

Mohendra Narain Singh Vs. Ajodhya Prosad Singh

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Court : Kolkata

Decided On : Jan-09-1912

Reported in : 15Ind.Cas.284

Judge : Mookerjee and ;Carnduff, JJ.

Appellant : Mohendra Narain Singh

Respondent : Ajodhya Prosad Singh

Judgement :

1. This is an appeal on behalf of the plaintiff in a suit for recovery of arrears of rent. The substantial question in controversy between the parties relates to the character of the holding, whether it is a holding at a money rent as the tenants allege or at a produce rent as the landlords contend. The Courts below have concurrently decided this question in favour of the tenants. That decision has been attacked in this Court as erroneous in law because relevant evidence has been excluded. The evidence in question is a Road Cess Return filed in 1896 by a ticcadar of the property by name Bisonath Singh. The learned Vakil for the appellant has contended that the Road Cess Return is admissible in evidence, first, because it was used in evidence against the plaintiffs by the defendants in another suit for declaration of title; secondly, because Section 95 of the Bengal Cess Act of 1880 does not present a bar to the admission of the Road Cess Return; and thirdly, because the person by whom it was filed was no other than a benamdar for the grandfather of the defendants themselves.

2. In so far as the first reason assigned by the appellants is concerned, we do not feel impressed by it. The mere circumstance that the Road Cess Return has been successfully used in evidence by the tenants against their landlords for the purposes of another litigation, does not show that it is admissible in evidence in the present litigation on behalf of the landlords themselves.

3. In so far, however, as the second ground is concerned, it is, in our opinion, well founded. Section 95 of the Bengal Cess Act has no application to the case before us. That section provides that every return filed by or on behalf of any person in pursuance of the provisions of the Act shall bear the signature and address of such person or his authorized agent, and shall be admissible in evidence against such person but shall not be admissible in his favour. Now, as was pointed out in the cases of *Mohan Pandey v. Lala Bhagwitichuara* 1 Ind. Cas. 813 and *Chulkho Singh v. Jharo Singh*, S.A. No. 205 k of 1909 decided 30th May 1911, the provisions of Section 93 of the Bengal Cess Act are not exhaustive. They merely limit the application of Section 21 of the Indian Evidence Act and exclude Road Cess Returns when they are sought to be admitted in favour of the person by or on behalf of whom they have been filed. *Hem Chandra v. Kali Prosanna* 30 C. 1033 8 C.W.N. 1 : 30 I.A. 177. It has not been disputed that if a Road Cess Return is not admissible in favour of such person, it is equally inadmissible in favour of a person who claims through him or who may be deemed to be his representative-in interest. Now in the case before us, the Road Cess Return was not filed by the present plaintiffs; nor was it filed on their behalf. It was filed by Bisno Nath Singh in his capacity as temporary lessee of the property. The question, therefore, arises whether when the plaintiffs seek to have the document admitted in evidence, they can rightly be regarded as persons by or on behalf of whom the return has been filed. In our opinion, the question ought to be answered in the negative. The learned Vakil for the respondent has ingeniously contended that as during the subsistence of the ticca, a part of the superior interest was vested in the ticadar, upon the expiry of the term of the ticca when the landlord became the sole owner, he must be deemed to have acquired a part of the interest through his ticcadar. This argument is obviously unsound. The landlord cannot be said to claim through his tenant in whose favour he had created an interest limited for a time. We are, therefore, of opinion that the Road Cess Return is admissible in evidence

notwithstanding the provisions of Section 95 of the Bengal Cess Act.

4. As regards the third reason assigned on behalf of the appellant, it is obvious that if the Road Cess Return was, as a matter of fact, made by a predecessor-in-interest of the defendants, its evidentiary value in favour of the plaintiff and against the defendants is very considerable. This does not appear to have been appreciated by either of the Courts below and consequently the question of benami has not been investigated.

5. The result is that this appeal is allowed, the decree of the District Judge set aside and the case remanded to him for re-consideration. The Road Cess Returns will be treated as admissible in evidence and the question of benami must also be determined. The parties will be at liberty to adduce additional evidence in regard to this point; such evidence may be taken either by the District Judge himself or under his direction by the Subordinate Judge.

6. We may add that a subsidiary question has been raised before us, namely, whether in the event of a finding adverse to the landlords, the amount of rent payable in cash should not be assessed in this proceeding. We are of opinion that the question ought not to be determined in this suit. If the plaintiffs are unable to establish that they are entitled to recover the amount claimed by them, the only decree they can legitimately obtain is a decree for the sum admitted by the defendants. What is a fair rent in respect of this land must be determined in proceeding properly framed for that purpose. The costs of this appeal will abide the result.