

(1929) 03 CAL CK 0042
In the Calcutta High Court

Jyoti Prosad Singha Deo Bahadur

APPELLANT

Vs

Gopal Acharya Goswami

RESPONDENT

Date of Decision : 20-03-1929

Acts Referred:

Cess Act, 1880 — Section 52, 54, 56, 58, 62

Citation : AIR 1930 Cal 145

Judgement

1. This appeal has arisen out of a suit for recovery of arrears of cesses for the years 1328 to 1331 B.S. in respect of a revenue-free tenure. The plaintiff's case was that the defendant was liable to pay cesses at Rs. 36-6-0 per annum, and he was also liable to pay a penalty of a like amount for nonpayment of the same u/s 58 of the Cess Act. The defendant contended that he was ready to pay the cesses for the revenue-free tenure year after year to the plaintiff's gomastha but the latter refused to accept it, that he remitted the cesses for 1327 to 1329 by money order but the same was not accepted by the plaintiff and that he also offered to pay the cesses for 1330 and 1331 to the plaintiff's gomastha but that the latter would not accept it. He alleged further that no valuation roll was published or notices were served such as were necessary to fix him with liability for payment of penalty, interest or costs.

2. The trial Court held that the plea of tender was not made out, that the amount remitted by money order was insufficient and that the question of publication of the valuation roll and service of notice etc. did not arise as the defendant was fully aware that he had to pay Rs. 36 and odd as cesses and had failed to pay the same. That Court therefore decreed the suit in full.

3. The District Judge on appeal held the question of publication of notices did arise as it was only after such publication that the liability on the part of the defendant, the holder of the rent-free tenure would arise u/s 56. Holding that such publication had not been proved he dismissed the suit in its entirety.

4. The plaintiff has then preferred this appeal. A preliminary objection has been urged on behalf of the respondent to the effect that the suit was of a nature

cognizable by a Court of Small Causes and so no second appeal lies. This is sought to be met on behalf of the appellant by asserting that the suit was one for rent and has been treated by the Courts below as such. Now the matter is not *res integra* but is concluded by authority, and the value of the suit having been over Rs. 100 a second appeal would lie : see *Mohesh Chunder v. Umatara* [1889] 16 Cal. 638, *Rajani Kanta v. Jogeshwar* [1893] 20 Cal. 254. Also *Birendra Kishore v. Trailokhya* AIR 1923 Cal. 673.

5. On the merits what has been argued on behalf of the appellant, in the first place, is that the liability of the defendant is created by Sections 5, 14, 41 and 47 of the Act, and that he is liable to pay the amount together with penalty and interest to the plaintiff inasmuch as the plaintiff, has admittedly made the payment of cesses due to the Collector. It has been further argued that Section 50 has no application to the case as that section deals with a special class or special classes of rent-free tenures, and that therefore the plaintiff is under no necessity to invoke Sections 52, 54, 56, 58 and 62 of the Act in his aid. We have considered the arguments, such as they have been advanced before us, but we cannot see our way to accede to them. We are dearly of opinion that where, as here the defendant submitted a return in pursuance of the proclamation issued u/s 14 and there has been a valuation and unless the lands come within the category of lands mentioned in Section 33 of the Act or comprise an estate borne on the general register of revenue-free lands, Section 50 of the Act must necessarily apply. We are also of opinion the publication of notices u/s 52 and, in certain cases, also of notices u/s 54 is necessary. The liability of the holder of the rent-free lands, in our opinion, would arise only u/s 56 and his liability to penalty only u/s 58 and his liability to pay the statutory interest only u/s 62. The view which the District Judge has taken in our opinion, is right.

6. We, however, do not agree with the District Judge in the order that he has made. During the pendency of the suit in the trial Court the defendant admitted his liability to pay the cesses, though not the penalty or the interest and actually deposited in Court Rs. 164-6-3 by a petition dated 22nd October 1925. As the plaintiff insisted on the payment of penalty and interest he did not withdraw the amount. It remained in Court till after the District Judge had passed his orders and after that the defendant was allowed to withdraw it on 28th February 1927.

7. We are not inclined to give the plaintiff a further chance of proving the publication of the notices simply to enable him to saddle the defendant with liability for penalty and interest. At the same time we do not see why the plaintiff will not get the Rs. 164-6-3 as regards which the defendant admitted his liability and which he actually put in in Court.

8. We therefore, allow the appeal; set aside the decrees passed by the Courts below and order that a decree be entered in plaintiff's favour for Rs. 164-6-3 with interest from date till realization at the rate of 6 p. c. p. a. There will be no order for costs in favour of any of the parties in, this litigation.