(1920) 08 CAL CK 0065

Calcutta High Court

Case No: None

Raja Bejoy Singh Dudhuria		APPELLANT
	Vs	
Hem Chandra Chowdhury		RESPONDENT

Date of Decision: Aug. 18, 1920

Citation: AIR 1921 Cal 520 : 62 Ind. Cas. 925

Hon'ble Judges: Asutosh Mookerjee, Acting C.J.; Ernest Fletcher, J

Bench: Division Bench

Judgement

Mookerjee, Acting C.J.

1. This is an appeal by the plaintiff in a suit for recovery of money. The plaintiff is the proprietor of two taluks which be holds under the Government; the defendant holds a putni taluk under him created on the 2(sic)th May 1888.

2. It appears that proceedings were taken by the Local Government under Chapter X of the Bengal Tenancy Act, and an assessment was made of the cost of the Cadastral Survey and Settlement in accordance with Section 114. The case for the plaintiff is that he was sailed upon by the Government to pay Rs. 988-7 annas as his proportionate share of the cost. The sum was paid in two instalments, on the 8th August 1916 and 4th October 1916. The present suit was instituted on the 7th January 1918, on the allegation that under the terms of the putni contract the sum paid by the plaintiff to the Government was recoverable by him from the defendant.

3. The defendant denied liability and stated that he himself had paid to Government Rs. 1,442 as his proportionate share of the cost of the Survey and Settlement. It may be stated at the outset that the circumstances that the defendant has paid to Government what was assessed as his proportionate share of the cost of Survey and Settlement does not absolve him from his liability, if any, under the terms of the putni contract: and, the question for decision is, whether under the terms of that contract the sum paid by the plaintiff is recoverable by him from the defendant.

4. The lease, after providing for the payment of the usual cesses, proceeds as follows: "should any tax, toll, rent or whatever sum under whatever denomination be assessed in future, then the same should be paid by the lessee if they were assessed on the two taluks, but it was to be payable to the lessor if the same was assessed not on the taluks but on the lessor''s income." The question in controversy consequently is, whether the sum assessed as payable by the Zemindar u/s 114 of the Bengal Tenancy Act is an assessment on the taluk. It has been in contended on behalf of the appellant that it cannot in any event be regarded as an assessment on the lessor''s income and that consequently it should be treated as an assessment on the taluk. In our opinion this position cannot be maintained. It is conceivable that the contingency which has happened was not anticipated by either party to the putni contract, and the liability which the plaintiff seeks to impose upon the defendant may be altogether outside the ambit of the covenant. In order to succeed, the plaintiff must establish that the sum assessed by Government was assessed on the taluk, so as to make it payable by the lessee to his lessor.

5. Section 114(1) provides that: "When the preparation of a Record of Rights has been directed or undertaken under this Chapter, in any case except where a settlement of land revenue is being or is about to be made, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure, or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the Record of Rights, in the maintenance, repair, or restoration of boundary-marks and other survey-marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direst, shall be defrayed by the landlords, tenants, and occupants of land in that local area, estate, tenure or part, in such proportions, and in such instalments, if any, as the Local Government, having regard to all the circumstances, may determine." If we confine our attention for a moment to the provisions of this subsection, it is plain that the intention of the Legislature was to make the expenses of the proceeding under the Chapter liable to be defrayed, either in their entirety or in part, at the discretion of the Local Government, by the landlords, tenants and occupants of land in that local area, estate, tenure or part thereof, within which the settlement operations have been carried out: and, the question of apportionment amongst the persons so liable to defray the expenses of the proceedings is a matter for decision by the Local Government. Prima facie, then the inference follows that this is an assessment not upon the land but upon certain persons in respect of the land.

6. On behalf of the appellant, it has been argued, however, this distinction is without a difference. We are of opinion that this contention should not be accepted. Questions of a similar character have frequently arisen in England; and it has been repeatedly ruled that there is a distinction between an assessment on land and an assessment on a person in respect of land. Reference may be made, amongst others, to the decisions in Wilkinson v. Collyer (1884) 13 Q.B.D. 1 : 53 L.J.Q.B. 248 : 51

L.T. 299 : 32 W.R. 614 : 48 J.P. 791; Allum v. Dickinson (1882) 9 Q.B.D. 632 : 52 L.J.Q.B. 190 : 47 L.T. 493 : 30 W.R. 930 : 47 J.P. 102 Baylis v. Jiggens (1898) 2 Q,B. 315 : 67. L.J.Q.B. 793 : 79 L.T. 78 : 14 T.L.R. 493 and Floyd v. Lyons & Co. (1897) 1 Ch. 633 : 76 L.T. 251 : 45 W.R. 435 : 66 L.J. Ch. 350. In the first of these cases, the assessment was made on account of improvements effected on the road in front of certain premises and the liability was imposed on the premises which abutted on the road; it was held that this liability was not an assessment on the lands but was an assessment in respect of the premises on persons who either owned or occupied those lands.

7. On behalf of the appellant it has been urged, however, that the provisions of Sub-section (3) of Section 114 indicate that the assessment was on the land. That sub-section provides as follows: The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land revenue due in respect of the said local area, estate, tenure, or p Article " This is of no assistance to the appellant; the expenses do not constitute arrears of land revenue, but are only treated as recoverable as arrears of land revenue. That does not give them the character of land revenue for all purposes. A sum may be summarily recoverable under the provisions of Sub-section (3) of Section 114, and yet may not be a sum assessed on the land. It is not necessary for our present purposes to discuss the scope of Sub-section (3) or to determine the precise effect of a sale under the provisions of that sub-section. We need only observe that considerable complication might arise if effect were to he given to the extended interpretation placed upon Sub-section 3 by the appellant, namely, that the interest of any subordinate tenant who might fail to pay the sum assessed by Government is liable to be sold, with the consequence that the property would pass to the purchaser subject to all the incidents which attach to a property sold under Act XI of 1849 or under that Act read with Act VIII of 1868 B.C. We feel no doubt that sub Section (3), whether it be taken to have a wide or a narrow operation, does not make the expenses an assessment on the land. If it has not that effect, it is clear that the sum payable is a sum assessed on the persons mentioned in Sub-section (1), although the assessment is made in respect of lands in their occupation. In this view, it is clear that the plaintiff has not established that under the covenant in the putni lease, the sum levied from him by the Government is recoverable by him from his lessee.

8. The result is that the decree of the District Judge is confirmed and this appeal dismissed with costs.

Fletcher, J.

9. I agree.