

(1957) 02 MP CK 0017
Madhya Pradesh High Court
Case No: C.S.A. No. 484 of 1951

Bankeylal

APPELLANT

Vs

Ghisulal

RESPONDENT

Date of Decision: Feb. 22, 1957

Acts Referred:

- Land Revenue Act, 1917 - Section 159(3)

Citation: (1957) JLJ 496

Hon'ble Judges: G.P. Bhutt, J

Bench: Single Bench

Advocate: J.V. Jakatdar, for the Appellant; M.L. Singhal, for the Respondent

Final Decision: Allowed

Judgement

Bhutt, J.

This is defendant-co-sharer's appeal from the decree for village profits.

2. The suit was instituted by the plaintiff-respondent as lambardar of Mahal No. 2 of mouza Kapurda for the money due by the defendant-appellant as a co-sharer on village accounts for the years 1943-44 to 1946-47. The following points were urged in this appeal namely: ♦

(1) that the plaintiff is not entitled to lambardari hak as It was not fixed by the revenue officers;

(2) that the defendant was not liable for the rental assessment of sir fields Nos. 470 and 472, as

(i) he held them revenue-free on an agreement with the plaintiff's predecessor-in-title, and

(ii) that the fields were not separately assessed to land revenue, and

(3) that the claim for the year 1943-44 was barred by limitation.

Point No. (1) was conceded by the learned counsel for the plaintiff. Points Nos. (2) and (3) are in dispute.

3. Ex. D-1, dated 9th January 1884, is a sale-deed executed by the defendant's father, Ishwariprasad, in favour of Jawaharmal, grand-father of the plaintiff. The parties are the only co-sharers of the mahal. The sale-deed shows that the fields Nos. 103 and 105 were retained by the vender revenue-free. The present number of these fields are 470 and 472. There is, therefore, no doubt that there was an agreement between the predecessors of the parties that the defendant would be entitled to hold the fields revenue-free as against the plaintiff's branch.

4. At the time of the transfer, the C.P. Land Revenue Act of 1881 was in force. u/s 74 thereof, a claim by a malguzar to hold land free from revenue as against the other malguzars of the mahal was a matter to be decided by the Settlement Officer. Under Sec. 152 (b)(9) *ibid* this matter was excluded from the jurisdiction of the Civil Court. A similar provision is contained in Sec. 75 of the C.P. Land Revenue Act, 1917, and the question is excluded from the jurisdiction of the civil Court under Sec. 220 (d) of the Act. It was contended that this provision is not applicable because the agreement was entered into after the 4th of November 1881, which is the date mentioned in Sec. 75. This section however, covers all agreements not excluding those which were entered into before that date. Accordingly this question could not be agitated before the Courts below, It could doubtless be referred to the Deputy Commissioner for decision u/s 106 (1)(f) of the Act, but no application in that behalf was made by the defendant as required by sub-section (3) of Section 75. In these circumstances, the defendant could not claim to hold the fields revenue-free as against the plaintiff.

5. It was contended that as the fields were not separately assessed to land revenue, the lower appeal Court was in error in taking into account a proportionate amount of the land revenue assessed on the home farm of the mahal. Reference is made, in this connection to sub-sec. (3) of Sec. 159 of the Land Revenue Act, 1917. This provision only empowers the parties to get the land separately assessed to land revenue by the Deputy Commissioner, and does not mean that while making village accounts a co-sharer cannot be made liable for land revenue proportionately to the total assessment of the land in a mahal.

6. *Gajadhar Prasad vs. Govind Shankar* ILR (1942) Nag 320 is an authority for the view that the claim for the year 1943-44 was within limitation. The lower appeal Court's finding on the point is therefore, confirmed.

7. Disallowing the plaintiff's claim for *lambardari hak*, the amount due to him is reduced to Rs. 39. The appeal is accordingly partly allowed and the decree of the lower appeal Court is modified by substituting Rs. 39 in place of Rs.76-4-0. Defendant shall pay plaintiff's costs of the Courts below in proportion to Rs.39. Defendant's costs of this appeal proportionate to Rs. 37-4-0 shall be paid by the

plaintiff. Rest of the costs shall be borne as incurred.