APPELLATE CIVIL.

Before Rankin C. J. and C. C. Ghose J.

DHIRENDRA NATH DEB

v.

DHARANI MOHAN ROY.*

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Feb. 16.

Cess—Assessment, basis of—Whether total land cultivated or different jamas to be the basis—"Cultivating raiyat," meaning of—Cess Act (Beng. IX of 1880), s. 41.

When a person holds more than one *jama* and pays a total rent of more than Rs. 100, he is for the purpose of assessment of cess under the Bengal Cess Act, 1880, a holder of a tenure.

The fact that a person is a *raiyat* and actually cultivates land does not make him a "cultivating *raiyat*" for the purpose of the Cess Act.

APPEAL FROM APPELLATE DECREE on behalf of the defendants.

This appeal arose out of a suit for the recovery of arrears of cesses in respect of 29 small tenancies, the total of the annual rents of the tenancies being Rs. 126-14. It was alleged that under the last revaluation, the defendants were liable to pay Rs. 12-9-9, in excess of ordinary cesses calculated at 6 pies in the rupee.

The defence *inter alia* was that the additional cesses claimed by the plaintiff were not recoverable and that the Collector had no jurisdiction to make a joint valuation of several tenancies. Objection was also taken on the ground of special limitation attracted by the deposit of cesses made by the defendants.

*Appeal from Appellate Decree, No. 2343 of 1925, against the decree of Jatindra Chandra Lahiri, Subordinate Judge of 24-Parganas, dated June 19, 1925, reversing the decree of Amrita Lal Banerjee, Munsif, Diamond Harbour, dated March 16, 1923.

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The Munsif found that the joint valuation made by the Collector was without jurisdiction, that consequently the claim for additional cesses was not maintainable and that the claim for 1326 B. S. was time-barred. The suit having been entirely dismissed, the plaintiff appealed. The only point for determination in the appeal in the Court below was whether the plaintiff was entitled to recover cesses at the cess valuation rate claimed in the plaint for the years 1325, 1327 and 1328 B. S. The appeal was allowed by the Subordinate Judge.

Hence this appeal by the defendants.

Babu Pyari Mohan Chatterji (with him *Babu Gurudas Mukherjee*), for the appellants. The tenants are cultivating *raiyats* within the meaning of section 4 of the Cess Act, and were accordingly liable to assessment at a much lower rate than tenure-holders. The tenants held different holdings and paid rent for each of them at much below Rs. 100, and consequently they were to be assessed as indicated in clause (3) of section 41 of the Cess Act. The Collector was not entitled to amalgamate separate holdings and fix a cess for such amalgamated holdings, holding that the tenants were not cultivating *raiyats*, but tenure-holders, because they paid in the aggregate a sum exceeding Rs. 100 as rent for the 29 holdings taken together. One suit may lie for several holdings, but a number of *raiyati* holdings cannot be lumped up to form a tenure. Supposing some one buys one of the *raiyati* holdings, will he have to pay cesses for the imaginary amalgamated holding?

Further, the plaintiff was estopped from questioning the status of the tenant-defendants as cultivating *raiyats* as in the return filed by the plaintiff under section 17 of the Act, the tenants had been described as cultivating *raiyats*.

[GHOSE J. See section 26 of the Cess Act. A *raiyat* may be taken as a tenure-holder. Has the Collector acted under this section?]

Perhaps not.

I was recorded and rightly recorded a "cultivating *raiyat*". But in the final stage, when it was found that the total area was more than 100 bighas, he assessed as a tenure. The papers of the final valuation are in the record.

[GHOSE J. There should be an order on record that the Collector changed your status.]

There is none. The respondent should show that such an order was passed, as he takes shelter under a supposed statutory provision.

The facts have not been properly investigated by the lower Appellate Court. Tenant No. 84 has only 81 bighas and not 100 bighas.

Consolidation of a number of separate *raiyati* holdings cannot alter the nature of the tenancies.

