## CIVIL RULE.

*Before Mookerjee and Beachcroft JJ.*

1914

Feb. 2.

# CHANDRA NARAYAN SINGH

*v.*

# ASUTOSH DE.*

*Ghatwali Tenures—Suit for possession—Court-fee—Court-Fees Act (VII of 1870) s. 7, cl. v, sub-cls. (a), (c), (d).*

Where a suit had been brought for recovery of possession of the Ghatwali lands of Rohini and court-fees had been paid under sub-cl. (*a*) of cl. v. of s. 7 of the Court-Fees Act on ten times the revenue alleged to be payable, and the Court below held that sub-cl. (*c*) was applicable and the value of the subject-matter should be deemed to be fifteen times the net profits:

*Held*, that the Ghatwali lands formed part of the estate of the zemindar of Birbhum and the contention that sub-cl. (*c*) was applicable could not be supported.

*Kustoora Kumari* v. *Manohar Deo* (1), *Raja Lilanund* v. *The Government of Bengal* (2), *Munranjan* v. *Raja Lilanund* (3), *Raja Leelanund* v. *Monorunjan* (4), *Lilanand Singh* v. *Munorunjan* (5), *Leelanund* v. *Munranjan* (6) referred to.

*Held*, also, that sub-clause (*d*) was applicable, as the land in suit formed part of an estate paying revenue to Government but did not constitute a definite share of such estate, nor was it separately assessed with revenue. Consequently, the value of the subject-matter must be deemed to be the market value of the land.

RULE obtained by Chandra Narayan Singh, the plaintiff, (petitioner).

The facts are briefly as follows. One Chandra Narayan Singh brought a suit in the Court of the

* Civil Rule, No. 442 of 1913, against the order of J. M. Christian, Subordinate Judge, Deoghar, dated March 25, 1913.

(1) (1864) W. R. 39.
(2) (1855) 6 Moo. I. A. 101, 123.
(3) (1865) 3 W. R. 84.
(4) (1866) 5 W. R. 101.
(5) (1873) 13 B. L. R. 124.
(6) (1877) I. L. R. 3 Calc. 251.

Subordinate Judge of Deoghar for declaration of his title as the ghatwal, and for recovery of possession of five ghatwali mahals known as the Rohini estate. He paid court-fees on ten times the sum payable by the ghatwal into the Collectorate, and valued the suit for the purpose of jurisdiction at a much larger sum, viz., Rs. 3,50,000. The Subordinate Judge directed the plaintiff to pay court-fees on fifteen times the net profits of the property in suit. The plaintiff, thereupon, moved the High Court and obtained the present Rule.

*The Senior Government Pleader* (*Babu Ram Charan Mitra*), for the Secretary of State, defendant No. 1. I submit that the Birbhum Ghatwals, including the ghatwals in suit, do not pay any revenue. They pay rent to the zemindar of Birbhum, but instead of paying the rent directly to him, it is paid into the Collectorate, and the Government deducts the revenue payable by the zemindar and pays the balance to the zemindar. Refers to s. 4 of Reg. 29 of 1814. These Ghatwali mahals are parts of the zemindari of Birbhum. Refers to s. 3 of Regulation 29 of 1814; s. 7, *v.* (*c*) of the Court-fees Act applies to this case.

*Babu Dwarka Nath Chuckerburty* (with him *Babu Nirmal Chandra Chunder*), for the defendant No. 2, supported the arguments of the Senior Government Pleader.

