1924] A. I. R. (Mad.) 621. (2) (1926) 52 Mad. L. J. 323.

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jurisdiction of the court trying the suit. The suit was for a declaration that the entry in the record-of-rights to the effect that the defendant had permanent occupancy right in the suit land was not correct. In suggesting what the proper valuation of a suit like that should be, the learned Judge observed that the proper way for determining the value of the suit for jurisdiction purposes was to adopt the mode of the valuation of a suit brought by the landholder for recovery of possession of immoveable property from a tenant holding over after the period of tenancy. According to section 7, clause xi (*cc*) of the Court-fees Act, the valuation should be one year's rent which must be taken, according to the Madras case, in connection with the jurisdiction of the court. I regret that I am unable to agree with the learned Judge's view that in a case like the one before him the valuation should be according to section 7, clause xi of the Court-fees Act. That clause begins by saying, "In valuing the following suits between landlord and "tenant," and then a number of suits between landlord and tenant is mentioned, under none of which the present case can be said to fall. The words "the "following suits between landlord and tenant" indicate that no other suit between them should be valued in like manner.

In my judgment, therefore, the Rule should be made absolute only to this extent that the order of the learned Special Judge that the plaintiff should value her relief against each tenant at 20 times the difference between the rent recorded and the rent claimed by her should be modified by making it ten times, and in other respects the Rule is discharged with costs—three gold mohurs.

GRAHAM J. I agree that the Rule must be discharged, except in so far as the method of valuation for the purpose of court-fee is concerned. My learned brother has dealt with this point and I do not wish to add anything.

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As regards the question whether the court-fee should be charged in respect of each tenancy or each group of tenancies, it appears to me that the decision of the court below is right. Mr. Huq on behalf of the petitioner has referred to rule 60, sub-rule (*4*) of the rules framed by the Local Government under the Bengal Tenancy Act and to notification No. 6954 L.R., dated the 21st July, 1922, and on the basis thereof has argued that the petitioner should have been held to be liable to pay court-fee in respect not of each tenancy, but of each group. No doubt, rule 60 (*4*) does authorise the revenue officer to consolidate a number of such applications under sections 105 and 105A, where there are a number of tenants occupying lands under the same landlord in the same village, but because that is permissible, presumably for the convenience of the parties, or of the court, it does not follow that the question of court-fee must necessarily be affected. As to that, having regard to the wording of the rule referred to above, it appears to me that the *ad valorem* court-fee is payable not in respect of each group but in respect of each tenancy.

Rule absolute in part.

A. A.