

(1972) 05 AHC CK 0009

In the Allahabad High Court

Case No : First Appeal No. 41 of 1971 connected with Writ Petition No. 459 of 1971

Raja Jagdambika Pratap Narain Singh

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 19-05-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Constitution of India, 1950 — Article 14

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 30, 32(2)

Citation : (1974) 94 ITR 159

Hon'ble Judges : Satish Chandra, J; K.N. Seth, J

Bench : Division Bench

Advocate : R.K. Gulati and B.L. Gupta, for the Appellant; K.C. Agarwal, for the Respondent

Judgement

Satish Chandra, J.—The State of U. P. instituted a suit for the recovery of Rs. 3,02,982.62 as arrears of agricultural Income Tax for the assessment year 1952-53 with pendente lite and future interest at twelve per cent. per annum. The learned civil judge, Faizabad, decreed the suit for recovery of Rs. 1,89,364.62 with interest at 4 1/2 per cent. per annum. Aggrieved Raja Jagdambika Pratap Narain Singh, the defendant, has come up in appeal.

2. The plaint case was that the defendant, Raja, had agricultural income liable to tax under the Agricultural Income Tax Act, 1948, for the assessment year 1952-53. The Deputy Commissioner, Faizabad, on 27th November, 1952, passed an order assessing the defendant's income to a tax of Rs. 3,40,090. The defendant preferred an appeal (No. 65 of 1953) before the Agricultural Income Tax Commissioner. The appeal was decided on 25th November, 1953. The quantum of tax was reduced to Rs. 1,89,364.62. The assessee did not prefer a revision and the appellate order became final. During the pendency of the appeal the defendant had obtained an order of stay from the appellate court staying the realisation of three-fourth of the assessed tax. The defendant filed a writ petition

(No. 77 of 1953) in the High Court and on 21st January, 1953, obtained a stay order in regard to the recovery of the tax. The writ petition was dismissed on 19th April, 1954, as not pressed. The plaintiff. State, was, however, informed of the dismissal of the writ petition by the standing counsel on 18th March, 1958. It was alleged that the defendant had not paid the tax in spite of the demand and that in addition to the arrears of tax of Rs. 1,89,364-62 the plaintiff was further entitled to Rs. 1,13,618 as interest by way of damages at twelve per cent. per annum with effect from 25th November, 1953, till the date of the suit. The cause of action was alleged to have arisen on 25th November, 1953 (the date when the appeal was decided) and on 19th April, 1954, when the writ petition was dismissed.

3. In defence it was pleaded that the appellate order, while reducing the original amount of tax to Rs. 1,89,364.62, ordered its realisation in four equal installments to be fixed in a fresh notice of demand. In spite of this well-known decision the plaintiff took no steps to realise the tax. On 24th March, 1958, the defendant received a notice from the plaintiff calling upon him to deposit the entire amount in a lump sum by 31st March, 1958. The defendant felt that the demand made in this notice was barred by time. The defendant thereupon filed a writ petition (No. 1072 of 1958) in the High Court on 1st April, 1958. On 26th September, 1961, the High Court allowed the writ petition and quashed the notice of demand dated 29th March, 1958. The plaintiff has not served on the defendant any other notice of demand on the basis of which the plaintiff can legally realise the disputed tax. In the absence of a valid notice of demand the defendant was under no liability to pay the disputed tax. It was also pleaded that the suit was barred by Order 7, Rule 11, and Section 11, Civil Procedure Code.

4. The learned civil judge repelled the various pleas taken in defence. He held that the plaintiff was entitled to interest at the rate of 41/2 per cent. per annum only from 25th November, 1953, till the date of realisation. The suit was consequently decreed for the principal amount determined in the appellate order with interest at 41/2 per cent. per annum.

5. The appeal was valued at Rs. 1,89,364.62 which was the principal amount of the arrears of tax. This valuation did not include the amount which was granted by way of interest at 41/2 per cent. During the course of the hearing the appellant made an application for the amendment of the valuation of the appeal. Finding that the prayer in the appeal was that the suit be dismissed and that there was a specific ground taken in the memorandum that the award of interest was illegal, we permitted the appellant to amend the valuation and pay the requisite court fee. Thereafter, the plea that the award of interest was illegal became a live issue in this appeal.

