(1903) 05 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2250 of 1900

Nawab Assanullah Bahadur APPELLANT

Vs

Manjura Banu and others RESPONDENT

Date of Decision : 15-05-1903

Acts Referred:

Citation : (1903) 05 CAL CK 0005

Judgement

1. The Plaintiff purchased a revenue-paying estate then belonging to the Defendants in execution of a mortgage decree and the sale was confirmed on the 5th March 1898. The Defendants had not paid to the Collector the amount of cesses due under Act IX (B. C.) of 1880 up to March 1897, and after the purchase by the Plaintiff the Collector proceeded to realise the same under sec. 99 of the Act. The Plaintiff had to pay up the amount and he then instituted the present suit for recovering it from the Defendants. The lower Courts have held that the amount of cesses payable by the holder of an estate under Act IX (B. C.) of 1880 is a charge on it and the Plaintiff having purchased subject to all existing charges was not entitled to be reimbursed by the Defendants.

2. The decision in this case depends on the answer to the question whether before a Collector proceeds under sec. 99 of the Cess Act, the amount payable to him as cesses is a charge on an estate.

3. In Shekaat Hossain v. Sasi Kar I. L. R. 19 Cal. 783 (1892) it was held that an amount due on account of cesses under the Bengal Cess Act 1880, was only a personal debt and could not properly be recovered from the property on which it was assessed if it should so happen that that property belonged to a third person.

4. The ordinary mode of recovering the amount from the holder of an estate is by means of a certificate under the Public Demands Recovery Act which has the effect of a personal action against the debtor named in the certificate. There is no provision in the Cess Act (IX B. C. of 1880) except sec. 99, which we shall presently consider, making the amount recoverable by the Collector a charge on the estate in respect to which it is due. In cognate Acts relating to the dues of

the state there are express provisions for the avoidance of incumbrance on sales for the recovery of such dues or words expressly making such dues charges on land. We may refer to sec. 37 of Act XI of 1859, sec. 12 of Act VII (B. C.) of 1868 and sec. 15 of XXXVI of 1871 as amended by Act XXI of 1876. We do not think that the words in sec. 5 of the Cess Act, 1880, "all immoveable property shall be liable to the payment of a Road-cess or a Public Works-cess" are sufficient in themselves to lead us to conclude that the amount assessed as cess is a charge.

5. Under sec. 99 of the Act the Collector has the power to recover any sum due under the Act from the tenants in an estate after recording a proceeding and giving notice to the tenants to that effect. It is a power in the nature of a right to attach the rents payable to the person from whom the dues are recoverable. The Collector by recording a proceeding under sec. 99 constitutes himself a receiver for the collection of dues to the state. It does not appear that the Collector has the power to realise the amount by sale of the estate as if it was a charge having priority over other charges. In the last clause of sec. 99, the priority of the claim for the arrears of cesses "over any other demand or claim or lien existing" upon any estate or tenure attaches if and when the Collector sees fit to proceed under the first clause of the section. The charge contemplated by the last clause is not one ordinarily existing on an estate but becomes one only on the Collector''s taking action under the first clause sec. 99, it seems to us, shows that an amount recoverable as cesses under the Public Demands Recovery Act is not ordinarily a charge.

6. Chatraput Singh v. Grindra Chander Roy I. L. R. 5 Cal. 389 (1880) is not in conflict with the view taken by us. The question raised before us was not raised in that case and there is only a stray observation in the judgment of White, J., that "revenue and cesses constitute a standing incumbrance and first charge on the land subject to them." Cesses were then levied under Bengal Act X of 1871 and of 1877 and these Acts have now been replaced by Bengal Act IX of 1880. The Defendants in that case were exonerated from liability to pay the amount deposited by the Plaintiff as revenue and cesses on the main ground that they had become due after the purchase by the Plaintiff and the decision of the question whether cesses constitute a charge was not necessary and was not shared in by Field, J. In the present case the amount of cesses levied by the Collector was payable by the Defendants as a personal debt and the Plaintiff was compelled to pay it on account of the proceedings taken by the Collector under sec. 99 of the Cess Act. We think the Plaintiff is entitled to be reimbursed and this appeal is decreed with costs in all the Courts.

