

(1879) 05 CAL CK 0003

Calcutta High Court

Case No: None

Bepin Behari Singh

APPELLANT

Vs

The Government

RESPONDENT

Date of Decision: May 29, 1879

Citation: (1880) ILR (Cal) 325

Hon'ble Judges: Tottenham, J; Mitter, J

Bench: Division Bench

Judgement

Mitter, J.

In this case the Munsif awarded a partial decree in favour of the plaintiff, but on appeal the District Judge has reversed the judgment of the Munsif, and has wholly dismissed the plaintiff's suit.

2. The decision of the District Judge is based upon two grounds: In the first place, he is of opinion that, after the lease to the proprietor of the mehal had been cancelled, and the zemindari had been brought under khas management, the Collector had the right to recover the arrears which were due to the proprietor whose lease was cancelled. The second ground upon which the District Judge has dismissed the plaintiff's claim is, that as regards the claim for Rs. 635, the plaintiff has no cause of action, and that the balance was justly recovered by the Government from the plaintiff under a certificate.

3. As regards the first ground of the decision of the lower Appellate Court, we do not think that it is necessary in this case to express any opinion. But we are of opinion that, having regard to the facts found by both the Courts below, the plaintiff cannot maintain this suit to recover back the money which has been paid by him. It appears that the whole of the amount, which has been paid by the plaintiff, is due, either to the Government, or to the proprietor whose engagement had been cancelled. It also appears that the Revenue Officer, who was managing this khas mehal, after the cancellation of the aforesaid lease, issued a certificate to recover the money which is involved in this suit. The plaintiff appealed and objected to the claim made under

that certificate. The Revenue Officer to whom this objection was made, referred the matter for enquiry to a subordinate revenue officer. Upon that the plaintiff appeared before this latter officer, and stated that he would not prosecute his objections. After thus waiving all objections to the proceedings of the Revenue Officer, the plaintiff deposited a portion of the amount sought to be recovered under this certificate in the Munsif's Court in favour of the Government, and that amount was drawn by Government after it was so deposited. The balance of the money due under this certificate was paid by the plaintiff direct to the officer who issued the certificate in question.

4. It appears to us that, under these circumstances, it cannot be said that the plaintiff has been in any way endamaged, or has sustained any injury. The amount recovered from him is admittedly due from him as rent. He was in doubt whether it was recoverable by the proprietor whose lease had been cancelled, or by Government. It is also evident that Government had to receive from that proprietor the revenue which he had defaulted to pay, and which default was followed by the cancellation of the lease. In this state of things the plaintiff being under the impression that the amount in question was justly recoverable by Government, paid in the money. Under these circumstances, the plaintiff is not equitably entitled to recover this amount from Government, simply on the ground that it was not due to Government, but to the proprietor whose lease had been cancelled. If he be compelled to pay it again to the latter, it may be that he would be entitled to be reimbursed by Government. But it is not necessary to express any decisive opinion upon that point, as he has not been compelled to pay it twice over.

5. We are of opinion that the judgment of the District Judge, that upon the facts proved the plaintiff has no cause of action against the Government is correct in law; and we accordingly dismiss the appeal with costs.