

(1921) 01 AHC CK 0014
In the Allahabad High Court

Sri Thakur Radha Madho Lalji through Ram Dass	APPELLANT
Vs	
Ram Sewak and Another	RESPONDENT

Date of Decision : 18-01-1921

Acts Referred:

Citation : AIR 1921 All 77 : 62 Ind. Cas. 739

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

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for rent and the dispute before us relates to what is known in the case as "Gaon Kharach." The parties to this appeal are the Zemindar and certain agricultural tenants. The plaintiff, who is the appellant before us, brought a suit in the Revenue Court seeking to recover arrears of rent from the defendants on account of their holdings of cultivator land. In his statement of account the plaintiff put down the rent of the land at a certain figure and added to that amount another figure under the head of village expenses, which is sometimes calculated at the rate of three pies and sometimes at the rate of four pies a rupee on the rental of the land. There was also a claim for acreage cess, with which we are not concerned in this appeal. The Court of first instance gave the plaintiff a decree for rent and also for the Gaon Kharach. On appeal, the learned District Judge has held that it has not been established before him that the Gaon Kharach is in fact part of the contract of rent. He found that the Gaon Kharach was a cess. It was, therefore, not recoverable in the Revenue Court. In addition to this he also held that sections 56 and 86 of the Land Revenue Act applied and as there had been no record made by any Settlement Officer, therefore, the cess was not recoverable. The villages in question lie in Pargana Saktishgarh in the District of Mirzapur and are under Permanent Settlement. It is an admitted fact that no Settlement Record has been drawn up by any Settlement Officer, nor has any Record Officer ever been deputed by Government to draw up the Record of Rights. The result is that Sections 56 and 86 of the Land Revenue Act do not operate or apply to the present village. It is urged before us that the evidence on the record clearly

establishes the fact that the tenants of this village have for the last forty-five or fifty years been regularly paying this Gaon Kharach and that this fact clearly establishes that it was part of the contract of rent that they should pay this item. Attention has been paid to the entry of rent in the patwari's record. As against each field of the tenants a rent is entered and under the total of these rents there is entered a figure for "Gaon Kharach". The record, in our opinion, does not establish the fact that the Gaon Kharach was part and parcel of the contract of rent. It may be a customary due which residents of the village have been paying, but as far as we can judge, it is not part and parcel of the contract of rent and as such is not recoverable in the Revenue Court. We express no opinion as to whether or not it is recoverable in a Civil Court, but certainly it is no part and parcel of the contract of rent, and is not recoverable as rent in the Revenue Court. In this view, the appeal must fail and we dismiss it with costs.