*Babu Naresh Chandra Sinha*, in support of the Rule. The Birbhum ghatwals pay revenue; these ghatwali mahals are separated from the zemindari of Birbhum. Refers to Harington's Analysis, Volume III, pages 509-510; District Gazetteer of the Sonthal Perganas Volume 22, page 219; these ghatwals pay revenue. Refers to s. 2 of Regulation 29 of 1814; s. 7, *v.* (*a*) of the Court-Fees Act applies to this case. The

1914

CHANDRA NARAYAN SINGH v. ASUTOSH DE.

court-fee paid is sufficient. Even if the lands in suit do not form entire estates or definite shares of entire estates, they form part of estates paying annual revenue to Government. Therefore, if the court-fee paid on ten times the sum payable by the Rohini ghatwal into the Collectorate be deemed insufficient, the plaintiff is liable to pay only on ten times the revenue paid by the Zemindar of Birbhum for estate Sarath Deoghar, which, besides a number of other Ghatwalis, includes the Ghatwalis in suit: *Hubibul Hossein* v. *Mahomed Reza* (1).

*Cur. adv. vult.*

MOOKERJEE AND BEACHCROFT JJ. We are invited in this Rule to determine the principle on which court-fees are to be levied on the plaint in the suit instituted by the petitioner for recovery of possession of a Ghatwali estate known as Rohini. The plaintiff contends that the case falls within section 7, clause v, sub-clause (*a*), while the defendant argues that the case is governed by section 7, clause v, sub-clause (*c*) of the Court Fees Act, 1870. The Subordinate Judge has accepted the contention of the defendant as well-founded and has called upon the plaintiff to pay court-fees accordingly. As the question raised is of considerable importance and affects the Government ultimately, we have heard the learned Government pleader in addition to the learned vakils for the parties themselves. To determine the provision within which the case before us falls, it is necessary to examine carefully the terms of the sub-clauses of clause v of section 7 of the Court-Fees Act.

Clause v of section 7 provides that in suits for the possession of land, the amount of fee payable on the plaint shall be computed according to the value of the

(1) (1881) I. L. R. 8 Calc. 192.

subject-matter. Sub-clause (*a*) lays down that where the subject-matter is land, which forms an entire estate, or a definite share of an estate paying annual revenue to Government or which forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue, and such revenue is permanently settled, the value of the subject-matter shall be deemed to be ten times the revenue payable. Sub-clause (*b*) treats of a case similar in all respects with that comprised in sub-clause (*a*), with the difference that the revenue payable in respect of the estate is not permanently settled. Sub-clause (*c*) lays down that where the land pays no such revenue or has been partially exempted from such payment or is charged with any fixed payment in lieu of such revenue and net profits have arisen from the land during the year next before the date of presentation of the plaint, the value of the subject-matter shall be deemed to be fifteen times such net profits; but where no such net profits have arisen therefrom, the value of the subject-matter shall be the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood. Sub-clause (*d*) provides that where the land forms part of an estate paying revenue to Government but is not a definite share of such estate and is not separately assessed as mentioned in sub-clause (*a*), the value of the subject-matter shall be deemed to be the market value of the land. To these sub-clauses is added an explanation that the word "estate" means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government or which, in the absence of such engagement, shall have been separately assessed with revenue. Before we determine which of these sub-clauses governs the case before us, we may state

1914

CHANDRA NARAYAN SINGH v. ASUTOSH DE.

that, according to the plaintiff, the Ghatwali estate in suit pays a Government revenue of Rs. 3,148-12-8 and the plaintiff paid on the plaint, a court-fee stamp of Rs. 995 on ten times the revenue payable, while he fixed the market value of the subject-matter at Rs. 3,50,000 for purposes of jurisdiction. The history of this Ghatwali estate has been explained to us, but need not be set out in detail here for our present purposes, and will be found narrated in the judgment of this Court in the case of *Kustoora Kumari* v. *Monohur Deo* (1). There is no controversy that the land does not form an entire estate nor a definite share of an estate paying annual revenue to Government within the meaning of sub-clause (*a*). To enable us to determine whether the land forms part of such an estate and is recorded in the Collector's Register as a separately assessed with such revenue, we called upon the parties to produce before us a certified copy of the Register in so far as it is relevant to the matter under enquiry. We found that the property in suit, which consists of five Ghatwali mahals, is included in an aggregate of fifty-two Ghatwali mahals for which a sum of Rs. 16,183 is annually payable as *sadar jama*. No apportionment of this sum has been made with reference to the several tenures. It further appears from the Register that a sum of Rs. 22,494 is collected by Government from the fifty-two Ghatwali mahals, out of which the Government retains a sum of Rs. 16,183 on account of *sadar jama* and pays the balance to the zemindar within whose estate the Ghatwali land was originally comprised. The collections from the five Ghatwali mahals in suit amount to Rs. 3,148-12-8. It is consequently plain that this latter sum is in no sense revenue payable in respect of these five Ghatwali mahals; the whole

