(1933) 01 AHC CK 0030

In the Allahabad High Court

Suraj Pal Singh APPELLANT

Vs

Jawahar Singh RESPONDENT

Date of Decision : 17-01-1933

Acts Referred:
Agra Tenancy Act, 1926 — Section 267(2)

Citation : AIR 1933 All 310 : (1933) ILR (All) 375 : 145 Ind. Cas. 479

Hon'ble Judges : Mukerji, Acting C.J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, Ag. C.J.

1. This is a reference by the Collector of Aligarh u/s 267(2), Agra Tenancy Act, in the following circumstances: The plaintiff, Raja Suraj Pal Singh, brought a suit for recovery of certain wieghment dues from the defendant on the allegation that the defendant took a lease for the dues for 1335 Fasli in the village of Kailaura and failed to pay the said dues as agreed upon. The suit was filed in the first instance before the Munsif of Agra who returned the plaint for presentation to the proper Court, the learned Munsif being of opinion that the suit was cognizable by the Revenue Court inasmuch as the weighment dues were in the nature of a sayar income. The learned Assistant Collector who heard the suit decreed it in part. No question of jurisdiction was raised before the learned Assistant Collector. An appeal was filed before the Collector of Aligarh who, being of opinion that the claim did not fall within the definition of "sayar income," "allowed the appeal," but he did not say whether he dismissed the suit or whether he directed the plaint to be returned to the plaintiff for presentation to the proper Court. The learned Collector evidently overlooked the very salutary provision of Section 267, Sub-section (2) which says that where once a civil Court or a revenue Court directs that a plaint should be returned for presentation to a Revenue Court or to a civil Court, the Court receiving the plaint, if it disagrees with the former Court, should submit the record with a statement of its reasons for disagreement, to the

High Court. If this procedure had been followed by the learned Collector, his ultimate decision would have been in accordance with the decision of this Court. However as we have said, the learned Collector, "allowed the appeal."

2. A revision was filed before the Board of Revenue but, as we understand the practice is, it was presented before the Commissioner to be forwarded to the Board of Revenue. The Commissioner wanted to follow the procedure laid down in Section 267, Sub-section (2), and therefore directed the Collector to make the reference. The reason probably was that the Commissioner, as Commissioner, was not properly seised of the case, and it was in the Court of the Collector that the question of jurisdiction had been raised. The procedure adopted by the learned Commissioner cannot perhaps be strictly justifiable by the letter of the law, but we think that in substance it was right. We accordingly entertain the reference. We may note the learned Collector in his letter of reference is not quite accurate when he says that the "revisional application was dismissed by the Commissioner on 29th July 1932." We have got that order of the Commissioner before us. There is nothing in it to suggest that the Commissioner has dismissed the revision. To start with, it would not be for the Commissioner to dismiss the petition of revision inasmuch as it is for the Board of Revenue to pass the final orders and secondly, the Commissioner nowhere says that the petition should be dismissed. If the petition had been dismissed, we would not probably have taken the trouble to go into the merits of the case, because our opinion is meant to be a guide to the revenue or civil Court, as the case may be, and it is not to be given merely as a matter of academical interest. Coming to the merits of the case: it appears to us that the weighment dues do come within the definition of "sayar" as contained in Section 3, Clause (4), Agra Tenancy Act. It will be noticed that the definition of "sayar" as given there is not exhaustive. It is only illustrative. It runs as follows:

''Sayar'' includes whatever is to be paid or delivered to a landholder by a lessee or licensee on account of the right of gathering produce, forest rights, fisheries, tanks not used for agricultural purposes, the use of water for irrigation, whether from natural or artificial sources, or the like.

3. As we understand by the expression "weighment dues," it is money paid by the person who is licensed by the land holder or the lamhardar to exercise his profession of weighing the goods of the tenants within the zamindari of the licensor. The licensee in plying his profession uses the land of the zamindar, and therefore he is called upon to pay some compensation to the zamindar. The majority of the people living in a village are agriculturists and mostly deal in agricultural produce that is weighed by the weighman, the licensee. In the circumstances we are of opinion that we ought to class the weighment dues as "sayar." This accordingly is our opinion on the reference. We direct that a copy of this judgment under the seal of the Court be sent to the learned Collector of Aligarh for his information. Nobody has appealed on the other side and we make no order as to costs of the reference.

