

Pachen Singh Vs. Jangjit Singh and anr.

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Court : Allahabad

Decided On : Jan-20-1916

Reported in : AIR1917All249; 38Ind.Cas.647

Judge : Henry Richards, C.J. and ;P.C. Banerji, J.

Appellant : Pachen Singh

Respondent : Jangjit Singh and anr.

Judgement :

1. This appeal arises out of a suit brought under Section 159 of the Tenancy Act by a lambardar, alleging that the defendant is liable for his proportion of Government revenue paid by the lambardar. It appears that in the year 1872 the predecessors-in-title of the defendants sold the whole village, which included 196 bighas. These 196 bighas, it is alleged, were retained out of the sale for the maintenance of the vendor.' From the year 1872 right up to the present time it seems that the owner of the rest of the village has always paid the entire Government revenue. It is contended from this circumstance that there must have been an agreement that the 196 bighas should be held free of Government revenue as between the owners of the 195 bighas and the owners of the rest of the village. Of course so far as Government were concerned, the entire village (including the 196 bighas) was liable for Government revenue. In the case of Sri Thakurji Maharaj v. Lachmi Narain 19 Ind. Cas. 67 : 11 A.L.J. 212 the facts were very similar, except that in that case the agreement as to Government revenue

was expressly stated, while in this case it can only be inferred from the fact that the owners of the 196 bighas have not been in the habit of paying it. A learned Judge of this Court held that notwithstanding the agreement the lambardar was entitled to sue for the contribution of Government revenue. The same learned Judge in *Ram Gobind v. Sri Thakurji Maharaj* 19 Ind. Cas. 126 : 11 A.L.J. 231 decided to the same effect. In the case of *Ali Husain v. Hakim-ul-lah* 33 Ind. Cas. 187 : 14 A.L.J. 266 : 38 A. 230 a Bench of two Judges, which included the learned Judge from whose decision the present appeal has been preferred, held that an agreement of the kind was void under Regulation XXXI of 1803. In deciding the present case the learned Judge of this Court seems to have thought that there had been a decision between the predecessors-in-title of the plaintiff and the predecessors-in-title of the defendant that the owner of this 196 bighas was not liable to pay revenue. A perusal of the judgment in that case shows that the decision was that the owner of the 193 bighas was not liable to pay rent, not that he was not liable to pay revenue. We think that we must follow the rulings to which we have referred. We think at the same time that as this suit has been brought for the recovery of Government revenue for the first time since the year 1872, the plaintiff should abide his own costs in all Courts. We accordingly allow the appeal, set aside the decree of this Court and of the lower Appellate Court and restore the decree of the Court of first instance, with this modification that we direct that the parties do abide their own costs in all Courts.