

(1919) 05 CAL CK 0057
In the Calcutta High Court

Raja Peary Mohan Mukherjee

APPELLANT

Vs

Kumar Sarat Kumar Roy

RESPONDENT

Date of Decision : 09-05-1919

Acts Referred:

Public Demands Recovery Act, 1895 — Section 10, 12, 15, 32

Citation : AIR 1919 Cal 817 : 52 Ind. Cas. 832

Hon'ble Judges : Duval, J;Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for refund of certain costs of drainage, which have been realised from the plaintiff by the defendant in execution of a certificate under the Public Demands Recovery Act.

2. It appears that certain drainage works were constructed in the District of Howrah. The defendant is the owner of the estate within which Mauza Bali is included. The Commissioners appointed under the Bengal Drainage Act apportioned the costs of the drainage works between the proprietors, the tenure-holders and under tenure-holders; and a sum of Rs 947 was assessed upon certain la he has lands in Bali as the proportionate amount of drainage costs. The Collector realised thin amount together with other sums payable in respect of the estate from the defendant. The defendant thereupon took steps to have the money realised from the plaintiff, under the certificate procedure. The certificate was filed and notice issued upon the plaintiff, but he did not contest his liability when the notice was served. Subsequently in proceedings which were taken to execute the certificate, the plaintiff took objection and the objection was disallowed. "There was an appeal and the appeal was rejected on the 28th May 1912.

3. The present suit was instituted on the 80th August 1912 The suit was dismissed by the Court of first instance. On appeal the suit was decreed.

4. On second appeal the case was remanded for re hearing the appeal after

finding whether the plaintiff was declared to be the landholder" in respect of the lakheraj lands in Bali within the meaning of Section 50 of the Drainage Act.

5. The learned Subordinate Judge after remand has held that the suit is barred by limitation and that the plaintiff is not entitled to recover" the amount from the defendant. It is also found that the Drainage Commissioners determined that the plaintiff was a landholder in respect of the lakheraj lands in Bali within the meaning of Section 50 of the Act.

6. The plaintiff has appealed to this Court.

7. The first question for consideration" is whether the suit is barred by limitation.

8. It is contended before us that the suit is not barred because Section 15 of the Public Demands Recovery Act I of 1895 provides that a person deemed to be the judgment-debtor under the provisions of Section 8 may, at any time within six months from the service upon him of notice u/s 10, or if he files a petition of objection u/s 12 from the date of the determination thereof, or if he appeals u/s 32 from the date of the decision of such appeal, bring a suit in the Civil Court to have the said certificate cancelled or modified.

9. The plaintiff did not bring the suit within six months from the date of the service of notice u/s 10, nor did he file a petition of objection u/s 12. But the suit is within six months of the date on which the appeal which he filed against the order in the execution case had been disposed of. It is urged that as Section 32 of the Act provides for an appeal from (among other things) any original order of a certificate officer other than the District; Collector, an order in an execution case, if it is an original order of a certificate officer, is appealable u/s 32 and as Section 15 gives the period of six months from the date of decision of an appeal u/s 32, the plaintiff's suit is not barred.

10. We are, however, unable to accept this construction of the section. The plaintiff has not asked for cancellation of the certificate. He has prayed for a declaration that the defendants' claim for realising the drainage charge was unjust and illegal. But so long as the certificate is not set aside, the plaintiff cannot get back the money recovered in execution of that certificate. Section 16 of the Public Demand Recovery Act provides that when no suit is instituted by the judgment-debtor within the period specified in Section 6 or Section 15 or if any such suit having been instituted is finally decided against such judgment debtor, such certificate shall become absolute and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court." A certificate, therefore, can be,, executed only after it has become final. We do not see how a judgment debtor can, by merely preferring an appeal against an order passed in execution of a certificate (and the certificate can be executed only after it has become final), get a fresh start of six months for bringing a suit u/s 15 of the Act. Reading Sections 15 and 16 together, we are of opinion that he cannot do so.

11. It is contended, however, that the whole proceeding is bad because the

defendant had no right to realise the money from the plaintiff under the provisions of the Drainage Act.

12. It has been found that the Commissioners determined that the plaintiff was to be deemed the landholder in respect of lakheraj lands u/s 50 of the Drainage Act.

13. u/s 28 of the Drainage Act, the Drainage Commissioners have to apportion costs of the drainage works among the several landholders and tenure-holders, and u/s 30 of the Act the Commissioners are to declare whether the holders of the estate of the tenure or of the under-tenure shall be deemed to be the landholders liable to pay to the Collector the sum apportioned as payable in respect of such lands.

14. The defendant, who is the owner of the estate, appears to have been declared to be the landholder who was liable to pay the sum apportioned to the Collector in respect of the lakherai lands of which the plaintiff was declared to be the landholder. The defendant was thus primarily liable to the Collector. The Collector realised from him the entire amount which was payable by the plaintiff in respect of the drainage costs. A rent-free holder comes within the definition of a tenure holder within the meaning of Section 2 of the Act; and Section 44 provides that any landholder who has made any payment in respect of lands which are held by tenure-holders immediately under him may, upon application to the Collector, be entitled to recover under the procedure prescribed by the Public Demands Recovery Act, The defendant did adopt that course and realised the amount from the plaintiff.

15. We think under the circumstances that the proceedings were not illegal or without jurisdiction.

16. That being so, the appeal fails and is accordingly dismissed with costs.