APPELLATE CIVIL.

Before Cuming and Page JJ.

1926
March 18.

INTEZ
v.
DINA NATH DE SARKAR.*

Road Cess—Evidence—Road Cess Returns, if admissible in evidence on behalf of a third party—Road Cess Act (Beng. IX of 1880), s. 95.

Road Cess returns are not admissible in evidence in favour of the person filing them, but they are admissible in evidence on behalf of a third party who is not a party to them.

Imrit Chamar v. *Sridhari Pandey* (1), *Hem Chunder Chowdhry* v. *Kali Prosunno Bhaduri* (2) and *Chatho Singh* v. *Jharo Singh* (3) referred to.

Promode Chandra Roy Choudhury v. *Binayak Das Acharjya Choudhury* (4) explained.

This SECOND APPEAL arose out of a suit for possession. The trial Court decreed the suit for possession to the extent of a fourteen annas share, but the lower Appellate Court reduced the share and decreed eight annas.

Babu Upendra Kumar Roy, for the appellant, contended that the learned Judge was wrong in admitting in evidence the road cess returns against a person who was not a party to them.

Mr. Gopal Chandra Das (with him *Babu Satyendra Kishore Ghose*), for the respondents, contended that the road cess returns in question were admissible in evidence.

*Appeal from Appellate decree No. 238 of 1924, against the decree of N. K. Bose, Additional District Judge of Mymensingh, dated Sep. 13, 1923.

(1) (1911) 15 C. L. J. 7, 11.
(2) (1903) L. R. 30 I. A. 177.
(3) (1911) I. L. R. 39 Calc. 995.
(4) (1922) 27 C. W. N. 548.

1926

INTEZ
v.
DINA NATH
DE SARKAR.

CUMING J. This appeal arises out of a suit for recovery of *khas* possession of certain land on the declaration of the plaintiffs' title thereto. The plaintiffs' case was that the property in dispute belonged to defendant No. 1 who is the father of defendants Nos. 2, 3 and 4. He mortgaged this property to the plaintiffs in 1904. They brought a suit on their mortgage bond, obtained a decree, in 1918 put the property to sale in execution of this decree; purchased it and obtained possession through the Court. It is contended, however, that the defendants in collusion with each other had not allowed the plaintiffs to take possession.

Defendant No. 1 apparently did not contest the suit. Defendants Nos. 2, 3 and 4 who are the sons of defendant No. 1 contended that the lands in suit did not belong to Hanif, the father of defendant No. 1 but belonged to Mohali, the mother of defendant No. 1, and that she made over these lands to defendants 2, 3 and 4 by a *heba beel-ewaj*.

The trial Court decreed the suit in part, and ordered that the plaintiffs' title be declared to the 14 annas of the property claimed, and he gave a decree for *khas* possession thereof.

On appeal to the District Court the District Judge held that the plaintiffs were only entitled to eight annas of the lands in dispute, and he modified the decree of the trial Court accordingly.

Defendant No. 2 has appealed to this Court, and it is contended that the learned Judge was wrong in admitting in evidence a certain document, Exhibit 3, which is an old cess return filed by the co-sharer landlord of the defendants. His case is that the road cess returns are not admissible in evidence at all, and they cannot be used against any person who was not a party to them. In support of his contention he

relies upon section 95 of the Cess Act (IX of 1880 B. C.). Section 95 provides that

"Every return filed by or on behalf of any person in pursuance of the "provisions of this part shall bear the signature and address of such "person or his authorized agent and shall be admissible in evidence against "such person but shall not be admissible in his favour."

In other words the landlord who furnishes a return to the Collector cannot use any statement in the said return in his favour. I do not for one moment challenge the correctness of this statement. But obviously this does not help the learned vakil in his contention. It does not say that a cess return cannot be used by or against a third party who is no party to the preparation of the return.

The learned vakil then relies upon rule 57 in the Bengal Cess Manual which states as follows that

"Under section 95 of the Act no return made under the Act is admis-"sible as evidence against any one except the party submitting it."

The learned vakil contends that this rule was made by the Government under section 182 and has the force of law. The simple answer to this contention is that there is nothing to show that this rule was made under section 182 of the Cess Act. This is merely a rule which finds place in the Cess Manual which is intended for the guidance of the Revenue Officers. These rules are not headed as rules made under section 182. They are headed as rules and orders issued under or with reference to the Cess Act. Further, if it does purport to be made under section 182 of the Act it is clearly *ultra vires*.

The learned vakil in support of this contention has then relied on the case of *Promode Chandra Roy Choudhury* v. *Binayak Das Acharjya Choudhury* (1). In this decision there is the following passage:—

"Now so far as the Road Cess Returns are concerned it is quite clear "having regard to the provisions of the Cess Act that they are not "admissible in evidence at all."

(1) (1922) 27 C. W. N. 548.

1926

ISTEZ
v.
DINA NATH
DE SARKAR.

CUMING J.

The learned vakil would ask us to hold from that statement that these returns made under the Cess Act are not admissible in evidence for any purpose whatever. I do not, however, think that that was what the learned Judges intended. It will appear from a consideration of the facts in that case that the returns in question although filed by the tenant defendant were actually used by the Court in favour of the plaintiff landlord, the person in whose favour the Cess Act has specifically provided that they shall not be used. I think the learned Judges must have meant that so far as that case was concerned they were not admissible for the purpose for which the learned Judge of the lower Court used them; because apparently the only use he made of them was in favour of the plaintiff landlord in whose favour they ought not to have been used under section 95 of the Cess Act. I do not think for one moment that the learned Judges could have meant that they were not admissible in evidence for any purpose whatever, for the learned Judges state that

"Having regard to the provisions of the Cess Act they are not "admissible in evidence at all."

