

Privy Council Appeal No. 16 of 1928.

Bengal Appeals Nos. 5 and 6 of 1926.

Raja Reshee Case Law - - - - - *Appellant*

v.

Satis Chandra Pal and another - - - - - *Respondents*

Same - - - - - *Appellant*

v.

Satis Chandra Pal and others - - - - - *Respondents*

(Consolidated Appeals).

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1929.

Present at the Hearing :

LORD CARSON.

LORD ATKIN.

LORD SALVESEN.

[*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* (I.L.R. 52 Cal. 894). 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 The latter were withdrawn without any express leave being granted to bring a fresh suit, while in the former such permission was granted.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 Midnapore, 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.

Section 109 is in these terms :—

“ Subject to the provisions of Section 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.



In the Privy Council.

RAJA RESHEE CASE LAW

v.

SATIS CHANDRA PAL AND ANOTHER

SAME

v.

SATIS CHANDRA PAL AND OTHERS.

(Consolidated Appeals).

DELIVERED BY LORD SALYSESEN.