6. One of the pleas taken in the written statement was that the plaintiff was liable to be rejected under Order 7, Rule 11, Civil Procedure Code, On 22nd February, 1964, during the course of arguments before the trial court, the defendant made an application for amendment of the written statement (87-A). In this he gave

the details of the facts upon which the plea was supposed to rest. This application was rejected by that trial court on the ground that it was highly belated. The appellant reiterated his application for amendment during the hearing of the appeal. After hearing the parties, we by an order dated December 6, 1971, allowed the appellant to amend the written statement in the manner set out in his application No. 87-A. We also allowed the plaintiff, State, to file a replication, if any.

7. The defendant by an amendment introduced the following clause at the end of paragraph 17 of the written statement:

" It may further be made clear that the said appellate order dated November 25, 1953, was never communicated to the defendant as contemplated by Section 21(6) and Section 23 of the U.P. Agricultural Income Tax Act."

8. The plaintiff thereupon filed a replication stating that the arguments in the appeal were heard on 25th November, 1953, and after the conclusion of the hearing the Agricultural Income Tax Commissioner dictated the judgment on the same date. It was also pleaded that the defendant had otherwise also knowledge of the judgment passed in the appeal and had obtained a copy of the same which was filed in Writ Petition No. 1072 of 1958. On the additional pleadings introduced in this court the parties led oral as well as documentary evidence.

9. The submissions of learned counsel raise the following questions ;--

1. On the date of the institution of the suit the State Government had no cause of action for it; the suit was not maintainable.

2. The suit was barred by Section 32(2) of the Agricultural Income Tax Act.

3. The suit was barred by the doctrine of res judicata,

4. Section 9, Civil Procedure Code, violated article 14 of the Constitution.

5. The plaintiff was not entitled to any past interest.

10. For the appellant it was urged that the appellate order not having been communicated to the defendant, no liability to pay the amount of tax assessed thereby accrued and, consequently, the State had no cause of action for instituting the suit to recover the amount of tax assessed under the appellate order.

11. We may at first decide the question of fact whether the appellate order was communicated. Jagdish Lal Srivastava, the agricultural income tax clerk in the collectorate of Faizabad, appeared as a witness and tendered in evidence the order sheet of the appeal decided by the Agricultural Income Tax Commissioner. This was marked exhibit HC-I. The order sheet shows that on 25th November, 1953, Sri S.C. Das, counsel for the appellant, and Sri R.K. Singh, for the State, were present in the court of the Agricultural Income Tax Commissioner. The order sheet then states :

" The appeal is allowed in part and the amount of tax is reduced to Rs. 1,89,364-10-0 from Rs. 3,40,090 which must be paid as directed in the order. Send copies of the order to the LRC and LC along with the assessment file and then consign the case to the records."

12. The order sheet of 25th November, 1953, therefore, shows that the counsel were heard in the appeal and the order was also pronounced the same day.

13. On behalf of the appellant, Sri Braj Sunder Lal Mehrotra appeared as a witness. He stated that he was the manager of the defendant and was looking after the litigation of his estate. He as well as his counsel left the court of the Commissioner after the hearing of the appeal was over. He did not know the result of the appeal that day and that the Commissioner did not say anything about the pronouncement of the judgment. After the hearing of the appeal was over, another case was taken up. He also stated that no copy of the appellate judgment was received by him from the office of the Agricultural Income Tax Commissioner. He admitted in cross-examination that he had filed Writ Petition No. 1072 of 1958 in the High Court on behalf of the defendant and a copy of the appellate judgment was also annexed with the writ petition. It was a plain copy which was copied from a certified copy obtained on March 1, 1958, for defending the present suit.

14. The learned standing counsel stated that the despatch registers of the Commissioner's Office having been weeded out could not be produced,

15. From the order sheet it appears that the appellate order was pronounced in open court on the day fixed for the hearing of the appeal. Even though the defendant's witness states that the counsel appearing for the defendant as well as the pairakar left the court room after the hearing was over, since the order was dictated that very day in court, the defendant's knowledge of it must be presumed. This knowledge is further corroborated by the fact that in the writ petition filed by the defendant in 1958 a copy of this order was annexed. The writ petition was filed on 1st April, 1958, after receipt of the notice of demand on 28th March, 1958. Till 28th March, 1958, the defendant had no cause to fear that he will be required to pay any tax under any appellate order. The explanation for obtaining a certified copy of the appellate order on March 1, 1958, is that it was obtained for defending the present suit. The present suit was instituted on 22nd January, 1959, On 1st March, 1958, when the defendant had not even received the notice of demand, the explanation for obtaining the copy does not appear to be believable. The defendant must have known the contents of the appellate order and might have had some inkling that the State was thinking of enforcing the payment. That is why a copy was obtained. In our opinion, the evidence tends to show that the defendant had knowledge of the contents of the appellate order on the 25th November, 1953, the day when it was passed.

