

Seth Bhanwarlal Vs. State

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Court : Rajasthan

Decided On : Oct-01-1956

Reported in : AIR1957Raj375

Judge : Bapna, J.

Acts : Tenancy Law; Jaipur Tenancy Act, 1945 - Sections 96, 98 and 99; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11 and 100

Appeal No. : Second Appeal No. 257 of 1950

Appellant : Seth Bhanwarlal

Respondent : State

Advocate for Def. : R.K. Rastogi, Adv.

Advocate for Pet/Ap. : K.C. Sanghi, Adv.

Disposition : Appeal allowed

Judgement :

Bapna, J.

1. This is a second appeal by the plaintiff in a declaratory suit.

2. The plaintiff instituted a suit in the court of Civil Judge, Jaipur, on the 1-8-1939, on the allegations that his father and one Mitha Lal were Ijaredars of certain villages, and in Samwat 1974 by certain arrangement with Mitha Lal the plaintiff's father came to have the following Ijaras till Samwat 1982:

Rs. Narainpur

Tatwara 3,761 Hirapur 2,251 Ramsar 490 Badh

Ramsar 551 Manoli 3,101 10,154

3. It was alleged that the plaintiff's father sub-let the Ijara to the cultivators of the various villages at enhanced rates, but in Samwat 1979 the State cut an end to the Ijaras and began to collect the revenue itself. It was alleged that at the time of the determination of the Ijaras Rs. 8,174/14/6 remained due against the tenants for which he obtained 135 decrees. One suit for recovery of Rs. 1000/- against Bhuramal remained pending, and another suit against the cultivators of Manoli remained pending.

In the meanwhile, certain enquiries were made about the allegation that the plaintiff's father had recovered certain sums beyond what he was authorised to do under the Ijarama, and it was ultimately decided by the Revenue Minister on 17-3-1936 that the Ijaredar had recovered the following items from the cultivators, which he was not authorised to do:

(a) Neota for the Ijaradar's daughter's marriage. 841-14-9 (b) Seegha Jat. 517-12-0 (c) Patwari's Education. 1319-13-0 (d) Fine. 20-4-0 (e) Ijaredar's expenses. 561-13-6
Total Rs. 3261-9-3

It was ordered that this excess amount of Rs. 3261/9/3 should be recovered from the plaintiff by the State. The plaintiff, after obtaining the proper sanction, which was the law in these times instituted a suit for declaration that the order of the Revenue Minister dated 17-4-1936, directing recovery of Rs. 3261/9/3 from the plaintiff was void and illegal.

4. The Government filed a written statement, and it was pleaded that the plaintiff's father was not the Ijaredar, but had come to be so, and had realised the various items in excess of what he was authorised to do, and the State was, therefore,

quite right in recovering the excess realisations from the plaintiff.

5. The trial court framed as many as 21 issues, of which issues Nos. 4, 2 and 3 are important:

ISSUE No. 4.

If it be held that the amount was realised in excess, the cultivators can only claim it back, and the State cannot get it for itself.

ISSUE NO. .2.

Whether the plaintiff obtained decrees against the cultivators as shown in Schedule No. 1 from the Sub-Judge's Court, Sawai Madhopur, and the defendants did not raise the objection of excessive recovery nor proved it, hence the revenue department had no right to claim from the plaintiff, and the order is barred on the principle of res judicata?

ISSUE NO. 3.

In case it be held that the plaintiff realised undue amount and he is liable to refund, is the plaintiff entitled to set off the amount against the decretal money which has not been realised by the plaintiff and so the amount cannot be realised in cash from the plaintiff? ,

6. The trial court, after evidence, held that the plaintiff had realised in excess of what he was authorised to realise under the terms of the Kabuliyat and further the State had the right to recover this amount from the plaintiff, and dismissed the suit. The same Judgment was upheld on appeal.

7. There is a dispute in this case as to what is the status or position of an Ijaredar, The earliest authorised definition that can be got is to be found in Chapter XII of the Jaipur Tenancy Act, 1945, which contains the following provisions:

'Section 95:

A lease for the collection of rents is called an ijara, the person to whom it is granted the ijaradar and the area to which it relates the ijara area. Section 96:

An ijaredar may collect his dues in accordance with the custom and usage obtaining at the time the ijara was granted and arrange for the cultivation of unoccupied land but shall not be entitled to elect any tenant or to sue for enhancement of rent or to make any improvement in the ijara area or to cut any trees or to grant permission for the making of any improvement. Section 97:

(1) The interest of an ijaredar:

(a) shall not be transferable in execution of a decree of a civil or revenue court;

(b) except as provided by the terms of the ijara, shall not be otherwise transferable or be heritable.