See *Manmoth Nath Mitter* v. *Anath Bandhu Paj* (1), which is a case under the Bengal Tenancy Act, but the principle applies. Cess is realized also in suits under the Bengal Tenancy Act and the present suit is also described as a suit for rent.

Look at rule 10 of the Board. That is also the general law. See *Ashanullah Khan Bahadur* v. *Trilochan Baychi* (2).

Babu Mrityunjay Chatterji (with him *Babu Biraj Mohan Ray*) for the respondent. The ruling cited by the appellants had no application to the present case. Amalgamation of different tenancies cannot alter their nature for the purposes of the Bengal Tenancy Act, because different incidents under that Act would attach to different kinds of tenancies. The different classifications of persons holding lands under

(1) (1918) 23 C. W. N. 201. (2) (1886) I. L. R. 13 Calc. 197.

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the Cess Act were merely for the purpose of calculation of cess, and the terms "cultivating *raiyats*" and "holders of tenures" under the Cess Act meant entirely different things. A tenant under the Cess Act was not a "cultivating *raiyat*" merely because he cultivated the soil. Such a tenant remained a "cultivating *raiyat*" so long as he paid rent less than Rs. 100 for the land he cultivated. The moment it was found that the tenant cultivated lands for the total quantity of which he paid rent in excess of Rs. 100, he was liable to assessment on the basis that he was a tenure-holder within the meaning of section 4 of the Cess Act, and his assessment would be guided by section 41, clause (2) of the Act. Otherwise the very object of the Act, which is to offer some protection to small cultivators, would be frustrated by people trying to get round the provisions of the Act by taking settlement of various small tenancies, paying rent for each of them at less than Rs. 100, though in the aggregate rent is paid much in excess of Rs. 100. Rule 66 of the rules framed under the Cess Act showed that there was no option in the matter, but that persons paying more than Rs. 100 as rent are not to be considered as cultivators, but as tenure-holders. So the mere fact that the landlord described the tenants on the footing that they were cultivating *raiyats* was of no avail to the tenants, for the Collector, after the submission of a return under section 17, was entitled under section 26 to correct the description of the tenant in accordance with the directions contained in rule 66.

Babu Piyari Mohan Chatterji, in reply.

RANKIN C. J. In this case, the appellants are interested in each of the 29 tenancies under the plaintiff. The plaintiff brought his suit for extra cesses due to him from the defendants in the following

circumstances. It appears that the plaintiff made a return as required under section 17 of the Cess Act and in that return he described the defendants on the footing that they were cultivating *raiyats* within the meaning of the Cess Act. Thereupon, that return having been scrutinised by the Collector, the Collector issued a notice under section 24 upon the defendants requiring them to make a return. They said that they made a return and I am satisfied that, thereupon, action was taken by the Collector to put the defendants' names on the Cess Valuation Roll in part III. It appears that they were described as tenure-holder No. 84 and to that number the names of the defendants were supplemented. On that basis the plaintiff brought his suit, because the plaintiff having hitherto got cesses from the defendants on the footing that they were cultivating *raiyats* properly entered in part II of the Cess Valuation Roll, now claims that as he has to pay Government cesses on the basis that these defendants were not cultivating *raiyats* he was entitled to the balance from the defendants. These facts are not disputed and the only question which is raised in this appeal is the important question whether or not the defendants come within the definition of a cultivating *raiyat* as used in section 4 of the Cess Act—Act IX of 1880.

Now, if one looked at the scheme of that Act, one would find in section 41 that the amount of the cesses payable in respect of lands, depends upon certain things. One particular rate is payable by every holder of an estate. Then every holder of a tenure has to pay to the holder of the estate or tenure within which the land held by him is included, the entire amount of the road cess and public works cess calculated in a certain way. Every cultivating *raiyat*

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has to pay to the person to whom his rent is payable one half of the road cess and public works cess calculated in a certain way. There can be no doubt that a person who is a cultivating *raiyat* can only be assessed in a less onerous manner as regards rate than if he were a holder of a tenure as defined by the section. The question is whether the defendants come under the definition of "cultivating *raiyats*" and are entitled to the privilege of coming under the 3rd clause of the section.

