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Court : Allahabad

Decided On : May-25-1910

Reported in : 7Ind.Cas.647

Judge : Banerji, J.

Appellant : Bhoj Raj

Respondent : Srigopal

Judgement :

Banerji, J.

1. This was a suit brought by a lambardar for his remuneration as such, against a co-sharer. The claim was resisted on the ground that the defendant himself paid the revenue and the lambardar was not, therefore, entitled to get his fees. This contention was overruled by the Court below, which made a decree in the plaintiff's favour for the amount due, but did not allow interest. It is contended in this appeal that under the provisions of Section 144 of Act III of 1901, a lambardar is only entitled to his fees, if revenue is paid through him. It is further contended, though this plea does not appear in the memorandum of appeal, that under Section 159 of the Tenancy Act a lambardar can sue for his fees only when he brings a suit against a co-sharer for arrears of revenue paid to Government through the lambardar. This last contention is wholly untenable. Section 159 provides for a suit by a lambardar, first for arrears of Revenue, secondly for village

expenses, and thirdly for other dues. The other dues include the remuneration of the lambardar as laid down in Section 144 of Act II of 1901. That section provides, that subject to the rules made under Section 234, the lambardar shall be remunerated by such fees, to be paid by the other proprietors, not exceeding 5 per cent, on the revenue, payable in respect of their shares, as the Board may prescribe. Section 234 empowers the Board of Revenue to make rules regarding the appointment, duties and dismissal of lambardars, and also providing for the payment of the revenue through lambardars and for their remuneration. The rules made by the Board of Revenue direct that the percentage payable by any co-sharers to the lambardar shall be payable upon the whole of the revenue which the lambardar is, by virtue of his appointment, entitled to collect on account of such co-sharers' share and which has been paid later by the co-sharer or by the lambardar into the Government Treasury.

2. This rule clearly states that a lambardar is entitled to his remuneration even if revenue is paid by the co-sharer and not by the lambardar. Under Section 144, Act III of 1901, the lambardar's fees are to be calculated on the revenue payable in respect of a co-sharer's share and not on the revenue actually paid. The remuneration of a lambardar under this section and under the rules prescribed by the Board of Revenue is not merely for collecting and paying the Government Revenue, but for the performance of numerous other duties which are imposed upon him by the rules. In this case, the learned Judge says that it was not shown that the lambardar had failed to perform any of his other duties.

3. Having regard to the provisions of Section 144 Act III of 1901 and the rules framed by the Board of Revenue, it cannot be held that the lambardar is entitled to his fee only when he collects the revenue and pays it. His fee is payable not on the revenue paid but on the revenue payable in respect of the share of a co-sharer. The plaintiff is, therefore, entitled to claim his remuneration, although the revenue was paid by the defendant himself. The appeal, therefore, fails and is dismissed with costs.

4. There is an objection under Order XLI, Rule 22, of the Code of Civil Procedure, on behalf of the plaintiff in respect of the order of the Court below refusing to allow

interest and costs to the plaintiff. I think that this objection is untenable. There is no provision in the law by which the lambardar is entitled to interest on his fees, Further having regard to the circumstances of the case, the Court below was fully justified in refusing to award any interest to him and in directing him to bear his own costs. The objection, therefore, is dismissed with costs.

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