(1949) 12 AHC CK 0016

Allahabad High Court (Lucknow Bench)

Case No: Appeal No. 3 of 1947

Kunwar Rajendra Bahadur Singh		APPELLANT
	Vs	
Sukhram and Others		RESPONDENT

Date of Decision: Dec. 6, 1949

Acts Referred:

- Oudh Courts Act, 1925 - Section 12(2)

Hon'ble Judges: Misra, J; Ghulam Hasan, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Misra, J.
This a third appeal u/s 12(2) Oudh Courts Act in a suit for arrears of rent. It is directed against the decision of out brother, Kaul J. sitting singly as a Judge of the Chief Court of Avadh.

2. The Plaintiff-Appellant, Kunwar Rajendra Bahadur Singh is the zamindar of village. Saif Pur. The suit which gives rise to the appeal was for recovery of Rs. 207/10/9/- in respect of arrears of rent and interest after giving credit for the payments made by Ganga Prasad, Defendant during the period Rabi 1344 F. to Kharif 1347 F. The lease in favour of Ganga Prasad which was executed by the zamindar on 5th March, 1930, could Dot be produced by the Plaintiff presumably because it was in the possession of the lessee. Kunwar Rajendra Singh produced the relative qabuliat (Exl) This document indicated that besides the cash sum of Rs. 271/9/3/-, which it described as rent, Ganga Prasad also under-took to pay a further sum of Rs. 16/15/6/- as raqam sewai for bhusa and payal The present dispute is a sequel to a revision of settlement which took place in 1345 F, where in the rent of the holding was fixed at Rs. 165/- only. The sole question which now falls for determination in this appeal is whether Kunwar Rajendra Bahadur Singh is entitled to realize from the Defendant not only Rs. 165/- per annum but also an additional sum by way of raqam Sewai at the rate of Rs. 16/15/6/- for the period in suit.

3. The sub-Divisional Officer of Ramsanehighat held that he was not. He, therefore, decreed the suit for Rs. 71/10/ 4 1/2/- at the rate fixed in 1345 without allowing anything more to the zamindar. The Court of first appeal the District Judge of Bara Banki) upheld the decision. The appellate decree it may be mentioned was against the sons of Ganga Prasad, namely, Sukhram. Autar and puttin who were substituted in place of their father on account of the latter''s death during the pendency of the appeal.

4. When the case came up in second appeal before Kaul J., two contentions were raised on behalf of Kunwar Rajendra Bahadur Singh. As stated we are concerned with only one of them, namely, whether the Appellant is entitled to get from the Respondents Rs. 42/4/- in respect of raqam sewai in addition to the rent found due by the Courts below. The view taken by Kaul J. was that raqam sewai for bhusa and payal entered in Exhibit 1 formed part of the rent and he therefore, replied the contention urged on behalf of the Appellant that it was in the nature of cess and recoverable as such independently of the rent. As a result of his decision, the decree of the lower Courts was confirmed, but on the Appellant''s application to reagitate the, matter further in appeal u/s 12(2), Oudh Courts Act, our learned brother granted the requisite permission.

5. The case came up for hearing before this Bench on 14th January, 1948, but it had to be adjourned because after the return of the record from this Court to the Court of the sub-Divisional Officer of Ramesanehighat, some important documents including the qabulliat had been weeded out. It was felt that the appeal could Dot proceeded without reference to them and the parties, therefore, agreed that they would file certified copies thereof. The Appellant has now produced copies of some documents but the qabuliat upon which the whole case rests has unfortunately not be been filed by either side.