The Cess Act merely provides that they are not admissible in evidence in favour of the person submitting them. That these cess returns are admissible in evidence on behalf of a third party who is not a party to them is clear from the case of *Imrit Chamar* v. *Sirdhari Pandey* (1) where the learned Judges point out that section 95 of the Bengal Cess Act has no application to that case, because it was not the case of a maker of the document, in other words of the landlord using it in his favour, but it was sought to be used in evidence by one stranger against another as has been done in the present case. There is no substance,

(1) (1911) 15 C. L. J. 7, 11.

therefore, in this contention. It is admitted that if section 95 is not a bar the document is otherwise admissible in evidence.

The second point raised by the learned vakil is that the lower Appellate Court has given the go-by to a certain decree in a title suit brought in 1913 by some of the heirs of Tokia in respect of the same land in which title suit it was found that the jote in question belonged to Mohali Bibi. It is hardly correct to say that the learned Judge has given the go-by to a piece of evidence. What he does is to remark that the plaintiffs were not parties to the suit. This is a perfectly correct statement, and probably for that reason he did not attach very much weight to this decision. After all it is a question of weight to be attached to a particular piece of evidence, because it does not appear that the learned Judge entirely disregarded it. He considered it, but did not attach very much weight to it.

The result is the appeal is dismissed with costs. The cross-objection not being pressed is dismissed without costs.

PAGE J. The only point of substance in this appeal is whether certain road cess returns filed under the Road Cess Act (Beng. IX of 1880) were admissible in evidence.

The suit was brought by the mortgagee of the land in dispute who purchased the property in execution of a mortgage decree which he had obtained. The plaintiffs contended that the property in suit formed one of the parcels of the property mortgaged. In support of their claim they filed certain road-cess returns filed by a third person for the purpose of proving that the property in dispute was the subject-matter of the mortgage. It is conceded that the road cess returns were admissible in evidence unless their

1926

INTEZ
v.
DINA NATH
DE SARKAR.

PAGE J.

adduction by the plaintiff was prohibited by section 95 of the Cess Act which runs as follows :—

"Every return filed by or on behalf of any person in pursuance of the "provisions of this part shall bear the signature and address of such person "or his authorized agent and shall be admissible in evidence against such "person but shall not be admissible in his favour."

The learned pleader on behalf of the appellants contended that the meaning and effect of section 95 was that a return filed pursuant to section 95 was admissible against the party making it, but for all other purposes was wholly inadmissible in evidence. He referred in the course of his argument to rule 57 set out in the Bengal Cess Manual, 1919. I decline to refer to such a document for the purpose of construing an Act of the Legislature. The construction which the Court places upon a statutory enactment must depend upon the meaning which the Court attributes to the words which the Legislature has used. The learned pleader in further support of his contention referred to the case of *Promode Chandra Roy Choudhury* v. *Binayak Das Acharjya Choudhury* (1) and in particular cited a passage from the judgment in that case in which the learned Judges observed that

"The Road Cess Returns in question were tendered as exhibits in this "case not on behalf of the plaintiffs landlords but on behalf of the "defendants tenants. Now so far as the Road Cess Returns are concerned "it is quite clear having regard to the provisions of the Cess Act that they "were not admissible in evidence at all; and therefore so far as the "defendants' case is concerned we must leave out of consideration the "road cess returns."

In my opinion, when read in connection with the context in which they appear these observations cannot be regarded as an expression of opinion that except as against the person making the returns road cess returns for all other purposes are inadmissible in evidence. It appears from the case as reported

(1) (1922) 27 C. W. N. 548.

that the road cess returns in *Promode Chandra Roy Choudhury's* case (1) were tendered by the tenants. It may be so, but they were used solely by the learned Judges of the lower Court in that case as evidence in favour of the landlords who had made the returns. Both the lower Courts had decided the case in favour of the landlords upon the ground that although the quinquennial register was not of sufficient weight to rebut the presumption arising from the entry in the record-of-rights, the quinquennial register taken together with the road cess returns was enough to turn the scale in favour of the landlords. What the learned Judges in that case must be taken, I think, to have held, and intended to hold, was that it was not open to the lower Courts, having regard to the terms of section 95 of the Cess Act, to consider what weight ought to be attached to the road cess returns, because for the purpose for which they were used the road cess returns were not a matter which under section 95 it was permissible for the Courts to take into consideration. In my opinion, the effect of section 95 of the Cess Act is to prohibit the admissibility of the returns when tendered in favour of the person filing it; and it has, and was intended to have, no other effect whatever. Provided that such a return does not offend against section 95, in my opinion, the returns may be adduced in evidence if otherwise they are admissible under the Indian Evidence Act: see *Hem Chunder Chowdhry* v. *Kali Prosunno Bhaduri* (2), *Chatho Singh* v. *Jharo Singh* (3).

In my opinion, there is no substance in this appeal which must be dismissed.

B. M. S. *Appeal dismissed.*

(1) (1922) 27 C. W. N. 548. (2) (1903) L. R. 30 I. A. 177.
(3) (1911) I. L. R. 39 Calc. 995.