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**(1908) 04 CAL CK 0007**  
**In the Calcutta High Court**

Laliteshwar Singh

APPELLANT

Vs

Maharaja Rameshwar Singh Bahadur and Others

RESPONDENT

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**Date of Decision :** 09-04-1908

**Acts Referred:**

**Citation :** 4 Ind. Cas. 331

**Hon'ble Judges :** Mitra, J;Caspersz, J

**Bench :** Division Bench

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## **Judgement**

1. The appellant was one of defendants in the suit under appeal. The plaintiff-respondent sued for recovery of the sum of Rs. 50,867-1-7 1/4 alleging that he was entitled to recover the sum from the defendants as rent, cesses, dak-cess and Nimaksar, payable to him with respect to a babuana property, i.e., certain mehals in pergana Padri which were at one time included within the Durbhanga Raj Estate. Maharaja Rudra Singh Bahadur made over by a Rajgi sanad of the year 1850, the Raj to his eldest son Maharaj Kumar Maheswar Singh Bahadur, afterwards, Maharaja Maheswar Singh Bahadur and he stated in that document that he had made a babuana grant of certain mehals in pergana Padri to his son Maharaj Kumar Guneswar Singh Bahadur. The instrument, if any creating the grant, is not on the record. The Rajgi sanad, however, contains a direction that the Maharaja for the time being would be entitled to realize the Government revenue of the mehals granted to the Babus, and that the Maharaja himself would pay the Government revenue of the babuana mehals along with the revenue of the Raj estate. The babuana mehals were thus practically excluded from the Raj estate. The dependency, however, of the former to the latter was kept up in the matter of the payment of the Government demands. The babuana mehals would, also, according to custom lapse into the Raj estate on failure of male descendants of the Babus. They could not be called tenures or dependent taluks.

2. Maharaj Kumar Guneswar Singh Bahadur, it appears, admitted his liability to pay the Government demands to the Maharaja, i.e., revenue cesses, dak-cess

and Nimaksar leviable from the babuana mehals in his possession. In a bond, dated the 19th July 1900, in favour of the present plaintiff, he admitted such liability. In fact, the bond was executed for arrears in respect of the cesses and Nimaksar due up to the June kist of 1307 Interest also was stipulated to be payable at 6 per cent per annum on the amount covered by the bond. The appellant is one of the sons of Maharaj Kumar Guneswar Singh, and he was one of his co-parceners according to the Mithila School of Law. The appellant", however, denies his liability to pay any of the public demands with respect to the babuana mehals. He, also, denied the plaintiff's title to the Raj, but this plea has been abandoned in this Court. The learned Vakil for the appellant has also conceded before us that according to the Rajgi sanad of 1850, the appellant, along with his co-parceners, is bound to contribute towards the Government revenue, and that the claim as regards the Government revenue was maintainable.

3. As regards the cesses and the Nimaksar the contention raised is that the Rajgi sanad did not require Maharaj Kumar Guneswar Singh to pay the same to the Raj. But Nimaksar is, in reality, a part of the Government revenue, though it bears a different name, and the dak-cess and road and public works cesses came to be levied from estates under legislative enactments passed years after the Rajgi sanad. They are charges for which the Maharaja was liable to Government, and he did pay them, but he was not in possession of the babuana mehals, and the defendants are bound to pay them to the Maharaja to re-imburse him for his loss.

4. They are undoubtedly payable by the holders of the babuana mehals who enjoyed the profits and realized the cesses from the tenants in occupation of the lands. In fact, the liability to pay these charges was admitted by Maharaja Kumar Guneswar Singh and in a case which was decided by this Court on the 10th February, 1882, with reference to a similar babuana grant, it was held that the grantee was liable to pay all the Government dues with respect to the mehals in his occupation. Cesses are recoverable from the proprietors or holder of estates, and so is Nimaksar, and the Collector looks to him for payment, and the plaintiff-respondent in paying the same, along with the amounts payable by himself for mehals in his own occupation, made payments which benefited the, babuana grantees.

5. These amounts are, therefore, recoverable from the grantees. The learned Vakil for the appellant has attacked the claim for interest on the arrears of revenue, cesses, and Nimaksar, the contention being that under Act XXXII of 1839, no liability attaches to pay interest unless the claim is covered by the provisions of that Act. But the Act excepts usage and the claim in this case is, in substance, a claim in the nature of a claim for contribution. The plaintiff and the defendants are not indeed co-proprietors, neither do the defendants hold the babuana mehals as tenure-holders. But, according to the true interpretation of the Rajgi sanad of 1850 they must pay all the Government dues through the

plaintiff and the plaintiff, if he pays the amount, is, in our opinion, entitled to be fully re-imbursed and compensated for his loss.

6. Claims for contribution have always in this province been regarded as exceptional, and interest at the ordinary rate of 12 per cent per annum has always been allowed in contribution suits from the date of the payment by the plaintiff. It was so held in *Golam Ahmed Shah v. Behary Lall* 1862 Mar Rep 239; 1 Hay 500. The learned Judges in that case followed an earlier case decided by the *Sudder Dewany Adawlut*. The same view, as regards the liability to pay interest, was upheld in *Nullit Biswas v. Prosunno Moyee Dossee* 17 W.R. 179 and *Bistoo Chunder Banerjee v. Nithoremonee Debia* 19 W.R. 98. A demand, as contemplated by Act XXXII of 1839, was held to be unnecessary to support a claim for interest.

7. We are, therefore, of opinion that the claim for interest was proper and has been properly allowed by the lower Court.

8. The ordinary rate of interest is 12 per cent per annum and that is the rate of interest realised from tenure-holders and raiyats by landlords. We do not see why we should not allow the ordinary rate as to interest in the present instance. This case is not the first of its kind, and the demand is not novel in character. *Maharaj Kumar Guneswar Singh* had, as we have seen, executed a bond for arrears and the liability of the defendants was well-known and ascertained. The revenue, cesses, dak-cess and *Nimaksar* were practically ascertained amounts and were paid by the plaintiff to the Collector to the knowledge of the defendants and they must pay interest at the current rate of 12 per cent per annum, up to the date of suit. They themselves are entitled to recover from their tenants interest on cesses at that rate according to the Cess Act. There is no reason why we should adopt a different rule in this case.

9. The rate of interest will be six per cent. per annum on the consolidated amount from the date of the decree.

10. The result is that this appeal is dismissed with costs.