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Court : Kolkata

Decided On : Apr-17-1913

Reported in : 43Ind.Cas.497

Judge : Harington and ;Newbound, JJ.

Appellant : Jogeshwar Singh and ors.

Respondent : Ramoo Singh

Judgement :

Harington, J.

1. This is an appeal on behalf of the defendant in a rent suit. The plaintiff sued for rent of two holdings, one of 3 bighas and odd at a rent of Rs. 11-11 and the other of 5 bighas and odd at a rent payable in kind, 30 mounds 10 seers paddy. The Record of Rights was in favour of the defendants, but it has been held that the evidence as to the rate of rent produced by the plaintiff has met the presumption in the Record of Rights and established the rate as the plaintiff alleged.

2. The points of law taken on behalf of the appellant are four in number. The first is that the plaintiff is precluded from suing and recovering the rent claimed by virtue of Section 20 of the Road Cess Act. Secondly, the appellant objects that the kabuliyat which was produced was not evidence. Thirdly, he says that the lands were not identified, and fourthly, he Says that there was a plea of payment as to

the rent for the year 1915, and that point has not been dealt with in the lower Appellate Court.

3. [The last three points deal with questions of fact and are not material for the report.]

4. Then comes the last and most important point which has been raised on behalf of the appellant, and that is the effect of Section 20 of the Cess Act. Now the landlord had made an entry with regard to the lands in question, the Road Cess Return describing 10 bighas 19 dhurs as zeraith and 1 bigha 7 cutthas 19 dhurs as also zeraith but uncultivated, and then he gives the total 11 bighas 8 cutthas at a value of Rs. 42. Then follows a very important entry. The landlord says, no part of the land of the touzi is kasht. A tenant has fraudulently got the khas zeraith land entered as kasht in respect of which a separate regular suit will be brought that the land is zeraith. Ramu Singh by his own pan. Now this is the entry, and it has been conceded in the course of the argument that it has incorrectly described the land as zeraith land ; as a matter of fact it is kasht land. It is true that the landlord at the time of the entry was asserting that it was zeraith and he has put in this note to show that there was a dispute between him and the tenant at the time as to whether it was zeraith or kasht land. He entered as zeraith as he claimed. The tenant was claiming it as kasht and the tenant appears to have been successful. Under these circumstances, is Section 20 a bar? Section 20 precludes the landlord from recovering any rent whatsoever for any land, holding or tenure forming part of the estate or tenure to which such return relates but which has not been mentioned in such return, unless it be proved that the holding or tenure was created subsequently. It is impossible to say that the lands in question are not mentioned, because they are mentioned, though they are inaccurately described as zeraith, I think the fact that they are mentioned is sufficient, because the object of the Act is to prevent people escaping payment of their road cess by leaving out parts of their estate. In this case it is mentioned, and I do not think that the fact that it was incorrectly described deprives the landlord from recovering rent under Section 20, unless it is shown that he wilfully and dishonestly misdescribed it. In this case certainly he has not, because the landlord put in a note that there was a dispute whether it was kasht or zeraith. For these reasons Section 20 is no bar. Therefore, in

my opinion the appeal must be dismissed with costs.

Newbould, J.

5. I. Agree

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