

(1954) 08 CAL CK 0010
In the Calcutta High Court
Case No : S.A. No's. 626 and 627 of 1950

Gouri Prasanna Banerjee

APPELLANT

Vs

Kamalaksha Chatterjee and Others

RESPONDENT

Date of Decision : 03-08-1954

Acts Referred:

Cess Act, 1880 — Section 66

Citation : 59 CWN 400

Hon'ble Judges : P.N. Mookerjee, J

Bench : Single Bench

Advocate : Nilmoni Goswami, for the Appellant;

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—These are two appeals by the plaintiff arising out of two suits for recovery of cesses, in respect of two niskar holdings for the years 1349 to 1354 B.S. The suits were brought in 1948. The basis of the claim was the revaluation, made by the Collector in proceedings which ended prior to the amendment of the Cess Act by Bengal Act XI of 1934. At that time the earlier Cess Act was in force in the area, where the suit lands are situate and the revaluation was made in accordance with the provisions of the said Act. The Collector proceeded u/s 66 read with section 16 of that Act for the purpose of revaluation of the disputed lands. Thereafter, the Cess Act was amended and a new Chapter VIIA was added for regulating, and prescribing also in great details, the mode of valuation and revaluation of lands for the purpose of assessment of cesses. This Chapter consists of several sections, beginning with section 107-A and ending with section 107-S. u/s 107-A(1), clause (a), it is provided that "the valuation or revaluation of lands in a district included in Schedule G, or in a part in such district shall be made in accordance with the provisions of this Chapter". The area within which the disputed holdings are situate was included in Schedule G some time in the year 1940 and, as I have already said, the present suits were brought in 1948. It was contended by the plaintiff before the Courts below, and

that contention has been repeated by Mr. Goswami on his behalf in this Court that the present suits having been instituted after the amended Cess Act had come into force in this particular area, these suits should be governed by the provisions of the new Chapter VIIA in the matter of assessment, payment and recovery of cesses. Mr. Goswami contends that, as, in that Chapter, there are no provisions corresponding to the old sections 54 and 56 of the original Cess Act, under which the landlord was not entitled to recover cesses from niskar holdings the absence of publication of the statutory notice, as contemplated in those two sections, the absence of such publication in the present cases would not be fatal to the plaintiff's claim. He accordingly argues that the dismissal of the plaintiff's suit merely because no such notice has been published in the present cases cannot be justified and ought to be reversed. I am unable to accept this contention. As already stated, the revaluation, on the basis of which the plaintiff makes his claim in the present suits, was made under the old Cess Act. The Collector in making the revaluation proceeded u/s 66 read with section 16 of the said Act in respect of the disputed holdings. That at once attracted the provisions of sections 54 and 56 of that Act and, accordingly, the liability of the present defendants for cesses on that revaluation would arise only upon the publication of the statutory notice as mentioned and contemplated in sections 54 and 56 of that Act. This position could not be affected by the new amendment, which came into force later. It is to be remembered further in this case that the relevant area was included in Schedule G in the year 1940 so that prima facie, at least, in view of section 107-A (1) (a), as quoted earlier, the new amendment could not apply to this area until the said year. There is nothing in the new amendment dispensing with publication of notice as a condition precedent for the accrual of the liability to pay cesses or the accrual of the right to realise cesses in regard to revolutions, made earlier or under the old Act. Its language rather shows that it is prospective and not retrospective. The mere omission of sections 54 and 56 for the purposes of this new amendment, which can have effect with regard to the present suit lands only from 1940, when they were included in Schedule G, cannot therefore affect the immunity of the defendants from payment of cess of a revaluation, made earlier and under the old Cess Act, until the publication of the statutory notice under the old sections 54 and 56 as required by the said Act. The liability, sought to be enforced in the present suits, did not arise under the old Cess Act and the new amendment also did not impose any such liability on the defendants.

2. I hold, therefore, that the Courts below were right in rejecting the plaintiff's contention and in refusing him a decree when, admittedly, there was no publication of the statutory notice as required under the original Cess Act. These appeals, therefore, fail and they are dismissed, but as there is no appearance on behalf of the respondents, there will be no order for costs in this Court.