

FULL BENCH.

Before Sir Francis William Maclean, Knight, Chief Justice, Mr. Justice O'Kinealy, Mr. Justice Macpherson, Mr. Justice Trevelyan and Mr. Justice Banerjee.

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February 5.

DENGU KAZI (PLAINTIFF) *v.* NOBIN KISSORI CHOWDHURANI, WIDOW
OF THE LATE ISSUR CHUNDER ROY CHOWDHRY (DEFENDANT).*

Second Appeal—Bengal Tenancy Act (VIII of 1885), sections 105, 106, 108 (3)—Record of rights, Dispute prior to completion of—Dispute about proposed entry or omission in the record.

The respondent, in the course of proceedings for the record of rights in the village of which he was the landlord, applied for the settlement of fair rents. The appellant claimed to be a *raiyat* holding at a fixed rent. The respondent denied the validity of the claim. This dispute gave rise to a case between them which was decided by the Revenue Officer against the appellant, who then appealed to the Special Judge, with the result that the decision on that question was confirmed. At the time of the Revenue Officer's decision no record of rights had been completed under section 105 (1) of the Bengal Tenancy Act. On appeal to the High Court the respondent took the preliminary objection that no appeal lay under section 108 (3), as the case was not one under section 106.

Held, that the decision of the Revenue Officer was a decision in a proceeding under section 106 of the Bengal Tenancy Act, and that a second appeal lay from the decision of the Special Judge to the High Court.

Gopi Nath Masani v. Adoita Naih (1) and *Anand Lal Paria v. Shit Chunder Mukerjee* (2), so far as they decide that a second appeal would not lie in such a case, overruled.

THIS case was referred to a Full Bench by MACPHERSON and HILL, JJ., on the 10th August 1896. The reference was in the following terms:—

“This appeal, in which the tenant is appellant and the landlord respondent, arises out of proceedings under Chapter X of the Bengal Tenancy Act. We have not gone into the various questions raised as to the jurisdiction of the Revenue Officer and the

* Full Bench Reference in appeal from Appellate Decree No. 573 of 1895 against the decree of F. H. Harding, Esq., Judge of Zillah Mymensingh, dated the 31st October 1894, modifying the decree of Babu Lalit Kumar Das, Settlement Officer of that district, dated the 31st of July 1893.

(1) I. L. R., 21 Calc., 776.

(2) I. L. R., 22 Calc., 477.

legality and regularity of the proceedings, as the respondent takes a preliminary objection that no appeal lies. 1897

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“It appears from the judgment of the Special Judge that there were proceedings for the record of rights in the village of which the respondent is the landlord ; that the latter in the course of the proceedings applied for the settlement of fair rents ; that the appellant claimed to be a *raiyat* holding at a fixed rent, and that the respondent denied the validity of the claim. This dispute gave rise to a case between them, which is described in the judgment of the Revenue Officer as a case under section 106 of the Tenancy Act. The issue tried was whether the appellant held at a fixed rate of rent or was merely an occupancy *raiyat*. This was decided against the appellant, who then appealed to the Special Judge, with the result that the decision on that question was confirmed. The tenant now appeals to this Court under section 108 (3) of the Tenancy Act against the decisions of the Special Judge.

“Admittedly at the time of the Revenue Officer’s decision no record of rights had been completed or published under section 105 (1) of the Act. It is on that ground contended that no second appeal lies under section 108 (3), as the case was not a case under section 106, and in support of the contention the cases of *Gopi Nath Masant v. Adoita Naik* (1) and *Anand Lal Paria v. Shib Chunder Mukerjee* (2) are cited. If the decision appealed against is not a decision under section 106, there is, by the express words of section 108 (3), no right of second appeal. The question therefore is whether it is a decision under section 106 notwithstanding that the record of rights had not at the time been completed and published under section 105 (1).

“The cases cited seem to us directly in point. It was held in each that the case having been decided by the Revenue Officer before the record of rights was prepared and published there was no dispute, and no decision of a dispute, under section 106, and therefore no second appeal. The reason given was that before the record was framed there could be no dispute, and no decision of a dispute regarding the correctness of any entry in it. The effect of those decisions is to limit the application of section 106 to dispute arising after the record of rights has been

(1) I. L. R., 21 C 776.

(2) I. L. R., 22 Calc., 477.

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completed and published under section 105 (1) with reference to entries or omission in that record and to exclude from its operation all other cases.

