Gulab Singh and ors. Vs. Ram Dial and ors.

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SooperKanoon Citation : sooperkanoon.com/447375

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All26

Judge : Turner, Officiating C.J., ;Pearson, ;Spankie and ;Oldfield, JJ.

Appellant : Gulab Singh and ors.

Respondent : Ram Dial and ors.

Judgement :

Turner, Officiating C.J., Pearson and Oldfield, JJ.

1. We are of opinion that the Civil Courts are competent to entertain claims of this nature, and that the Munsif is in error in regarding it as a claim connected with or arising out of the collection of revenue within the meaning of that term in Section 241, Act XIX of 1873. Looking to the context, it appears to us that provision of the law may have been intended to apply to wrongs arising out of or connected with the collection of land revenue, such as suits against the revenue officers for the illegal exaction of revenue or for the illegal issue of process. In such cases, the claim arises out of a wrong done in the collection or connected with the collection. In the case before us the plaintiff seeks no remedy for a wrong done to him in the collection of revenue or arising there out, because assuming the revenue to have been due, he suffered no wrong in its collection, and certainly no wrong at the hands of the defendants; he sues because he has been compelled to pay a debt

for which they were all jointly liable, a payment which gives him the right to call on them for contribution.

2. It strengthens the view we have taken that, as pointed out by the Judge, neither in the sections of this Act nor in those of Act XVIII which declare what powers may be exercised by the several revenue authorities do we find any mention made of suits of this nature.

Spankie, J.

3. Until the passing of Act XIX of 1873 I am willing to admit that a suit of the nature of a claim for contribution, as this is, would be heard in the Civil Courts. But it appears to me that Act XIX which is one to consolidate and amend the law relating to land revenue and the jurisdiction of the revenue officers, aims at keeping in the hands of those officers the settlement of every dispute connected with the collection of revenue, whether such disputes arise between the revenue-payers themselves, or between the Government officers and the revenue-payers.

4. The question that we have to determine is whether or not the suit involves a dispute regarding one of those matters included in Section 241 of the Act, over which the section declares, in so many words, the Civil Courts shall exercise no jurisdiction.

5. Now Clause (i) of the section provides for claims connected with or arising out of the collection of revenue (other than claims under Section 189) or of any process enforced on account of an arrear of revenue. The exception relates to proceedings taken under Ch. v. of the Act to enforce the recovery of any arrears of revenue against a person. He may pay the amount under protest to the officer taking the proceedings, and upon such payment the proceedings shall be stayed, and the persons against whom such proceedings were taken may sue the Government for the amount so paid in any Civil Court in the district where such proceedings were taken. Here, possibly, the party who brings the suit may contest altogether any liabilities to pay revenue to Government, or that only a portion of what was taken was due from him, because the latter part of the section allows him to give evidence of the account which he alleges to be due from him,

notwithstanding the provisions of Section 149. This section declares that a statement of account certified by the tahsildar shall be conclusive evidence of the existence of the arrear, of its amount, and of the person who is the defaulter.

6. Clause (i) appears to provide generally for any dispute being a claim connected with or arising out of the collection of revenue or any process enforced on account of an arrear of revenue as in this case, in which the tahsildar enforced the joint and several responsibility of the proprietors declared by Section 146, by calling upon the plaintiff to pay Rs. 1,293, which sum was not the proportionate share due by himself, but included also the quota due by 38 other persons.

7. This is not a case of a lambardar suing under Act XVIII of 1873 for arrears of revenue payable through him due by the co-sharers, whom he represents. It is the case of a pattidar who is known or supposed to be solvent, who is made to pay what other pattidars owe or refuse to pay contumaciously or from design, or by the reason of some dispute in the patti. The revenue officer has done no wrong to the plaintiff in getting the arrears out of him. It is not pretended that he has made the plaintiff pay more on his own account than he is bound to pay. He has simply enforced against him the common liability of the pattidars, for which he also made himself responsible.

8. It is contended that the plaintiff does not seek a remedy for wrong done to him in the collection of revenue, because, assuming the revenue to be due, he suffered no wrong in the collection and none at the hands of the defendants. But it is, I think, apparent that whatever he has suffered is owing to the conduct of the defendants, and the enforced payment by him of revenue due by them has given to him the right of forcing them in return by suit to reimburse him. In the course of such a suit it would not be sufficient for the plaintiff to produce the revenue officer's receipt for Rs. 1,293. He would have to show what was the amount due by each of the pattidars, and they would have to account for not having paid their quota. It may surely be assumed that existing disputes, connected with or arising out of the collection of the revenue (very large and wide words) would be disclosed in the suit disputed, which, in my opinion, the legislature intended should be heard and determined by the revenue authorities.

9. Such a claim as the one before us seems to me to arise out of the collection of the revenue and the enforcement of the plaintiff's liability to pay the arrear due by his co-sharers, and it is, I think included in Clause (i) of the section. If this be so, then, in the last words of the section, 'in all the above cases, jurisdiction shall rest with the revenue authorities only.'

10. Thus the first words of the section bar the jurisdiction of the Civil Courts in any of the matters included in the section, and its last words declare that the revenue authorities only shall have jurisdiction. If the claim is one that will come under Clause (i) of the section, the Civil Courts can take no cognizance of it.

11. But the Judge finds that there is no special provision for the hearing of this particular class of suit by the revenue authorities, and that the prohibition entered in the last clause of Section 241 applies only to those cases for which there is a special provision. I do not understand whether the Judge means that a suit of this nature is not mentioned in Section 241, or whether he means expressly that no power is given to revenue officers elsewhere in the Act to hear suits of this nature.

12. As to the first point, some confusion is caused by regarding this case as a suit. It is sufficient that the dispute between plaintiff and defendants should be one connected with or arising out of the collection of the revenue. Being one of that description, it would be one of 'the matters' over which Civil Court could not, and the revenue authorities alone could, exercise jurisdiction. As to the second point, the jurisdiction being with the revenue authorities, those authorities must be one or more of the officers named in Section 207, the Commissioner, Collector, Assistant Collector, Officer in charge of a Settlement or Assistant Settlement Officer, or a tahsildar. Any one of those officers can summon persons before him, if he considers their attendance necessary for the purpose of any investigation, suit, or other business before him (Section 208), so it is not only suits that may be tried under the Act. The Act recites the powers of Collectors and Assistant Collectors generally and also particularly, and Collectors, in addition to their own powers, may exercise the powers of Assistant Collectors, and Assistant Collectors in charge of a sub-division exercise the same powers that a Collector could if there was no subdivision, subject to the control of the Collector. It is true that there is no

particular mention of claims under Clause (i), Section 241, outside that section. But Section 241 is a portion of Ch. vii, which, amongst other matters, treats of the powers of Collectors and others. Section 241 expressly gives to those officers as revenue authorities alone the power of dealing with the matters contained in it. And where this is the case, it seems to me to be idle, in this particular reference, to raise any difficulty regarding the revenue officer who is to determine any one of the matters contained in the section. If this is one of those matters referred to in Clause (i), Section 241, no want of clearer specification of the powers of the different revenue authorities no omission of the class of case outside the section, and no ambiguity or defect in the Act, can give the Civil Courts the jurisdiction which the opening words of the section expressly bar.

13. I would answer that this case should be heard by the revenue authorities.