(1939) 04 AHC CK 0004

In the Allahabad High Court

Noor Mohammad, Lambardar and Others APPELLANT

Vs

Lalloo and Others RESPONDENT

Date of Decision : 19-04-1939

Acts Referred:

Citation : AIR 1939 All 614 : (1939) 9 AWR 475

Hon'ble Judges : Bennet, J

Bench : Division Bench

Judgement

Bennet, J.—This is a first appeal by a lambardar and 18 other plaintiffs who have brought a suit against 22 defendants. The Court below has held that the suit does not lie in the Civil Court but in the Revenue Court and that therefore the plaint has been returned to the plaintiffs for presentation to the proper Court. The question therefore is solely one of jurisdiction and the jurisdiction will be determined by the allegations in the plaint. The plaint sets out in para. 3 that about 50 years ago the zamindars, who were predecessors of the plaintiffs, established a new bazar on a certain plot of land. Para. 6 states that about 150 persons including the 22 defendants earned money by weighing goods which come to the bazar and make a charge which is a customary charge according to para. 8 Para. 9 alleges that the plaintiffs as zamindars are entitled to have three-fourths share of the charge made by the defendants for weighment and the one-fourth should remain with the defendants. It is not alleged that the plaintiffs have ever collected this amount before, but apparently the plaintiffs rely on the fact that they are zamindars and therefore have a legal title to this share because the transactions take place on their land. Para. 11 alleges that on 10th March 1934, plaintiff 1, lambardar, granted a theka for the realization of weighment dues to one Hashim Khan but owing to the obstruction of the defendants the theka was not enforced. It was only a few days after the theka that the plaint was filed on 28th March 1934. The defendants filed a written statement making allegations with which we are not at present concerned. The question is whether the remedy of the plaintiffs lies in the Revenue Court or in the Civil Court. It is true that relief (a) appears to be a declaration, and relief (b) is an injunction, but relief (c) is for the share of the plaintiffs, for the last three years prior to the suit, of weighment dues to Rs. 4000. It is clear that the Revenue Court if it has jurisdiction can grant a sufficient relief to the plaintiffs by making a decree for any share to which they may be shown entitled. For the respondents it is pointed out that the Agra Tenancy Act 3 of 1926 provides in Section 3:

''Rent'' means whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him, and in Chap. 9 includes ''sayar'', as defined below.

2. Chapter 9 deals with the recovery of rent by suits for arrears. The definition in Section 3(4) of "sayar" is as follows:

''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.

3. Now it is claimed that the plaint implies that the defendants are licensees. No ex-press license is set up in the plaint, but it is stated in the Easements Act of 1882, Section 54 : "The grant of a license may be express or implied from the conduct of the grantor." The allegations in the plaint imply that the collection of weighment dues by the defendants on the lands of which the plaintiffs are zamindars was with the implied consent of the plaintiffs and that the plaintiffs had no objection to the action of the ''defendants provided the defendants were, willing to pay them three-fourths of the does so collected by the defendants. It appears 60 us that the case of the plaintiffs to amount to a claim for three-fourths of the dues which are realized by the defendants as licensees of the plaintiffs and therefore such a claim will come within the definition of "sayar" and therefore for the purpose? of Chap. 9 a suit for rent will lie. Learned Counsel for the plaintiffs objected that the claim for a share of weighment dues was not specially mentioned in Section 3(4). But the sub-section ends up with the words "or the like" and apparently therefore all payments for the use of land of a landholder will come under this definition. Certain rulings were referred to : Suraj Pal Singh Vs. Jawahar Singh, in which a Bench of this Court held that "weighment dues" do come under the definition of "sayar". That no doubt referred to a suit in which a zamindar sued under a definite lease under which the weighment dues were payable. But we do not consider that it makes any difference for the purpose of jurisdiction whether the suit was brought on a lease or on a license. Reference was made to an old ruling, Sadanand Pande v. Ali Jan (1910) 32 All. 193. This ruling laid down that

casses mentioned in Sections 56 and 86, Agra Land Revenue Act, are rates levied as a rule by a zamindar upon tenants and residents of villages. Moneys paid by frequenters of markets are voluntary payments made by persons who are under no obligation to use the market unless they please and cannot be called cesses at all.

4. This however is a different case and we are not concerned with the question of the waighment dues paid by the persons who got their goods weighed. We are in the present case concerned with a claim by the zamindars for a share of those weighment dues form the people who make the weightments. We consider that the Court below was correct in its view that the jurisdiction in the case of the present plaint lies in the Revenue Court and accordingly we dismiss this first appeal with costs.