6. On behalf of the Appellants it has been strenuously argued that since raqam sewai is a cess, it cannot be deemed to be a part of the rent. The argument was presented as a pure question of law and not by way of interpretation of the qabuliat as was done before Kaul, J. Whether or not a charge made by the landlord from his tenant is a cess depends on the facts involved in each case the nature, for example, of the covenant or covenants upon which the claim is founded the kind of produce to which raqam sewai relates its connection with the charge is made. It is therefore difficult to lay down that raqam sweai must in all cases constitute rent or that it must in all cases be regarded as a cess. The cases to which reference was made by the learned Counsel for the Appellants namely, Dip Sing v. Dav(sic) Pershad Singh 4 R.D. 457. Nema Singh v. kulsumum-nissa 1935 R.D. 544. Bashir Ahmad v. Lal Nar Singh Partab Bahardur Singh 1935 R.D. 544, and ploo(sic) v. Iqbal Hussian 1943 R. D. 244., were decided on their own facts. They do not lay down any universal proposition of the kind suggested by the Appellant''s learned Counsel. In the context in which raqam sewai was there agreed upon and claimed it was found to

partake of the nature of cess.

7. On behalf of the Respondents a number of other decisions were cited wherein raqam sewai was held to form part of the rent. As stated above, there can be no hard and fast rule of the kind advocates on Appellant, side and the mere fact that a pay meat is labelled as raqam sewai does not necessarily place it in the category of cess. It may however, be said that where an agreement to pay a sum. (whether it be in cash or in kind) is in tended by the parties to constitute recompense to the landlord for the use and occupation of agricultural land by a tenant it would constitute ''rent'' not withstanding that it is called by the parties by a different name.

8. In the case with which we are concerned, Ganga Prasad stipulated to pay Rs. 288/8/9/- for the grant of the right of cultivating the land in suit. It is immaterial that a portion of it was described by the parties as rent and another portion as raqam sewai payment is lieu of bhusa and pyal was obviously part of the consideration paid periodically on account of the use and occupation of the holding and that is all that matters. It cannot by any stretch of imagination be regarded as customary dues or cesses recoverable from riyayas for meeting village or other expenses or extranesous authorized impositions or levies.

9. By Board Circular No. 1-1 para 27, sewai derived from natural products was added to the rental of the cultivated area at the time of the settlement was taken into consideration in assessing the revenue demand and had to be accounted for in a suit for profits. The rules under the settlement Manual are not shown to be different and it would seem, therefore that the stipulations for payment of '' sewai'' of the kind contained in Ex 1 were in Avadh regarded as agreements for payment of rent. It may be incidentally noticed that there was under the Avadh Rent Act no provision for sanctioning cesses like that in the Agra Tenancy Act. The assessment of the holding of Ganga Prasad during the revision of settlement in 1345 Fasli on the basis of circle rates was, it would thus seem, irrespective of the consideration whether the income was derived from the principal crops or from subsidiary or auxiliary products such as bhusa or Payal. The rates depended on the total yield of the land of each class. They must, therefore, taken to include all that was recoverable from the tenants for its use and occupation. Kunwar Rajendra Bahadur Singh could not in this view be entitled to get anything in excess of Rs 165/- per annum as recompense for the use and occupation of land in suit from Ganga Prasad. The case is in my opinion of the type reported in Rangi Lal v. Jassa ILR 38 All. 286 F.B. Dunni Chand v. Tellu 1943 A.W.R. (Rev.) 321: R.D. 485 Mohammad Ejaz Rasool Khan v. Surju 1944 A.W.R. (Rev) 238:1944 R.D. 457 and Lal Youndra Bhusa(sic) Singh v. Lala I.L.R 22 Luck. 276. The mere fact that in three khatauns(sic) subsequent to 1345 Fasli(sic) a sum of Rs. 16/15/6/- is entered in the column of rent under the head raqam sewai in addition to the assessed rent of Rs. 165/- can scarcely make any difference. This is because there is nothing to show that the entry was made on the basis of any order in the course of the revision of settlement or on account of a fresh, engagement

between the landlord and the tenant.

9. There is no substance in this appeal. I would dismiss it with costs.

Ghulam Hasan, J.

10. I agree.