
(1935) 02 PAT CK 0026
In the Patna High Court
Case No : Civil Revn. No. 524 of 1934

Rani Bhuneshwari Kuer

APPELLANT

Vs

Mt. Devki Kuer and another

RESPONDENT

Date of Decision : 11-02-1935

Acts Referred:

Citation : (1935) 02 PAT CK 0026

Final Decision : Dismissed

Judgement

Dhavle, J.—In this case Mr. Jamuar who appears for the opposite party urges at the outset that there is no room for interference in revision as there is no question of jurisdiction involved. Mr. S.N. Ray who appears for the petitioner has endeavored to meet this by saying that the lower Court has completely overlooked S. 62, Cess Act, and has wrongly refused to exercise a jurisdiction vested in it by law.

2. The suit was for recovery of cess, and the defence was that notices under Ss. 52 and 54 of the Act were necessary but had not been given. There was no dispute that the property in respect of which the cess was claimed is a rent-fee jagir. The operation of S. 62 in such cases was considered in Hash Behari Mukerji v. Pitambari Choudhrani, (1888) 15 Cal 237, where Beverley, J., with whom Norris, J., concurred pointed out that under S. 56 cesses only become payable after publication of the notices required by Ss. 52 and 54; and that this would contradict S. 62 if the latter section were construed to mean that such cesses can be realised before publication of the notices.

3. Mr. Ray points out that the plaint was amended to cover a claim not for double the cess as provided in S. 58, but for the ordinary cess only. But under S. 56 even this amount only becomes payable after publication of the notices "and not otherwise." Mr. Ray urges that that would not prevent realization of cess at the old rate, but the case does not seem to have been conducted on that footing below, and I see that the only witness examined for the plaintiff, a law-clerk, cannot even say in which year the cess claimed was assessed, nor does there

appear to be anything in the record to show what the old cess, if any, was. It thus seems perfectly clear that in the first place there is no error of jurisdiction committed by the lower Court, and secondly that the view taken by the lower Court is supported by good authority. Mr. Bay has proceeded to argue that the petitioner's claim should have been allowed under Ss. 69 and 70, Contract Act. The answer to this is that no special contract being even alleged, nothing was lawfully payable by the tenant defendant except under S. 56 which requires as an indispensable preliminary that notices should be served under Ss. 52 and 54, Cess Act. Reference was made to S. 47 of the Act, but the addition of S. 64-A to the Act makes it clear that S. 47 has no application to rent-free tenures, as pointed out in *Pitamber Choudhury v. Rahmat Ali*, 1922 Pat 303 = 65 IC 138 = 1 Pat 218. There is no merit in the application either, quite apart from the fact that the preliminary objection raised by Mr. Jamuar is perfectly sound. The application is dismissed. Hearing fee, three gold mohurs.