
(1910) 01 AHC CK 0016
In the Allahabad High Court

Pandit Sadanand Pande

APPELLANT

Vs

Syed Ali Jan and Others

RESPONDENT

Date of Decision : 05-01-1910

Acts Referred:

Citation : 5 Ind. Cas. 288

Hon'ble Judges : Tudball, J;Richards, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit in which the plaintiff asks for a declaration that he was entitled to realize the income and profits of a certain fair jointly with the defendants in proportion to his share in the village. He further claims to recover the sum of Rs. 2,415-9-9, the amount which the defendants had wrongfully realized and converted to their own use. The facts found by the Court below are shortly as follows: The fair was established some years ago jointly by the plaintiffs and the defendants. It was held on land which belonged to them jointly in certain proportions. So far as the findings of fact are concerned, we are in entire accord with the Court below; in fact the evidence as to these facts has been practically admitted by the respondent's counsel. The learned Judge, however, notwithstanding the finding of facts in favour of the plaintiff held that inasmuch as there had been no sanction by Government to the levying of tolls and market dues, their exaction was illegal and on this legal ground he dismissed the plaintiff's suit, It must be remembered that no question arises between the alleged owners of the market and the persons who are called upon to pay the market dues, nor is there any question as to the rights of the owners of rival fairs and markets. The defendants admittedly have been collecting and recovering the profits derived from the fair in question. There is no doubt that if the taking of market tolls and custom? is illegal, the learned Judge was right in refusing to make a declaration that the plaintiff was entitled and the only question we have to consider in the present appeal is whether or not the taking of market dues and

customs in a private market is legal.

2. The profits of the market are derived from levying toll of so much per head upon every beast bought and sold and also from persons who are granted the privilege of putting up stalls during the time the fair is held. Prima facie any person is entitled to charge persons, who of their own free will and accord make use of his land for any purpose. Two provisions of the Agra Land Revenue Act III of 1901 are relied on by the defendants as showing that the exaction of market tolls and dues is illegal. We have not been referred to any other enactment. Section 56 provides as follows:

In the North Western Provinces all cesses which are payable by tenants on account of the occupation of land and which are of the nature of rent payable in addition to the rents of tenants or in lieu of which proprietary rights may be assigned u/s 78 Clause (b) shall be recorded by the record officer under the appellations by which they are known and no cesses not so recorded shall be recoverable in any Civil or Revenue Court.

3. The other section is Section 86. Sub-section (1) is as follows:

A list of all erases other than those referred to in Section 56 levied in accordance with village custom shall, if generally or specially sanctioned by the local Government, be recorded by the Settlement Officer and no cesses not so recorded shall be recoverable in any Civil or Revenue Court and no such list shall be altered or added to during the currency of settlement.

4. It can hardly be contended that the taking of the market-dues in the present case comes within Section 56. The dues are not payable by tenants as such at all. They are payable by persons who come and use the land in question on fair days for the purpose of buying and selling. We do not think that market dues can possibly come u/s 83 either. In the first place we feel the greatest difficulty in holding that the monies paid by the frequenters of markets are "cesses" at all. They are voluntary payments made by persons who are under no obligations whatever to make use of the market unless they please. They are not levied in accordance with any village custom. We think that the cesses mentioned in Sections 56 and 83 of the Land Revenue Act are rates levied as a rule by the zamindar upon tenants and residents of villages. We may give a few examples. A levy made by the zamindar for the Karinda, ckwkidar, the patwari would all be cesses. Probably if a zamindar thought fit to establish a market and attempted to levy a rate upon the tenants and occupiers for the upkeep of the market and the payment of the market officials, this also would be a cess within the meaning of one or other of the sections. The learned Judge refers to the case of Sukhdeo Prasad v. Nehal Chand 29 A. 740 The point in question in the present appeal was not before the Court in that case. Some reliance was placed upon Reg. VII of 1822. We think it extremely doubtful that any of the provisions of the Regulation rendered the holding of private markets and the taking of market dues illegal but even assuming that it did, we may point out that Reg. VII of 1822 is repealed by

Act XIX of 1873 so far as it relates to these provinces. The learned Judge very properly decided most of the issues of fact. There are, however, two issues which still remain to be decided before the appeal can be fully disposed of, namely, as to the amount realised by the defendants and what proportion of that amount the plaintiff is entitled to. We accordingly refer the following issues to lower Court:

(1) What amount was realised by the defendants in respect of the fair mentioned in the plaint and for the years therein mentioned?

(2) How much of the amount so realised is the plaintiff entitled to?

5. The Court below may, if it finds it necessary, take any additional evidence to dispose of these issues. Upon the return of findings 10 days will be allowed for filing objections.

6. The objections taken on behalf of the respondents fail and are dismissed with costs.