16. For the defendant-appellant it was, however, urged that mere knowledge of the order was not sufficient compliance of the requirements of the status. u/s 23,

U.P. Sales Tax Act, the authority passing an order on an appeal u/s 22 of the Act is to communicate such order to the assessee. Under Rule 25(g) the Commissioner is to send a copy of the appellate order to the Land Reforms Commissioner within a week of the date on which it was passed. There is no requirement for serving a copy upon the assessee. Relying upon *Maharaja Pateshwari Prasad Singh v. State* ILR [1959] All. 353 it was urged that the appellate order cannot in law be deemed to have been communicated to the assessee unless a copy thereof was served upon him. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, the Supreme Court held that if the date of pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced, the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. In the present case the assessee knew of the date of hearing. It was understood that on that day the judgment of the appeal can as well be pronounced. Under the circumstances the pronouncement of the appellate order on that day was an effective communication thereof to the assessee even though the assessee's lawyer or manager had left the court and may not have been actually present at the time of the pronouncement of the order.

17. In *State of Punjab Vs. Amar Singh Harika*, it was held that communication of an order was necessary before it can be an operative and binding order. In that case the order of dismissal was passed on 3rd June, 1949. Being ignorant of this order the officer made representations. On 28th May, 1951, the officer was informed that the record of the office showed that he had been dismissed from Government service with effect from the date of his suspension. It was on this date that the respondent came to know about his dismissal. Even on this date a copy of the order was not furnished to the officer. The Supreme Court held that the order of dismissal took effect from 28th May, 1951, because that was the date on which the order would be deemed to have been communicated to him. This decision seems to suggest that the essence of communication is the fact that the person concerned has come to know of the order. In the present case the assessee obtained a certified copy of the order on 1st March, 1958. The order can in any event be said to have been communicated to the assessee on this date. The present suit was filed much later. It cannot, hence, be said that the suit was premature or that no cause of action had arisen on the date when it was instituted.

18. Section 30 provides the mode of payment. The amount of tax is payable in two equal installments. The first installment is to be paid within one month of the communication of the order and the second installment within six months from the due date of the first installment. When installment is not paid within the time allowed, the assessee shall be in default,

19. Even if it be assumed (and of the assumption, we are doubtful) that the liability to pay or to recover the taxed amount arises only after the expiry of the

period of the two installments mentioned in Section 30, and after the assessee is in default, yet in the present case that event had happened prior to the institution of the suit. The order will be deemed to have been communicated to the assessee at the latest by 1st March, 1958. The prescribed six months' period expired on 1st September, 1958.- The suit was filed on 23rd January, 1959. On this day the assessee was in default and the right to release the taxed amount had accrued to the State.

20. For the appellant it was urged that no cause of action for instituting the suit could accrue until the service of notice of demand upon the assessee. Section 20 of the Act requires that the assessing authority after passing the assessment order shall serve on the assessee a notice of demand in the prescribed form specifying the amount of tax. Such a notice was served upon the appellant on December 27, 1952 (exhibit 9). As seen above, Section 23 requires the communication of the appellate order. There is no other provision in the Act requiring the service of a fresh notice of demand after the passing of an appellate order. Rule 24 of the rules framed under the Act provides for a fresh notice of demand in case the demand is subsequently enhanced on appeal or revision. Obviously, if the demand is reduced in appeal, there is no requirement to serve a fresh copy of the notice of demand. Mere communication of the appellate order is enough.

21. Mr. Gupta then urged that in view of the specific language of the appellate order the liability to pay the reduced amount of the tax did not in law arise till the service of a notice of demand in accordance with it. No such notice of demand having been served, the State had no cause of action to institute the suit.

22. The operative part of the appellate order runs as follows :

" The appeal is, therefore, partly allowed and the amount of tax is reduced to Rs. 1,89,364-10-0 only which must be paid in four equal installments to be fixed in the fresh notice of demand after making necessary adjustments for the payments already made "

23. After the appellate order the State served upon the appellant a notice on 28th March, 1958. That notice was quashed in a writ petition. It is admitted that no other notice of demand was served upon the appellant.