(2) Where an ijaredar's interest is heritable, it shall devolve according to the personal law applicable to him.

Section 98:

An Ijaredar shall be liable to ejectment on one or more of the following grounds, namely:

(a) on the ground that the rent due from him has not been paid in full;

(b) on the ground of any act or omission prejudicial to the rights of the Government or inconsistent¹ with the purpose of the ijara;

(c) on the ground that he or any sub-ijaredar under him has broken a condition on breach of which he is, by the terms of his ijara, liable to be ejected;

(d) on the ground that the term of the Ijara has expired, or will expire on or before the end of the current year;

(e) on the ground that his treatment of the tenants or other residents of the village is oppressive.

Section 99. An Ijaredar may sue a tenant for arrears of rent due from him.'

8. Learned counsel for the appellant produced for perusal a certified copy of the Circular issued by the Mahakma Aliya Council, Jaipur, on the 29-7-1895, in the matter of Ijaras. First of all is the procedure for announcement of the auction sale, then how an auction was to take place, and the highest bid is to be accepted. It mentions who are not authorised to bid or who should be given preference, and how the solvency of the Ijaredar and his surety is to be found out. In paragraph 19 it is mentioned that the excess income which may be realised (by the Ijaredar): will be of the Ijaredar, and the State will have no concern with the amount in excess of the Ijara money agreed to be paid to the State. It was argued by learned counsel for the respondent that this Circular did not appear to have been issued by His Highness who was the only authority entitled to legislate. This is not a legislation. These were only instructions to officers of the revenue department how to proceed in the matter of granting Ijaras, and indicated the relationship sought to be created between the Ijaredar and the State. The Circular, as it were, announced the terms on which the contract was to be entered into between the Ijaredar and the State. The Ijaredar was the lessee for the purpose of collection of revenue and he had the same status as subsequently defined in Section 95 of the Jaipur Tenancy Act. Baden-Powell in his treatise on Land-Systems of British India says in Volume I at page 184:-

'The independent kingdoms did not have a very prosperous course. Before long, decay and corruption began to invade every department of the State. Under such a state of things honesty was hardly to be looked for in the local revenue collectors: and the land revenue fell off... The device to save trouble and secure at least a certain revenue, was to employ local agents over greater or less areas of country, and to contract for the revenues of those areas As time went on these agents everless and less controlled; and they soon became mere contractors for fixed total sums; and the local officers had no power what ever over them, and finally disappeared before them. No one in fact knew (or cared) what was actually wrung out of the villages, so long as the contract sum was paid into the treasury.'

Again at page 259 :-

Under such a system, oppression of the country people was sure to follow. All regular assessments, and authorized revisions of land-revenues, were further and further abandoned. The Treasury authorities of the province merely increased their demands on the 'zamindar' by adding extra cesses, giving them this name or that, according to the particular necessity or fancy that originated them. These amounts had, of course, to be got out of the villages with a good deal more besides.'

9. The system of employing Ijaredars for collection of land revenue must have had its origin in conditions described by Mr. Bedan-Powell and the granting of Ijaras to highest bidders was not in the nature of appointing agents responsible to the State, but was in the nature of leasing out the village to the bidders leaving it to them to collect as much as they could for themselves. Documents from Ex. D 1 to Ex. D 5 are the Kabuliats of the Ijara of the villages. After mentioning the amount of Theka money, it is further agreed that the amount of the Theka money will be paid on particular dates in default whereof interest will be charged.

It is further agreed that the rent will be realised from the zamindars according to the usual Jamabandi as before, and the Ijaredar will make the tenants happy and contented. There was no settlement on any fixed assessment, and it must have been a pious hope that the Ijaredar would collect at the rates of previous year when the Theka money was enhanced by the method of auction sale. The condition to keep the tenants happy and contented could perhaps only be followed to the extent that the levy would be just short enough to keep the tenants on the land otherwise in case they left, the Ijaredar would be the greater sufferer inasmuch as the hen that laid the golden egg would no more be there.