(1) (1864) W. R. 39.

of this sum is not payable as revenue to Government. As already explained, the larger sum, of which this amount is a component element, is collected by Government, and is retained in part as revenue and made over in part to the proprietor of the estate from which the ghatwali tenures have been carved out. We must hold accordingly that even if the disputed land is deemed part of a revenue-paying estate, it is not recorded in the Collector's register as separately assessed with revenue, within the meaning of sub-clause (*a*). It has been ingeniously argued, however, on behalf of the plaintiff, that he should not be called upon to pay a larger amount as court-fee than what he would have had to pay if he had been the owner of all the fifty-two ghatwali mahals and sued to recover possession thereof. This contention is manifestly fallacious for two reasons, namely, *first*, that the plaintiff cannot avail himself of sub-clause (*a*) unless he brings his case strictly within its terms, and for that purpose the determining factor is the land in suit and not a larger property in which it may be included; and, *secondly*, that even if the plaintiff had sued for recovery of all the fifty-two ghatwali mahals, the question would require careful examination, whether those mahals constitute an estate paying annual revenue to Government. The contention of the plaintiff consequently fails.

As regards sub-clause (*b*), it is plainly inapplicable for the reasons assigned for the exclusion of sub-clause (*a*). As regards sub-clause (*c*), it is clear that before the defendant can successfully rely upon it, he must establish that the land in suit pays no revenue permanently or temporarily settled thereon, or has been partially exempted from such payment or is charged with a fixed payment in lieu of such revenue. This the defendant has failed to establish. On the other

1914

CHANDRA NARAYAN SINGH v. ASUTOSH DE.

hand, the Subordinate Judge has found, on the authority of the cases of *Rajah Lilanand* v. *Government of Bengal* (1) *Munrunjun* v. *Rajah Lelanund* (2), same case on review *Rajah Lilanund* v. *Monorunjun* (3), same case on appeal to the Privy Council *Rajah Lilanand* v. *Munorunjan* (4), *Leelanund* v. *Munrunjan* (5), that the ghatwali lands form part of the estate of the zamindar of Birbhum; this position, indeed, is supported by the fact that a definite amount is collected through the agency of the Government and is divided between the Government and the zamindar of Birbhum. Consequently, the contention of the defendant that sub-clause (*c*) is applicable cannot be supported.

From what has been already stated, it is plain that sub-clause (*d*) is applicable. The land in suit forms part of an estate paying revenue to Government, but does not constitute a definite share of such estate, nor is it separately assessed with revenue. Consequently, the value of the subject-matter must be deemed to be the market value of the land. In paragraph 15 of the plaint, the market value is stated to be Rs. 3,50,000 and the fee payable is Rs. 2,675. As the plaintiff has paid Rs. 995 only, he must be called upon to pay the deficit, namely, Rs. 1,680 within a time to be fixed by the Court below.

The result is that the Rule is made absolute, the order of the Court below set aside and the case remitted to it, so that the direction given in this judgment may be carried out. As the contentions of both the parties have failed, there will be no order for costs.

G. S. *Rule absolute.*

(1) (1855) 6 Moo. I. A. 101, 123.
(2) (1865) 3. W. R. 84.
(3) (1866) 5 W. R. 101.
(4) (1873) 13 B. L. R. 124.
(5) (1877) I. L. R. 3 Calc. 251.