24. During the hearing of the appeal the learned standing counsel prayed for an adjournment in order to institute a writ petition to challenge the validity of the direction in the operative part of the appellate order requiring a fresh notice of demand and requiring payment in four equal installments. We adjourned the hearing on payment of Rs. 500 as costs to the appellant. The respondent, State, has filed the connected writ petition (No. 459 of 1971). It is prayed that this part of the appellate order be quashed.

25. Section 30(1) of the Act initially provided that the amount specified in any

notice of demand u/s 20 or in any order communicated u/s 23 shall be payable in four equal installments. Sub-section (2) of Section 20 provided that the first installment shall be paid within one month of the notice of demand or communication of the order, as the case may be, and each subsequent installment within 2 months of the previous installment. These provisions were amended by Section 13 of the U. P. Agricultural Income Tax (Amendment) Act (14 of 1953). The amendment came into force on July 1, 1953. After the amendment Section 30(1) provided for payment in two equal installments. Sub-section (2) provided that the first installment shall be paid within one month and the second installment within six months from the due date of the first installment. The amendment had come into force prior to the date of the appellate order, namely, 25th November, 1953. The statutory provision on this date was for payment in two equal installments on the communication of the order. The appellate order contravened this mandatory statutory requirement by providing for four equal installments. As has already been seen, the Act or the rules did not require the service of a fresh notice of demand in case the tax demand was reduced in appeal. Hence the direction that the four equal installments will be fixed in a fresh notice of demand was contrary to the statute and clearly illegal.

26. Learned counsel for the assessee strongly urged that the writ petition was highly belated and should not be entertained. The appellate order was passed on 26th November, 1953, and it was open to the State Government to have filed the writ petition soon thereafter. The State has furnished an explanation for the delay. It has been urged that the defendant did not even in the written statement take the plea that the suit was barred because of non-compliance with the appellate order in not serving a fresh notice of demand. This point was urged for the first time at the hearing of the appeal. The appellant, State, was also not advised that the appellate order would in any way be a bar to the present suit. The mistake of law as to the implications of the appellate order came to light for the first time when the question was argued during the hearing of the appeal. It was for lack of knowledge of this aspect of the matter that no proceedings were initiated by the State for the setting aside of the impugned clause of the operative part of the order.

27. A perusal of the written statement shows that such a plea was not specifically taken. The judgment of the court below leads to the same conclusion. The memorandum of appeal also shows that no such plea was included in any of the grounds of appeal. Ground No. 2 stated that there being no valid notice of demand, there was no liability on the defendant-appellant to the impugned tax. But, this means no reference to a notice of demand as contemplated by the appellate order. Under the circumstances, we are inclined to believe the case of the respondent, State, that it was unaware of the implications and the illegality of the impugned clause in the operative portion of the appellate order. The writ petition was immediately instituted after the point came to light. It is well-settled that, if a litigant approaches this court under article 226 of the Constitution with

an explanation that till a particular point of time he was unaware of his rights or had a mistaken notion of a particular position in law, the writ petition should not be thrown out merely on the ground of delay because, if such a plea is established, it proves that the litigant was not guilty of laches, *State of Kerala v. Aluminium Industries Ltd.* [1965] 16 S.T.C. 689 (S.C.). We are not satisfied that this is a fit case in which the writ petition should be thrown out on the ground of delay. We shall accept it and quash the following direction :

" in four equal installments to be fixed in the fresh notice of demand "

28. Since this portion is being quashed, the position will be as if no such direction had been originally made. The appellant cannot hence base his plea that the State had no cause of action for the suit upon the language of the appellate order.

29. Mr. Gupta then submitted that the suit was barred by Section 32(2) of the Act. Section 32 provides :

" 32. (1) Recovery of penalties and time for recovery of any sum payable under this Act.--The Collector may, on the motion of the assessing authority, recover any sum imposed by way of penalty under the provisions of sections 17, 31, 37 or, where an assessee is in default, the amount assessed as agricultural Income Tax, as if it were an arrear of land revenue.

(2) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the date on which the last installment u/s 30 falls due:...."

30. A Division Bench of this court in *State of U.P. v. Raja Jagdish Pratap Sahi* (First Appeal No. 161 of 1960, decided on 20th May, 1966, The decision of the High Court was affirmed by the Supreme Court in *Raja Jagdish Pratap Sahi Vs. State of Uttar Pradesh*, interpreted the word "proceeding" occurring in Section 32(2) to refer and be confined to the proceedings for recovery initiated under the Act, namely, proceedings for recovery as an arrear of land revenue. A suit in a civil court was not within the purview of this provision. We are in respectful agreement with this view. Section 38 of the Act bars suits in civil courts. It provides that no suit shall be brought in any civil court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer or the State Government for anything in good faith done or intended to be done under this Act. Thus, the legislature barred suits of the kind mentioned in Section 38. In this context Section 32 should not be construed as laying down a bar to the institution of a suit not covered by Section 38.