“ The question is one of great importance, affecting not merely a right of second appeal, but also the validity of all decisions passed by a Revenue Officer, before the record of rights is prepared and published, on any disputed question other than the amount of rent settled under section 104 (2). The construction put upon the section, if right, deprives all such decisions of any legal validity, and the true ground for holding that there is no right of second appeal is that there is no decree to appeal against. Sections 106 and 107 read together make this clear. Section 106 is the only section in Chapter X relating to the decision of disputes by Revenue Officers acting under that chapter, and section 107 gives to their decisions the force of a decree in all proceedings for the settlement of rent under Chapter X [see section 104 (2)] and in all proceedings under section 106. To decisions not coming under section 106, no validity or force of any kind is given;

“ We must respectfully dissent from the construction which has been put upon section 106 in the cases cited. It admits of a construction much wider than the one adopted and more consistent with what we consider to have been the intention of the Legislature.

“ Section 105 provides first that when the Revenue Officer has completed a record made under Chapter X, he shall cause a draft of it to be published for the prescribed period (one month) and shall receive and consider any objection which may be made to any entry in it during such period; second, that after the expiration of that period he shall finally frame and publish the record, and the publication is to be conclusive proof that the record was duly made under the chapter.

Section 106 may be grammatically read thus: ‘If at any time before the final publication of the record under section 105 a dispute arises as to the correctness of any entry (not being an entry of a rent settled under Chapter X) or as to the propriety of any omission which the Revenue Officer *proposes to make therein or therefrom*, he shall hear and decide the dispute. If at

any time before such publication a dispute arises as to the correctness of any entry (not being an entry of a rent settled under Chapter X) or as to the propriety of any omission which the Revenue Officer *has made therein or therefrom*, he shall hear and decide the dispute.'

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"The section therefore provides, first, for the decision of disputes about proposed entries or omissions in the uncompleted record, for the words imply something to be done or omitted, and the time is 'any time before the final publication of the record under section 105.' Those words, although controlled and limited in their scope by subsequent words denoting something which has been done or omitted, cannot be so controlled or limited by words denoting something to be done or omitted. Secondly, for the decisions of disputes about ~~entries~~ or omissions which have been made in the record, and ^{is term} must necessarily mean the completed record under section 105 and 1
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"The question is, what is *metonymy* a dispute about a proposed entry or omission in the record. *Unhappily* some meaning must be given to the words, and the *meaning*, and the difficulty, whatever it is, of ascertaining it, is the same whether the proposed entry or omission is to be in the completed or the uncompleted record. In either case the Revenue Officer proposes to enter or omit something, and there is a dispute about it.

"Possibly every entry is in the position of a proposed entry until the draft record is published, for obviously the process of preparing the record must be a gradual one, and Rule 33 in Chapter VI of the rules framed by the Bengal Government clearly contemplates, as might be expected, that all known disputes should be decided before the draft record is published. But it does not seem to us necessary that there should be any actual entry. *It is enough if the Revenue Officer proposes to make one.* When in the course of the proceedings a dispute arises about any matter which must be recorded or about the particulars with reference to which any such matter must be determined, and there is on the one side an assertion and on the other a denial of a right or of a material fact, the Revenue Officer must decide the dispute *in order to make the necessary entry*, and it must be presumed that he proposes to make the entry which he would be

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bound to make or to decide the fact as he would be bound to decide it, if the party upon whom the burden of proof rests as regards the particular matter in dispute failed to discharge it. It seems to us quite immaterial under either the Act or the Rules at what particular stage of the proceedings the dispute arises or is decided. Section 107 provides that in proceedings under section 106, the Revenue Officer shall, subject to rules made by the local Government, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits. This means that the parties are to be arranged as plaintiffs and defendants, and the rules, although not perhaps exhaustive, provide in many cases for the position which they are to occupy.

“ We cannot suppose that the Legislature intended that no disputes were to be settled until after the draft record was completed and published, or *teir de* contemplated the preparation of a draft record in which *lemerig* was decided. We consider that we are precluded by the *proes* cited from holding that an appeal lies in this case, and *ctior* must refer the matter to a Full Bench. The question *w* we refer is, whether, having regard to the cases cited, *issr* decision of the Revenue Officer in this case is a decision in a proceeding under section 106 of the Bengal Tenancy Act which has the force of a decree, and does a second appeal from the decision of the Special Judge lie to this Court under section 108 (3). There are four other analogous cases in which precisely the same question arises, but we think it sufficient to refer only this one.”

Babu Dwarka Nath Chuckerbutty for the appellant.