10. Learned counsel for the respondent urged that the Ijaredar was only an agent for purposes of collecting land revenue. This was not so, for the State having fixed the amount which the Ijaredar had to pay, did not make itself responsible for the loss which may be suffered by the reduction, if any, in the collections, and for the same reason could not claim the benefit of any excess amount that may be realised by the Ijaredar. Once having taken the contract from the State to realise the rents, whatever realised was the income of the Ijaredar himself.

No law or document or usage has been shown on behalf of the State which may authorise the State to demand any excess realisations from the Ijaredar or take the responsibility for any deficit that may accrue to the Ijaredar. On the other hand, there were the sureties who could be called upon to deposit the agreed amount in case the Ijaredar made default.

11. It was argued by learned counsel for the State that leaving the matter of land revenue aside, the Ijaredar in the present case realised certain items which were not rents and which were not the usual charges to be paid by the tenants. It was said, for instance, that the Ijaredar realised some sort of contribution for his daughter's marriage. If, as stated, the exaction was illegal, it was for the tenants either to refuse to pay or to take up that defence if the recovery was to be enforced by a suit. If the Ijaredar wanted to recover some illegal cesses or dues how would they become legal for the State? The trial court assumed the right of the State to recover from the Ijaredar any excess amount realised by him. The grounds for this opinion are to be found in the following lines :--

'This principle is on the ground that the cultivators may not be harassed by the Ijaredars and may not leave the villages or reside elsewhere.'

The learned District Judge has supported the action of the Revenue Minister with the following observation :--

'It cannot be ignored that the State is the first party to the contract granting specific rights of realisation from its tenants to the plaintiff. When these rights are exceeded to the detriment of the cultivators the State is bound in equity to intervene and protect and reimburse its tenants.'

12. In the present case it may be mentioned that the State has at no place expressed its desire that the excess amount which the Government wanted to realise from the Ijaredar was to be utilised for the benefit of the tenants. In fact the argument for the respondent is that the Ijaredar having recovered something more than he was entitled to do, it would be for the benefit of the State who was in the position of the principal and the Ijaredar was the agent, and any unlawful benefit made by the agent in the business of the agency is to be made over to the

principal. In my opinion, the State had no right whatsoever to demand from the Ijaredar any sum which he may have recovered in excess of the usual and customary rents.

13. The above finding is quite sufficient of dispose of the case. It may, however, also be pointed out that when the Ijaredar had filed suits for recovery of the amounts due against the cultivators they had the option to object that any of the dues demanded from them were unauthorised. This was not done, and, therefore, if the case comes to be examined in respect of each cultivator, it may very well be that the cultivator and the State, which proposes to safeguard the rights of the cultivators will be barred from raising that objection. It is not necessary, however, to examine this aspect of the case, because the argument raised by learned counsel for the respondent is not that the money now recovered is to be utilised for the benefit of the tenants, but the sole argument was that the Ijaredar was the agent of the State, and any sums realised in excess of what he was authorised to do should go to the coffers of the State.

14. Learned counsel for the appellant tried to show that although the Kabuliyat mentioned only the Ijara money, which the Ijaredar was bound to deposit, it was understood that he had to pay certain other abwabs, for instance, the case on goats and sheep, the gazing charges, the Patwari expenses, and certain other sums, and that he as a matter of fact, had paid such extra cesses to the State and he had only tried to reimburse himself for these items. It is not necessary to go into this question, because such plea was not specifically raised in the plaint that the items said to have been realised by him in excess of the Ijara money were not any illegal exactions, but were such as he was authorised to do, and had, as a matter of fact, deposited certain sums of money in the Treasury towards those abwabs.

15. Learned counsel for the appellant also tried to contend that every amount which he had tried to realise from the tenants was justified, as he had given intimation to the Revenue Deptt. of the sub-leases which he had granted to the villagers themselves. The two courts have not held these documents to be genuine, and it is not necessary to go into that question, once it is held that the State was only concerned with the Ijara money and whatever excess or deficit may

be realised by the Ijaredar was no concern of the State.

16. As a result, the appeal is allowed, the judgment and decree of the two courts are set aside, and it is declared that the order of the Revenue Minister of the former Jaipur State dated 17th March, 1936, is illegal and no recovery can be made from the plaintiff, who stood in the shoes of the Ijaredar in respect of the Ijara of the five villages, viz., Narainpur Tatwara, Hirapur, Ramsar, Manoli and Badh Ramsar, for the years Samvat 1974 to 1973. The appellant will get his costs from the respondent of all the courts.

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