31. The right to recover money due and payable to the plaintiff is a civil right which inheres in every creditor. The provisions of the Agricultural Income Tax Act show that at least when the assessee is in default the State has, the right to recover the amount. That could only be as if the assessee had become a debtor to the State Government. The State Government, having become a creditor, has

all the remedies available to a creditor. The institution of a suit for recovery of a debt is provided for by Section 9, Civil Procedure Code. That section does not exclude a suit at the instance of the State Government. There is no provision in the Act which expressly or by necessary implication takes away the right of the State Government to recover its tax demand by way of a civil suit.

32. The Municipalities Act provides a detailed procedure for recovery of refund of excess octroi paid to the municipality. It was urged that those detailed provisions indicated that the procedure laid down therein was the only way by which a person could recover the refund due to him. The Supreme Court in *Kirpal Singh Duggal Vs. Municipal Board, Ghaziabad*, repelled the submission and held that the claim for refund was a civil right and was justiciable by the civil court and the civil court's jurisdiction to entertain such a claim was not barred by the provisions of the Municipalities Act. The rules framed by the Government relating to the procedure to be followed in giving effect to the exemption do not purport to bar the jurisdiction of the civil court if the procedure is not followed. These rules could not exalt what were merely matters of procedure, which the municipality was entitled to require compliance with in granting refund, into conditions precedent to the exercise of jurisdiction of the civil court.

33. The rule of limitation laid down in Section 32(2) is applicable to proceedings undertaken under the Act. It will have no relevance and cannot be treated as a rule of limitation applicable to a suit instituted in the civil court. To a suit by the Government, article 149 of the Limitation Act prescribes a period of 60 years. That would include a suit of the present nature. The same view was taken by a Full Bench of this court in *Union of India, v. Nagar Mahapalika, Allahabad* [1971] A.L.J. 1366 . We find no substance in this submission.

34. The next point urged by learned counsel was that the suit was barred by the doctrine of *res judicata*. In this connection reliance was placed on the decision by a single judge of this court disposing of Writ Petition No. 107-2 of 1958. It is well settled that the judgment in a writ petition under article 226 operates as *res judicata* under the general doctrine, *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, . In that case the notice of demand dated 24th March, 1958, was quashed on the ground that it was barred by limitation prescribed by Section 32(2) The present suit is not based upon the aforesaid notice of demand. We have seen that after the tax demand had been reduced in appeal, the Act does not require the service of a fresh notice of demand. We fail to see how the decision in that writ petition would operate as *res judicata*. In passing, the learned judge observed that u/s 46 of the Income Tax Act " it has been held that recovery proceedings under that section are not exhaustive. The Government have a right to institute other proceedings, outside that section, to recover the amount due. It is for the legal advisers of the Government to advise it, whether or not a suit can be filed, for the recovery of the amount in this case ". These observations do not suggest that a suit will not be maintainable. In fact, barring the making of the above observations, no decision was recorded by the learned

judge on this aspect.

35. Learned counsel then submitted that Section 9, Civil Procedure Code, violated Article 14 of the Constitution. In many statutes the State has been conferred a right to recover its dues by an expeditious remedy provided therein. That remedy was alleged to be more stringent than the normal way of recovering money by a suit, because the special procedure was quick and provided for recovery as an arrear of land revenue under which the person liable to pay could be subjected to arrest as well. In all those cases it was held that the State had been conferred a right to recover its dues by adopting the special procedure provided in the statute in addition to the general right it has of recovering its dues by a suit. Since there was no express bar to the institution of a suit to recover the money, the court held that that right remained with the State. The special procedure provided by the Acts was considered to be more stringent and since it was found that the choice to adopt the special procedure or to take recourse to the civil courts had been left to the whim of the concerned official, the special procedure was violative of Article 14 of the Constitution as involving an invidious discrimination. In all these cases the provisions of the Act were struck down. In no case was Section 9, Civil Procedure Code, held as violative of Article 14 of the Constitution, Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, , Prakash Pottery Industries, Chunar Vs. The District Magistrate, Mirzapur and Others, , Ram Gopal Gupta Vs. Assistant Housing Commissioner and Others, and Raja Ram Verma Vs. State of U.P. and Others, .

