APPELLATE CIVIL.

Before Mukerji J.

1932

Nov. 23.

MOHANTA BHAGAWAN DAS

v.

BHUPENDRANARAYAN SINGHA.*

Cess—Rents—Râjashwa—*Bengal Tenancy Act (VIII of 1885), s. 3, sub-s. (5).*

The word "*râjashwa*" is wide enough to include cess payable under the Cess Act.

With reference to cess, which is not really payable to Government and which the Government does not at all appropriate for its own purposes but which is wholly used and appropriated for the purpose of the District Board,

held that it is the Government that imposes the cess and, if under the law it has got to be appropriated to definite purposes, which had been assigned to a particular public body, still the imposition must be taken as an imposition by the "*hâkimân*".

Bhupendra Narayan Singha v. *Midnapur Zamindary Company Limited* (1) followed.

Nawab Bahadur of Murshidabad v. *Bhupendra Narayan Sinha* (2) referred to.

The definition of "rent" as contained is section 3, sub-section (5) of the Bengal Tenancy Act is sufficiently wide to include cesses, which are payable by the tenant to the landlord as a consideration for the use and occupation of the lands of the tenancy.

SECOND APPEAL by the defendant.

The facts and arguments appear fully in the judgment.

Gunadacharan Sen and *Prasantabhooshan Gupta* for the appellant.

Seetaram Banerji and *Prakashchandra Basu* for the respondent.

*Appeal from Appellate Decree, No. 1866 of 1930, against the decree of H. G. S. Bivar, District Judge of Murshidabad, dated March 17, 1930, affirming the decree of Taraneekanta Nag, Munsif of Lalbag, dated April 30, 1929.

(1) (1922) 37 C. L. J. 556. (2) (1927) 46 C. L. J. 527.

1932

Mohanta Bhagawan Das v. *Bhupendra-narayan Singha.*

MUKERJI J. This appeal has been preferred by the defendant in a suit, which was instituted by the plaintiff—Raja Bhupendranarayan Singha Bahadur —for recovery of excess cess in respect of a certain *patni mehâl* for four years together with damages, on the basis of certain terms in a *kabuliyat*, under which the defendant holds the same. The suit has been decreed by both the courts below.

A preliminary objection was taken as regards the maintainability of the appeal on the ground that the suit, out of which this appeal has arisen, was a suit for recovery of money and that, therefore, no Second Appeal lay. This preliminary objection, if it succeeds, would land the respondent at once into two difficulties, of which one is a question of defect of parties and the other is the question of limitation so far as one year's cesses are concerned. It may be stated here that the respondent's position in the courts below was that what was claimed was not money but rent and in that way he was able to ward off the two contentions, as regards defect of parties and limitation, that were levelled against him by the defendant. The appellant, also, equally contrary to what his case in the courts below was, contends that the suit was a suit for recovery of rent and not for recovery of money and that for that reason he is entitled not only to maintain the appeal but also to put forward the aforesaid contentions, together with an additional contention, which was also put forward by him, as regards the interpretation of the clause in the document, upon which the plaintiff relies. The latest decision relevant to the question, as to whether a suit of this nature is a suit for money or a suit for rent, is a decision of this Court in the case of *Nawab Bahadur of Murshidabad* v. *Bhupendra Narayan Sinha* (1), but in that case no very clear decision appears to have been pronounced on this question. On the other hand, there is a very clear decision in an earlier case, namely, the case of *Bhupendra Narayan Singha* v. *Midnapur Zamindary Company Limited* (2) directly

(1) (1927) 46 C. L. J. 527. (2) (1922) 37 C. L. J. 556.

bearing upon this question. There, the suit was instituted upon a *kabuliyat*, the terms of which were very similar to the terms of the document in the present case and the relief claimed in the suit was exactly of the same description, and in the appeal, which was preferred in that case, a preliminary objection was taken as regards its maintainability. In that case, it was held that, although the suit related to recovery of excess cess, the suit was a suit for rent, the learned Judges observing that rent as defined in the Bengal Tenancy Act includes cesses and the dispute, between the parties to the suit in that case, was a dispute as to the "rent". The definition of "rent" as contained in section 3, sub-section (*5*) of the Bengal Tenancy Act, in my opinion, is sufficiently wide to include cesses which are payable by the tenant to the landlord and as a consideration for the use and occupation of the lands of the tenancy. I am not prepared to put a narrow construction upon that definition and I think, I must hold, agreeing with the courts below, that the present suit was a suit for rent. The suit does not offend the provision of section 153 of the Bengal Tenancy Act and, therefore, a Second Appeal is competent. That being the position, two of the contentions of the appellant, namely, the one as regards limitation and the other as regards defect of parties, cannot prevail for the simple reason that, in a suit for rent the plaintiff is entitled to include rent for four years and that the name of the plaintiff, having been registered under the provisions of the Land Registration Act, he was perfectly entitled to institute the suit alone and maintain the action. It may also be stated here that the defendant's case that the plaintiff has got a son is not sufficiently specific, inasmuch as it has not been proved that, at the date when the suit was instituted, the son had been born.

The third contention, namely, the one relating to the interpretation of the clause in the document aforesaid certainly requires consideration. There again, the terms of the *kabuliyat* in the case of

1932

Mohanta Bhagawan Das v. *Bhupendra-narayan Singha.*

Mukerji J.

Bhupendra Narayan Singha v. *Midnapur Zamindary Company Limited* (1), so far as may be gathered from the report, were very similar to those of the document in the present case. It was held in that case that the word "*râjashwa*", which was used in that document, is wide enough to include cess payable under the Cess Act. I have considered the terms of the whole of the document, which has been placed before me, and I am fully in accord with what was said by the learned Judges in the other case, namely, the case of *Bhupendra Narayan Singha* v. *Midnapur Zamindary Company Limited* (1). Mr. Sen has contended that a different interpretation should be put upon this document, because the imposition that has been made is an imposition of cess, which is not really payable to Government and which the Government does not at all appropriate for its own purposes but which is wholly used and appropriated for the purpose of the District Board. That, in my opinion, makes no difference. It is the Government that imposes the cess and, if under the law, it has got to be appropriated to definite purposes, which had been assigned to a particular public body, still the imposition must be taken as an imposition by the *hâkiman*, which is the word used in the document. On the whole, I find no reason to dissent from what was held by Mr. Justice Richardson in the case referred to above.

In my opinion, the decisions, arrived at by the court below, are correct. The appeal, accordingly, must be dismissed with costs.

The application for revision is rejected.

Leave to appeal under the Letters Patent has been asked for, but I do not consider that it is a fit case in which such leave should be granted.

Appeal dismissed.

G. S.

(1) (1922) 37 C. L. J. 556.