Now the point is this, that these defendants are interested in 29 different *jamas*, the total rent of which amounts to more than Rs. 100. They say that they themselves cultivate lands of each of those 29 holdings. They say that as in respect of none of the holdings which they cultivate, they pay a rent exceeding Rs. 100, they are cultivating *raiyats* and, therefore, although the total rent of the 29 such holdings exceeds Rs. 100, they are entitled to the privilege of paying road cess in the manner prescribed in the third clause of section 41. Now to my mind that is not so. One has to remember first of all that while these defendants may be *raiyats* and may actually do cultivation, that does not make them cultivating *raiyats* for the purpose of the Cess Act. A cultivating *raiyat*, according to the definition in the Act, means a person cultivating lands and paying rent therefor not exceeding Rs. 100 per annum. There is, therefore, no argument to be based upon the fact that these peoples' holdings are *raiyati* holdings or upon the fact that they themselves are cultivators. One has to see whether they come within the definition of a "cultivating *raiyat*". If they do not themselves cultivate, it is clear from the definition of a tenure-holder that they are treated by the Act as tenure-holders. For that purpose one has

to make up one's mind whether or not persons may cultivate lands to a large extent and remain cultivating *raiyats* provided they hold the lands in separate holdings. The intention of the Act is to look at all the lands the person in question cultivates and if he is a cultivator—a small cultivator in the sense that his rent does not exceed Rs. 100—then he is given the privilege of a cultivating *raiyat*. Looking at the way in which the Act is framed, it seems to me that it would be unworkable unless this Act intended to have regard to the total land which is cultivated by the individual claiming those privileges. It seems to me idle to make a maximum of Rs. 100 if that is to apply to an individual holding. It makes no difference to the policy of this Act whether a man has ten holdings or one holding. The object of the Act is not to compel people to sub-divide holdings unnecessarily. The Act intended to treat leniently a person who is an actual cultivator of the soil, provided he is not paying a rent of more than Rs. 100, that being the limit within which that privilege can safely be granted. In my judgment the rent of Rs. 100 must be taken as applied to the whole of the land which is cultivated by the person in question. In this case we know that the defendants cultivate lands, but for the lands they cultivate they pay altogether a rent exceeding Rs. 100. I think, therefore, that the reasoning of the Subordinate Judge is in accordance with the intention of the Statute. He says: "No "doubt cesses are assessed on lands, but in the case of "persons payings more than Rs. 100 as annual rent, "the assessment is on the basis applicable to tenures". When a person holds two *'amas*, paying a total rent of more than Rs. 100, he is for the purposes of assessment, a holder of a tenure: That seems to me to be the correct determination of the point in dispute in

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this case. The point is not particularly clear and, speaking for myself, I am much obliged to the learned vakils for their arguments. In my opinion the intention of the statute is the intention which the learned Subordinate Judge imputes to the Statute. In my opinion this appeal should be dismissed with costs.

RANKIN C. J.

GHOSE J. I agree.

S. M. *Appeal dismissed.*

APPELLATE CRIMINAL.

Before Rankin C. J. and C. C. Ghose J.

KERAMAT ALI

v.

EMPEROR.*

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Feb. 20.

Prosecution—Order to prosecute—Contradictory evidence—When enquiry to be directed—Criminal Procedure Code (Act V of 1898), s. 476—Penal Code (XLV of 1860), s. 193.

To prosecute people, because they give evidence which is contradictory merely on the basis of that contradiction, is a very doubtful procedure.

It is only where a Court is expressly of opinion that "it is expedient "in the interests of justice that an enquiry should be made" into the offence of giving false evidence that an order under s. 476 of the Code of Criminal Procedure can be made.

CRIMINAL APPEAL.

The appellant was a witness for the prosecution in a case before the Sessions Judge of Noakhali. The Sessions Judge, after the termination of the trial, lodged a complaint before the Subdivisional Magistrate

*Criminal Appeal, No. 630 of 1927, against the order of K. C. Chunder, Sessions Judge of Noakhali, dated June 4, 1927.