
(1941) 08 AHC CK 0006
In the Allahabad High Court

Lala Ram das

APPELLANT

Vs

Nawab Ata Husain

RESPONDENT

Date of Decision : 28-08-1941

Acts Referred:

Citation : AIR 1941 All 397 : (1941) 11 AWR 840

Hon'ble Judges : Yorke, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Yorke, J.—This is a second appeal in a suit for profits u/s 226, Agra Tenancy Act, by one of the cosharers against the lambardar. The plaintiff has in his possession plots of land having a total area of 12 1/4 bighas for the purpose of brick kiln, and a point was taken by the defendant lambardar that he was entitled to what he called deduction in respect of this land, that is, as if the land had been occupied by the plaintiff as khudkasht or as if the income which was thus obtained from the land was income which could be treated as sayar and taken into account in the annual settlement of accounts between the cosharers. This point does not seem to have been contrasted seriously in the trial Court but in the lower appellate Court it was raised and the learned District Judge of Cawnpore held that income of the nature under consideration was more akin to income derived from the matters set out in Sub-section (4) of Section 3, Agra Tenancy Act, 3 of 1926, i.e., sayar income than to income derived from land occupied by dwelling houses or factories. He accordingly allowed the estimated income based on a rental of Rs. 15 a bigha to be taken into account in the accounting for the years in suit.

2. In this appeal it is contended strenuously on behalf of the plaintiffs-appellants that the income of the land treated as brick kiln in this manner is not income from "land" nor is it akin to sayar, and therefore it is not liable to be taken into account in the settlement u/s 226, Agra Tenancy Act. The learned District Judge has really not given any reasons for his statement that he thought the kind of

income under discussion to be more akin to sayar income than to income derived from land occupied by dwelling-houses or factories. Sub-section (2) of Section 3, Tenancy Act, provides that:

Land means land which is let or held for agricultural purposes, or as grove-land or for pasturage.

3. It includes land covered by water used for the purpose of growing singhara or other similar produce, but does not include land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto.

4. In Sub-section (4) it is stated that:

"Sayar" includes whatever is to be paid or delivered to a landholder by a lessee or licensee on account of the right of gathering produce, forest rights, fisheries, tanks not used for agricultural purposes, the use of water for irrigation, whether from natural or artificial sources, or the like.

5. I understand the learned District Judge to have concluded that income from land let for the purpose of a brick kiln comes within the scope of the last three words "or the like." Prima facie a brick kiln is in some sort a manufactory. I think there could be no doubt on that point and therefore prima facie it would be difficult to say that it does not come within the commendation implied by Sub-section (2), that is to say, it cannot possibly come within the scope of "land." In order therefore that income from such a source could be income which is liable to be taken into account in a suit for profits it must come within the scope of "sayar." "Sayar" has been defined in the Tenancy Act by the method of giving the scope of the term, and on an examination of the scope of the term it seems that it is limited in the main to income from the things which can be obtained as it were by growth from the land, as for example the right of gathering produce, or forest rights, which means rights of some kind with reference to timber or grazing, and fisheries, which clearly means the right to take fish from lakes or rivers situated within the boundaries of the land. About tanks not used for agricultural purposes I feel some doubt as to what rights there are which could be exercised with reference to such tanks since in view of Sub-section (2), if they contain "singhara" or similar produce they would come within the definition of "land" and if the water is used for irrigation, they will come within the definition of "sayar" as derived from the next clause "the use of water for irrigation." The right to occupy land for the purposes of making bricks does not seem to be at all closely akin to any of these rights of taking something in the shape of produce of the land or produce of the forest standing on the land or produce of the water standing on the land.

6. The matter can be looked at perhaps from another point of view. In the present case the land is in the occupation of one of the cosharers. A very common situation and perhaps more usual is for a cosharer or a body of cosharers to make some kind of a transfer in favour of the person who wants to take the earth for making bricks and wants to place a brick kiln upon the land so

transferred. Such a transfer is really a transfer of the earth contained in the land and to the best of my recollection such transfers have been held not to be in the ordinary way leases of land. The common feature is that there is a sale of the earth which is sold at a certain rate per bigha while an annual rent is also reserved in case the earth is not fully dug out within a certain period. It seems to me that the sale of the earth, which is what occupation of land in this manner involves, is not akin to a transfer of the right of gathering produce from the land. It is a transfer of the very earth which goes to make up the land and not of the produce of the land.

7. Similarly, income from use of the land in this manner cannot be akin to income from such rights as those described in the definition of sayar. On these two lines of argument, or rather three because as I have said *prima facie* a brick kiln is of the nature of a manufactory, it seems to me that the view taken by the learned District Judge that the income from land used for brick kiln is more akin to sayar income is not a sound view. There can be no doubt that the words "or the like" have to be interpreted as covering only such rights as are *ejusdem generis* or akin to the rights previously described. I cannot agree with the learned District Judge that the right of the plaintiff in respect of the land which he holds for the purpose of brick kiln in the present case is akin to the rights described under the head of "sayar" in Sub-section (4) of Section 3, Agra Tenancy Act. In my judgment therefore whatever right the defendants may have arising out of this occupation of these plots by the plaintiff cannot be taken into consideration in a suit u/s 226, Agra Tenancy Act.

8. I accordingly allow this appeal with costs, and in view of the fact that this income had been taken into consideration in a less or greater degree by both the Courts below it will be necessary to remand the suit for final disposal to the lower appellate Court, which will decide the appeal after leaving out of account the estimated rent of these plots which it has, in my opinion, wrongly taken into consideration. Apart from the one point decided in this appeal the decision of the lower appellate Court stands.