

(1936) 01 AHC CK 0011**Allahabad High Court****Case No:** None

Narsingh Prasad Singh

APPELLANT

Vs

Puranmashi and Others

RESPONDENT

Date of Decision: Jan. 20, 1936**Acts Referred:**

- Agra Tenancy Act, 1926 - Section 123
- Uttar Pradesh Land Revenue Act, 1901 - Section 55(d)

Citation: AIR 1936 All 459**Hon'ble Judges:** Bennet, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Bennet, J.

This is a second appeal by a plaintiff whose suit has been dismissed by the lower appellate Court. The plaintiff sued in the Court of an Assistant Collector, First Class, for a declaration u/s 123, Agra Tenancy Act, that the defendants were liable to pay the sum of Rs. 273-9-1 annually for their holding as fixed-rate tenants. The plaintiff is the zamindar of the village. The plaintiff had brought a suit for arrears of rent at this rate and only Rs. 270-13-0 have been decreed on the ground that Rs. 2-12-2 was cess payable under the Benaras Family Domains Act, Act 3 of 1904. The word used in that Act is "rate" and the Act provides that the Maharaja of Benares should receive a certain rate from land and that rate should be paid by the tenants to inferior proprietors who could recover it as arrears of rent from the tenants and that the inferior proprietors should pay to the Maharaja u/s 6, Part 2, Act 3 of 1904. The Court below has come to the conclusion that the declaration should not be granted u/s 123, because that section only deals with rent and does not include what the Court is pleased to call "cess". But even on this view it appears to me that the Court is wrong because Section 123(f) states that the suit may be for declaration of "any other condition of the nature required to be specified u/s 55(d), U.P. Land Revenue

Act, 1901." The sub-section states that one of the matters to be specified in the register is "any other condition of the tenure." Now the case for the plaintiff is that it is a condition of the tenure of the defendants that they should make this payment of Rs. 2 odd per annum. Clearly therefore this is a matter which may form the subject of a suit u/s 123, Tenancy Act. Respondent argued that the decision in the rent suit might operate as *res judicata*. That suit was tried by a tahsildar, an Assistant Collector, Class 2, and the present suit is only triable by an Assistant Collector, Class 1, so Section 11, Civil P.C., will not apply. For these reasons I allow this second appeal with costs, and decree the suit of the plaintiff with costs throughout. Permission is not given for a Letters Patent appeal.