

(1934) 03 PAT CK 0021
In the Patna High Court
Case No : Appeal No. 246 of 1932

Gourchandra Choudhuri and others

APPELLANT

Vs

Sarat Kumari Debi and another

RESPONDENT

Date of Decision : 12-03-1934

Acts Referred:

Citation : (1934) 03 PAT CK 0021

Judgement

Mohammad Noor, J.—The simple question involved in this second appeal is whether the plaintiffs are entitled to get a decree for the cess which has increased since the tenure was created. The defendants held two tenures on one lump rental of Rs. 42 annually. This rent according to the lease was fixed inclusive of cesses. The plaintiffs brought the suit for realization of cess at half anna per rupee on this Rs. 42 up to Chait 1334 Fasli and, since then, for cess payable by the defendants under the revised assessment. Both the Courts below have disallowed cess for the period before the re-assessment. The Deputy Collector however allowed the increased cess for the period after the re-assessment. This has been disallowed by the Judicial Commissioner. The plaintiffs have appealed. The advocate for the appellants has rightly, not pressed the claim for cess so far as the period prior to the re-valuation is concerned. The only question is whether under the terms of the lease and under law the plaintiffs are entitled to get the increased cess. The patta makes the jama inclusive of cess. In my opinion, this case is on all fours with Mahanand Sahai v. Sayedunnissa Bibi, (1908) 12 CWN 154 = 8 CLJ 525. It is true, as the Judicial Commissioner has pointed out, that the liability to pay cess under the Cess Act can be contracted out. But in order to make the legal provisions for the responsibility to pay cess ineffective the contract must be clear and expressive. In this particular case there is no such contract and the plain meaning of the lease is that the cess so far paid has been included in the rent. There is no mention that further cess assessed upon the tenure would not be payable by the tenure-holder by whom it must be paid under the provisions of law. In my opinion the view taken by the Deputy Collector was right, and, had the Calcutta case referred to above been

brought to the notice of the Judicial Commissioner, I am sure his decision would have been the same. I hold that the cess payable up to Chait 1334 Fasli is included in the sum of Rs. 42 which the defendants have to pay as rent and defendants are liable to pay the additional cess imposed upon the tenure. The Deputy Collector fixed this amount on calculation at Rs. 7-3-6. There is however one mistake in this calculation, namely that the amount of cess included in the sum of Rs. 42 ought to have been deducted and the rent should have been calculated by deducting cess from Rs. 42. The correct calculation should be as follows:

Rent inclusive of cess Rent Cess on the amount at 6 pies in the rupee Rs. A. P 40 11 3 1 4 9

42 0 0

Value of tenure under the new assessment 136 11 0

Cess at 1 anna per rupee... 8 8 6

Deduct landlord's share at 6 pies a rupee on Rs. 40-11-0 1 4 9

Cess after deduction 6 3 9

Deduct cess included in the rent ... 1 4 9

Cess payable 5 15 0

2. The decree of the Judicial Commissioner is set aside and that of the Deputy Collector is restored with this modification that the plaintiffs will get a decree for cess allowed by him for the period after Chait 1334 Fasli at the rate of Rs. 5-15-0 per annum and not Rupees 7-3-6. The plaintiffs will get three-fourths of costs in this Court and also of the Court of appeal below.