36. It was urged that for proceedings under the Act a limitation of one year has been provided while for a regular suit the prescribed period of limitation is 60 years. This is more onerous for the assessee. We are rather doubtful if this is so. Under the Act the liability of the assessee has to be enforced within a year. He is thus liable to pay the money immediately, but if the State Government decides to institute a suit the suit may not be filed for 60 years, giving the assessee a much longer time to pay up the admitted demand. Moreover, from many other aspects the remedy under the Act is far more stringent. Under the Act the recovery is as if the amount due was an arrear of land revenue. Under those proceedings the assessee could be arrested, his property could be attached and sold immediately, whereas if the State proceeds by way of a suit it cannot touch the assessee or his property at least until the passing of a decree and the institution of an execution application. Taking all aspects of the matter into consideration we do not find that Section 9, Civil Procedure Code, is more stringent to the assessee so as to attract Article 14 of the Constitution.

37. For the appellant it was urged that the award of past interest was illegal. The plaintiff's claim does not arise out of any contract. The plaintiff-State sought to realise a statutory debt. The statute did not make any provision for payment of interest. On behalf of the respondent,, State, it was urged that interest could be awarded u/s 73, Indian Contract Act, or, in the alternative, under the Interest Act.

38. Illustration (n) to Section 73, Contract Act, was by the Supreme Court in Union of India (UOI) Vs. A.L. Rallia Ram, held inapplicable to the right of a creditor to recover interest from his debtor on a loan advanced to the latter. It was held that the illustration does not confer upon a creditor the right to recover interest from a debtor when he is not entitled to such interest under any provisions of the law.

39. The proviso to Section 1 of the Interest Act (1 of 1839) provides that interest shall be payable in all cases in which it is not payable by law. The term "law " occurring in this proviso has been construed repeatedly as applying to cases in which either the provisions of the substantive law or the common law provide for interest and also to cases in which the court of equity exercises jurisdiction to allow interest. In AIR 1938 67 (Privy Council) it was observed that in order to invoke a rule of equity it is necessary in the first instance to establish the existence of a set of circumstances which attract the equitable jurisdiction. This decision of the Judicial Committee has been referred to with approval in several decisions of the Supreme Court. In Seth Thawardas Pherumal Vs. The Union of India (UOI), the claim for interest for breach of contract was negatived because such a claim was not such in which the courts of equity will have any jurisdiction to allow interest.

40. In A. L. Rallia Ram's case the claim was for compensation for certain supplies made. The claim for interest was negatived. Similarly, in Union of India (UOI) Vs. Watkins Mayor and Co., the claim for interest was disallowed in a suit for compensation.

41. In Vithal Das Vs. Rupchand and Others, Chand a claim for interest was disallowed in a suit for dissolution of partnership and accounts. It was held that the partner in possession of the properties cannot be treated as constructive trustee merely because of collection of rent. It was observed that, in the absence of any advantage gained against the interest of a co-owner, he could not be made liable u/s 23, Trusts Act.

42. On behalf of the respondent. State, reliance was placed upon Suna Ana v. Mana Pana AIR 1939 Mad. 531 That case related to a case of contribution. It was held that such a claim does not arise out of a contract but falls within the equity jurisdiction of the court and on that basis interest could be awarded.

43. In Mahabir Prashad Rungta Vs. Durga Datt, it was held that interest cannot be awarded as damages. In that case a party rescinded the contract and sued for damages. His claim for past interest was disallowed.

44. In the present case the suit is for realising the statutory demand for tax. Our attention was not invited to any authority or principle on the basis of which it could be held that such a claim falls within the equity jurisdiction of the court. In that view interest cannot be granted on any equitable principle. There being no agreement to pay interest or any provision in any law for award of interest under such circumstances, the plaintiff was not entitled to a decree for past interest.

The decree under appeal, in so far as it grants past interest, cannot be sustained.

45. In the result the appeal succeeds and is allowed in part. The decree of the court below is modified by dismissing the suit for past interest, namely, from 25th November, 1953, till 23rd January, 1959, the date of the institution of the suit. The rest of the decree is maintained. The parties may pay and receive costs in both courts in proportion to their success and failure. The connected writ petition is allowed and the following clause in the operative portion of the appellate order, namely, " in four equal installments to be fixed in the fresh notice of demand ", is quashed. The parties would bear their own costs of the writ petition.