

(1913) 05 CAL CK 0001
In the Calcutta High Court

Narendra Narain Singh and Others

APPELLANT

Vs

Gopi Sundari Dasya

RESPONDENT

Date of Decision : 08-05-1913

Acts Referred:

Bengal Cess Act, 1880 — Section 43, 44, 46, 48, 95

Citation : 25 Ind. Cas. 366

Hon'ble Judges : Richardson, J; Mallik, J

Bench : Division Bench

Judgement

1. The plaintiffs and the defendant in the suit were joint proprietors in equal shares of an estate called Islampur. The estate was valued by the Collector for the purposes of road and public work cesses at Rs. 65,075 odd. "The amount of cesses assessed upon that valuation was Rs. 3,543 odd. The parties each paid annually half of the total cesses assessed, that is, they paid in proportion to their shares in the joint estate or, which is the same thing, in proportion to the amount of land revenue for which each was responsible. Subsequently the defendant opened a separate account for the purpose of the payment of land revenue and in connection with that separate account, the Collector proceeded u/s 44 of the Bengal Cess Act (IX of 1880) to apportion half the cesses to the plaintiffs' share and half the cesses to the defendant's share. The defendant took no objection such as is contemplated by Clauses (2) and (4) of Section 44. On this suit the plaintiffs claim to recover from the defendant a certain sum which they say they paid in excess of the cesses properly payable by them. The claim is in respect of cesses paid both before and after the separate account was opened. In regard, however, to the period after the separate account was opened the claim is no longer pressed. In regard to the period before the separate account, the plaintiffs rest their case on the valuation rolls submitted by the parties. They allege that they valued their shares at Rs. 3,245 odd while the defendant valued her share at Rs. 3,329, and they assert that they are entitled to recover from the defendant in" this suit the cesses paid by them prior to the opening of the separate account in excess of the amounts which would have been payable by

them had the total amount of cesses been apportioned between themselves and the defendant in the proportion of the two sums we have just mentioned. They assert further that they are entitled to enforce such a claim u/s 48 of the Bengal. Cess Act.

2. In regard to the period subsequent to the opening of the separate account the plaintiffs originally claimed in their plaint that they were entitled to a declaration that the apportionment made by the Collector u/s 44 should be altered in the manner we have already indicated. That part of the case, however, has, as we have already said, been abandoned in this Court and need not, therefore, be considered. It may be well, however, to say in this connection that it is now admitted that after the opening of a separate account for the purposes of the payment of land revenue the only way in which a co-proprietor can obtain an apportionment of the cesses payable by him on any basis other than the basis of the amount of land revenue to which he is liable, is by preferring an objection in accordance with the procedure prescribed by Section 44. The plaintiffs did not take that course and it is now conceded that they cannot come to the Civil Court to rectify the" apportionment made by the Collector and that the Civil Court has no jurisdiction to alter that apportionment.

3. To return to the period prior to the opening of the separate account, during that period the joint estate was liable under the provisions of the Public Demands Recovery Act for the whole amount of the cesses assessed. There was no separate apportionment of the amount of cesses payable by each co-sharer. It is argued, therefore, for the plaintiffs, the appellants before us, that the Civil Court can step in and adjust the contributions due from the co-sharers as between each other upon an equitable basis. The basis suggested here is the valuation of their shares as made by their respective proprietors. We are of opinion, however, that Section 48 of the Act does not contemplate such a claim. That section gives any share-holder in an estate, who may have paid the roadcess and public works cess payable in respect of such estate or any part thereof in excess of the amount proportionate to his own interest in such estate, a right to recover from his co-sharers any amount paid by him on account of their respective shares and interests. As we read the section the words "proportionate to his own interest" refer to the share of the estate held by the shareholder and not to valuation of that share or the income which he derives from it. The word "interest" and the words "shares and interests" used in this section may be compared with the words "specified share or interest" used in Clause (1) of Section 46. In that clause what is meant is obviously a share or interest of the nature of the shares and interests recorded in Part I of the Collector's Land Register. The word "interest" in Section 48 seems to us to mean an interest of that kind, that is an interest of a kind capable of being entered in the Land Register. In our view Section 48 according to its true meaning implies this that the co-sharers as between themselves are bound to pay in proportion to their respective shares without regard to the valuations of those shares submitted to or adopted by the Collector for the purpose of determining the total amount of cesses payable. In

support of that view we may refer to Section 43. That section lays down that in case of partition of an estate under the Estates Partition Act the total valuation of the original estate is to be distributed" in the first instance by the Collector over the newly found estates proportionately to, the land revenue. The basis of distribution is, therefore, the land revenue payable, or in other words the share or interest recorded in the Land Register, and not, in the first instance, the valuation (for road-cess purposes) of the new estates. The" scheme of the Act seems to us to be that until a separate" apportionment is obtained by a shareholder under the provisions of the Act, the extent of his liability for cesses as between himself and his co-sharers is the" extent of his share on the extent of his liability for land revenue. In the present case the plaintiffs as already mentioned," might have obtained a separate apportionment under" Section 44. Section 44 deals with revenue paying estates. In the case of such estates the opening of a separate account for land revenue purposes seems to be a condition precedent to the "opening of a separate account for cess purposes or to the redistribution between the different share-holders of the total amount of cesses payable. Section 46, which we understand has been extended by the Local Government to all. Districts in Bengal, deals with the case "of revenue-free estates. The result is that, in our opinion, this suit is not maintainable u/s 48.

4. Having arrived at that conclusion, it is hardly necessary for us to go into another question which was argued, namely, whether the plaintiffs have proved the valuation of their share. In regard to that question the record is; not in a very satisfactory state. Both the Courts below have found that the plaintiffs have failed to prove as between themselves and the defendant that the proper valuation of their share for roadcess purposes is Rs. 3,245. They put their claim on an equitable basis and obviously if the suit were maintainable at all, it would be open to the, defendant to raise the question of valuation. It would not be equitable that the plaintiffs should succeed on the basis of a valuation made by themselves, if that valuation be an undervaluation. We do not desire to say that the Courts are wrong in saying the valuation had not been proved, although there may be ground for supposing that the parties were agreed as to the amount at which they had valued their respective shares and as to the correctness of the valuation. All we desire to say is that if a share-holder comes into a Civil Court for such a purpose as the present and if the question arises whether the valuation submitted by him to the Collector is or is not correct, the burden is on him to prove that it is correct, because u/s 95 the general rule is that the return filed by him is only admissible in evidence against and is not evidence admissible in his favour.

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