Babu Srinath Das and *Babu Promotho Nath Sen* for the respondent.

Babu Sringth Das.—No second appeal lies to the High Court as the decision appealed from was not under section 106 of the Bengal Tenancy Act. Section 108 of the Act deals with appeals from decisions of Revenue Officers. An appeal lies to the Special Judge from every decision of a Revenue Officer. But from decisions of a Special Judge an appeal to the High Court lies only in cases tried under section 106; see section 108 (3). Section 106 provides only for disputes after record. The dispute must be after the draft and before the final record. The dispute must be as to an actual entry in the record, but here there was

no record completed under section 105 (1). I rely on the cases of *Gopi Nath Masant v. Adoita Naik* (1) and *Anand Lal Paria v. Shib Chunder Mukerjee* (2). 1897

Babu *Dwarkanath Chuckerbutty*.—It is not necessary that the objection should be made after the completion of the draft record. If the contention raised by the respondent is correct then the whole proceedings should be set aside as without jurisdiction. There is nothing in section 108 of the Act which limits the jurisdiction of a Special Judge to deal only with matters of objection taken after publication of the record of rights—see *Durga Churn Laskar v. Hari Churn Das* (3). In that case the proceedings were before the completion of the record and yet the appeal was entertained. In the case of *Secretary of State for India v. Kajinuddy* (4) it is pointed out that the words “objection” and “dispute” are not synonymous terms, and that they are not used in the same sense in sections 105 and 106 of the Act. Again, if the proceedings purport to be under section 106, there must be a right of appeal. See also the cases of *Norendra Nath Roy Chowdhry v. Srinath Sanda* (5) and *Bidu Mukhi Dabi v. Bhugwan Chunder Roy Chowdhry* (6).
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Babu *Srinath Das* in reply cited the case of *Irshad Ali Chowdhry v. Kanta Pershad Hazaree* (7).

The following opinions were delivered by the Full Bench (MACLEAN, C.J., and O’KINEALY, MACPHERSON, TREVELYAN, and BANERJEE, J.J.)

MACLEAN, C.J.—In this case I think that a second appeal lies to this Court under section 108 of the Bengal Tenancy Act. I arrive at that conclusion upon the grounds stated by Mr. Justice Macpherson and Mr. Justice Hill in the reference. I do not propose to go over those grounds, but confine myself to saying that for the reasons they have given I arrive at the conclusion that this appeal lies.

O’KINEALY, J.—I concur in the judgment which has just been delivered. I think looking at the Act and the Rules made by the Bengal Government under the Act that an appeal does lie.

(1) I. L. R., 21 Calc., 776.

(2) I. L. R., 22 Calc., 477.

(3) I. L. R., 21 Calc., 521.

(4) I. L. R., 23 Calc., 257 (261).

(5) I. L. R., 19 Calc., 641.

(6) I. L. R., 19 Calc., 643.

(7) I. L. R., 21 Calc., 935.

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MACPHERSON, J.—I also concur.

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TREVELYAN, J.—I concur. I should like to add a few words to the judgments which have been pronounced, as one of the decisions which have given rise to this reference is a decision to which I was a party. In one case at least, if not in more, I decided that no appeal would lie. Having had the advantage of a further consideration, notably having had the advantage of seeing the order of reference in this case, I think that I was wrong in the decision at which I before arrived. In my opinion there is nothing in the Bengal Tenancy Act which ought to control the wide words of section 106 of the Act. That section begins with the words "If at any time before the final publication of the record," etc. According to the decisions which have been referred to there could be no appeal except in the case of an order made after the draft record had been published in accordance with the terms of section 105 of the Act. It is perfectly true that the position of section 106 might lead to the argument that the words of that section are controlled by the earlier section. The words being so wide, and giving, as they do, an important right, I think it would be wrong, in the absence of anything more express, to attempt to control the right thereby given. I therefore agree with the view taken by the other Judges of this Bench and hold that there is an appeal.

BANERJEE, J.—I also am of the same opinion. I think the terms of section 106 of the Bengal Tenancy Act are wide enough to include the case in which a dispute arises as to the correctness of any entry which the Revenue Officer proposes to make in the record that he is preparing. And, if that is so, the decision of the Special Judge on appeal from the decision of the Revenue Officer in this case was a decision that came within the scope of sub-section 3 of section 108 of the Act.

An appeal, therefore, in my opinion lies to this Court.

[The appeal was eventually dismissed by the Full Bench.]

M. K. D.