

(Thakur) Ishri Singh Vs. Tejbir Singh

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Court : Allahabad

Decided On : Apr-30-1929

Reported in : AIR1929All689

Appellant : (Thakur) Ishri Singh

Respondent : Tejbir Singh

Judgement :

1. This is a second appeal by a plaintiff lambardar whose suit for arrears of revenue under Section 159 of the former Agra Tenancy Act, Act 2 of 1901, has been dismissed by both the lower Courts on the ground that the plaintiff had not proved that the amount of revenue which he paid on behalf of the defendant was paid from his own pocket. The plaintiff and defendant are full brothers and were members of a joint Hindu family up to the end of Fasli 1327, when a partition took place by a registered deed dated 14th April 1920. This deed provided that from that date the parties would be entirely separate and would realize their rents from their separate tenants and would pay their revenue separately. Kuras were prepared and the property was divided plot by plot. No provision was made in the deed for arrears of rent due before the partition which would be collected subsequent to the partition. Ishri Singh, the plaintiff, was the lambardar of the mahal in which he and his brother were the sole cosharers, and he continued to be lambardar for both of the pattis of the whole mahal until F. 1331 when the defendant respondent was appointed lambardar for his patti on 13th March 1924. It is found by the lower appellate Court and admitted that during the years in suit

1328, 1329 and 1330 Fasli the plaintiff-appellant paid the share of land revenue due from the respondent-defendant as well as his own share. The deed had provided that the defendant-respondent would pay his own share of revenue but he neglected to do so and the plaintiff-appellant as lambardar was bound to make the payment in the first instance. The plaintiff-appellant has now sued under Section 159, Act 2 of 1901 to recover those payments of land revenue which he made on behalf of the defendant-respondent. The first issue framed by the trial Court was: did the plaintiff pay the amount claimed from his own pocket

2. The lower appellate Court has found as a fact that there were arrears outstanding at the beginning of P. 1328 which amounted to Rs. 2,133 of which Rs. 212 were time barred, and the plaintiff had decrees for Rs. 241. There was therefore at that date a sum of Rs. 2,162 realizable arrears, of which during the year F. 1338 the plaintiff admittedly realized Rs. 316 odd for arrears of previous years including a sum of Rs. 29-6-6 which definitely belonged to the defendant. The plaintiff therefore should have paid defendant Rs. 143-9-6 plus 29-6-6, i.e. Rs. 173. No further facts were proved in regard to collection of arrears. The sum claimed as land revenue, lambardari dues and cesses for the 3 years in suit is Rs. 402-8-0 per annum, total Rs. 1207-8-0 principal. It is obvious that the evidence produced merely shows that a very small sum of arrears was collected by the plaintiff and by no means a sum equal to the land revenue admittedly paid by the plaintiff on behalf of the defendant. The question which we have to consider is whether under the circumstances of this case the onus lay on the plaintiff to prove his collection of arrears and to prove whether he had paid the whole sum claimed out of his pocket. It is to be noted that after the partition the plaintiff had no duty or right to make collections from tenants on behalf of the defendant nor is it found by the lower appellate Court that he did make any such collections for the years in suit. The lower appellate Court has relied on a ruling reported in *Dharam Pal v. Madan Mohan* [1892] A.W.N. 72 and the lower appellate Court has quoted the heading which states:

in a suit by a lambardar against a cosharer to recover the cosharer's portion of Government revenue paid by the lambardar, it lies upon the plaintiff to show that he had in his capacity of lambardar exercised due diligence in the collection of

rents.

3. But the ruling states:

in the village the lambardar only had power to collect the rents. Out of those rents it was his duty to pay so far as they would go the Government revenue and the village expenses,

In the present case it was for the lambardar to show that he had performed his duty as lambardar, and that notwithstanding the exertion by him of due diligence, he was unable to collect sufficient rents with which to discharge the Government revenue.

4. The present case differs fundamentally from this ruling, because in the present case owing to the partition the lambardar plaintiff no longer had any power to collect rent of the patti of the defendant. It would be extending the principle of this ruling much too far to say that in the present case the lambardar should have proved what were the amounts of arrears of rent he had collected during the years in suit for years prior to the partition. The lower appellate Court is wrong in stating that the defendant could not sue the plaintiff for arrears of profits since there had been no question of profits between those parties at all prior to the partition. On the contrary after the partition it was open to the defendant to bring a suit against the plaintiff claiming his share of profits from these arrears for years prior to the partition.

5. In such a suit the lambardar would naturally be required to produce all the evidence in his possession in regard to his collections, and if he did not do so it will be open to the Court to draw the presumption that he had collected those arrears in full. But it does not appear reasonable to expect the lambardar in a suit like the present to produce evidence of arrears he had collected on account of years prior to the years in suit. In the written statement it is not clearly pleaded that the plaintiff had paid the amount of revenue from the collections of arrears, it is merely stated that he had collected rent from tenants without stating whether it was for the years in suit or arrears of previous years. It appears therefore that the attention of the plaintiff was not drawn to the fact that the Court expected him to prove the amount

of arrears he had collected. Nor do we consider that it is necessary, that in a case like the present such a burden of proof should be thrown on the plaintiff. Section 159 does not state that the arrears of revenue claimed should have been paid by the lambardar from his pocket. On the contrary, it merely states:

a lambardar may sue a cosharer for arrears of revenue payable to Government through that lambardar by such cosharers.

6. The word used is 'payable,' and there is no doubt whatever in the present case that revenue was payable by the defendant through the plaintiff for the years in suit. In regard to the details of the claim of the appellant the revenue is Rs. 700 per annum, the cesses are Rs. 70 and lambardari fees for collection of revenue amount to 5 per cent i.e. Rs. 35, total Rs. 805-7-0 and the half due from the defendant is Rupees 402-8-0. The lambardar is undoubtedly entitled to his 5 per cent as has been held in numerous rulings. Interest at 1 per cent per mensam is claimed by the plaintiff-appellant and this can be awarded as laid down in *Ganesh Prasad v. Bachu* [1886] 7 B.R. 1886. We accordingly allow the appeal and decree the suit of the appellant in full for Rs. 1207-8-0 and Rs. 249 interest up to the date of suit and pendente lite interest and future interest at 6 per cent per annum with costs in all Courts.