

(1903) 01 CAL CK 0015

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 818 of 1900

Kumar Basanta Kumar Rai and Others

APPELLANT

Vs

Ram chandra roy chaudhry and Another

RESPONDENT

Date of Decision : 05-01-1903

Acts Referred:

Citation : (1903) 01 CAL CK 0015

Final Decision : Dismissed

Judgement

1. This Appeal arises out of a suit brought by the Plaintiffs-Appellants to recover from their tenants, the Defendants-Respondents, a certain sum of money under cl. (b) of sec. 42 of the Bengal Drainage Act (VI of 1880 B. C). The defense was that the land of the Defendants in respect of which the amount is sought to be recovered has not been benefited within the meaning of cl. (b) of sec. 42 of the Act by the works in question and that the landlords have not served any notice to the Defendants such as is required by sec. 44, sub-sec. (2); and the Courts below have given effect to these objections and dismissed the suit.

2. In Second Appeal it is contended for the Plaintiffs-Appellants, first, that the Courts below are wrong in holding that the report of the Commissioners under sec. 32 of the Act was not sufficient prima facie evidence to show that the land in suit had been benefited within the meaning of cl. (b) of sec. 42; and, secondly, that the Courts below are wrong in holding that a notice under sec. 44, sub-sec. (2), was a necessary preliminary to the suit.

3. At the hearing of the appeal, a preliminary objection was taken by the learned Vakil for the Respondents that a Second Appeal was barred by sec. 586, C. P. C, as the suit was of the Small Cause Court class and the subject-matter did not exceed Rs. 500. We are of opinion that this objection is sufficiently met by sec. 44 of the Bengal Drainage Act, sub-sec. (1), which provides that a sum payable to a landholder by a tenant under cl. (b) of sec. 42 shall be recoverable as if the same were an arrear of rent. If that is so, the case would come under cl. 8 of the Second Schedule of the Provincial Small Cause Courts Act and the present suit

must be held to be excepted from the cognizance of a Court of Small Causes.

4. Coming now to the points raised in the Appeal, we are of opinion that the Courts below have taken a correct view in holding that the report of the Commissioners was not sufficient evidence, as against the tenants Defendants, to show that their lands have been benefited, so as to shift the burden of proof from the Plaintiffs on to them. Cl. (b) of sec. 42, under which the present claim is made, provides that a landholder may recover such sum or any part thereof, according to the proportions provided in the Act, from the person holding immediately from him "lands in respect of which such sum has been declared payable and which have been benefited by the scheme or works carried out under this Act." The mere fact of a sum of money having been declared payable in respect of any land is therefore not sufficient to make a tenant of the land liable to contribute, for if it was, then the concluding words of the clause "and which have been benefited by any scheme, etc.," would be mere surplusage. Again, if the intention of the Legislature had been to make the report of the Commissioners prima facie evidence in that case the concluding words would have run differently and in some such way as this "unless it was shown that any particular lands had not been benefited." As the clause stands we think the natural construction of it requires that the landlord should show, in the first instance, that the land of any particular tenant against whom a claim has been made has been benefited by any scheme or works. It was argued that if this was so the landlord would be placed in a disadvantageous position, and that if the landlord was bound to pay by reason of its being found by the revenue authorities that the land was benefited, that circumstance ought at least to serve as prima facie evidence in his favor. The answer to this contention is two-fold. In the first place, the landlord cannot complain, because sec. 35 of the Act gives him an opportunity of objecting to the apportionment of the costs of construction of any drainage works, whereas there is no provision in the Act (save that contained in sub-secs. (2) and (3) sec. 44 which however relates to a different matter) allowing tenants to object to any such apportionment; and if that is so, it would hardly be just to make the Commissioners' report prima facie evidence in this case. Then, in the second place, as the Commissioners are required to apportion the costs, plot by plot, and these plots may not be co-extensive with the holdings of the tenants which may or may not be benefited notwithstanding that the plots in the Commissioners' report taken as a whole may be benefited, it would not be fair to infer from the fact of a plot taken as a whole being benefited that a tenant's holding, which may form only a part of such plot, has also been benefited.

5. We are, therefore, of opinion that upon the first point raised in the case, the view taken by the Courts below is correct.

6. That being so, it is not absolutely necessary for the disposal of this Appeal to express any opinion on the second point. But we may add this, that, notwithstanding that the language of sub-sec. (2) of sec. 44 is only permissive,

having regard to the general scheme of the Act, it is open to great doubt whether the power of determining any question as to the amount which any tenant is to pay is not intended to be exclusively vested in the Collector; and if that is so, a notice under sub-sec. (2) of sec. 44 would be a necessary preliminary to the maintaining of a suit like this. In the result, then, the Appeal fails and must be dismissed with costs.