

(1926) 03 CAL CK 0044

Calcutta High Court

Case No: None

Dinonath Ghose

APPELLANT

Vs

Official Trustee of Bengal

RESPONDENT

Date of Decision: March 4, 1926

Citation: AIR 1926 Cal 1158

Hon'ble Judges: Walmsley, J; Chakravarthi, J

Bench: Full Bench

Judgement

Walmsley, J.

The defendant prefers this appeal against a decree making him liable for a share in the cost of erecting an embankment. The facts are not in dispute. The plaintiff is zemindar to the extent of nine annas in Mouza Kamdebpur and the remaining seven annas belong to the pro forma defendant. The village is let in patni and the defendant bought the patni in 1912. The costs of erection were ascertained and apportioned in 1909 and 1910, that is, before the defendant acquired his interest under the provisions of Part VI of the Embankment Act (II B.C. of 1882). The plaintiff's share was realized in 1918, and in 1920, he brought this suit to recover from the defendant the amount which he was authorized to recover from the patnidar. The defendants' contention is that the amount should be realized from the former patnidar who owned the interest at the time when the apportionment was made.

2. The question turns upon the terms of Section 74 of the Act. In Section 72 the liability of the estate is clearly defined. The sum is declared to be a first charge on the estate in respect of which it is apportioned. The sections which deal with the zemindar's right of recoupment from the tenure-holders are Section 59, Section 68 and Section 74 in particular. There is no dispute about the making of the order, or the amount, so I need only refer to Section 74, which runs as follows:

Every zemindar...to whom any sum...is payable...may recover the same...in the manner provided for the recovery of arrears of rent, etc.: Provided that the right of

interest of any person holding from the defaulter shall not be affected by any sale held under these provisions.

3. It is argued that the defendant is a person holding from the defaulter and that in consequence he is not liable to pay.

4. It appears to me that this is not a correct interpretation of the section. In the first place, there is no reason why the former patnidar who was never called on to pay should be styled a defaulter merely because he owned the patni when the order of apportionment was made. Secondly, the words "a person holding from the defaulter" appear to refer to persons holding interest subordinate to the defaulter and not to one who has stepped into the place of the former owner by buying the whole of his interest.

5. In my opinion, therefore, the proviso does not protect the defendant. He is now the owner of the tenure, and looking at the nature of the work for which the charge is made, it is reasonable that he should pay. The benefit that arises from an embankment is a continuing one, and it is the completed embankment, and not the embankment in course of erection that confers the benefit. The liability for the proportionate share of the costs attaches to the patni, in whosoever hands it may be, just as in the case of a zemindari it attaches to the estate. The defendant is the owner of the patni, and on that account I think that the decree made against him is correct. It is conceded by the learned advocate for the plaintiff-respondent that the interest should be at five per cent., the rate allowed by the Act, instead of at six per cent. The result, therefore, is that the appeal is dismissed with costs subject to the slight modification that the interest on the amount allowed must be reduced from six per cent to five per cent.

Chakravarthi, J.

6. I agree.