

APPELLATE CIVIL.

Before Mukerji and Bartley JJ.

GORACHAND BARHAL

v.

MOHITKRISHNA KUNDU.*

1932

May 25,
June 1.

Cess—Basis of calculation—Cess Act (Beng. IX of 1880), ss. 34, 37, 41 (2).

Basis of calculation of the cess payable by a tenure-holder, under section 41 (2) of the Cess Act, is the cess valuation-roll, and not the amount of rent actually paid by him.

Where the rent of a tenure varies, so as to affect the liability to pay cess, as between the tenure-holder and his superior, the remedy of the latter is to get the valuation given in the valuation-roll altered.

APPEAL by the plaintiffs.

The material facts of the case appear from the judgment.

Bijankumar Mukherji (with him *Manilal Bhattacharjya*) for the appellants. The amount of cess payable by a tenure-holder is to be calculated in accordance with the provisions of section 41 (2) of the Cess Act. The said section says that the tenure-holder is to pay the entire amount of cess calculated on the annual value of the tenure, less a deduction to be calculated at one half the cess rate for every rupee of the rent payable by him for such tenure. The words "rent payable by him for such tenure" clearly indicate that the deduction is to be calculated on the actual amount of rent paid by the tenure-holder and not on the amount of rent shown as payable in cess valuation-roll. So, the rent actually payable by the tenure-holder should be the basis of calculation of cess and not the cess valuation-roll as

*Appeal from Original Decree, No. 58 of 1929, against the decree of Hemchandra Das Gupta, Third Subordinate Judge of 24-Parganas, dated Nov. 9, 1927.

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observed by the learned trial court. Otherwise in a case where the rent varies the superior landlord may have to suffer loss.

No one appeared for the respondents.

Cur. adv. vult.

MUKERJI AND BARTLEY JJ. This appeal is against the decision of the lower court as to the amount of cesses payable by the respondents. The material facts are that the latter hold a tenure under the plaintiff appellants, the area of which was found, on measurement, in the year 1893, to be 2,102 *bighās*. The rent of this tenure was fixed at Rs. 1,511 in accordance with the terms of the contract between the parties, and, in the valuation-roll prepared under the Cess Act, the annual value of the tenure is entered as Rs. 3,913, and the rental as Rs. 1,511.

In 1911, the defendants, respondents here, sued for abatement of rent on the footing that a large area of the tenure had diluviated. The suit was carried to the Privy Council, and in 1922, a decree passed under which the rent was reduced to Rs. 1,256-10-8¼.

Plaintiffs have now claimed arrears of rent and cesses for the years 1329 to 1332 B.S. at this rate of Rs. 1,256 odd, but allowed a deduction under section 41, clause (2) of the Cess Act on the basis of that figure, and not on the basis of the figure, Rs. 1,511, which is actually shown in the cess valuation-roll. The practical result is that they claimed from the defendants Rs. 205-4-18½ as cess, instead of Rs. 197-6, the amount payable according to the figures given in the valuation-roll.

The Subordinate Judge has held that they are entitled to recover only the smaller amount. He has said in effect that the courts cannot go beyond the valuation-roll, and that, until that roll is altered by the revenue authorities, it must be accepted as the basis of calculation for the determination of the cess actually payable. Hence the present appeal.

The question is one of first impression, and it is conceded that there is no authority to guide us. The actual wording of section 41 (2) of the Cess Act is that the tenure-holder pays the entire amount of cess calculated on the annual value of the tenure, less a deduction to be calculated at one half the cess rate for every rupee of the rent payable by him for such tenure. At first sight it might seem that this means the rent actually payable for the tenure, irrespective of what is stated in the valuation-roll, and that there is a certain amount of inequity involved in allowing a deduction on the rent given in the valuation-roll, when a smaller amount is really payable or actually paid. But a careful reading of the provisions of the Act seems to us to indicate that its policy is to apportion the liabilities of the various parties on the basis of the valuation-roll, and that the superior is merely a conduit-pipe through which the contribution of the inferior ultimately passes to the Government. The annual value of an estate or tenure is ascertained either on the returns made by the parties themselves or arbitrarily by the Collector, and it is the duty of the latter, under section 34 of the Act, to note the amount of revenue on which the deduction specified in section 41 is to be calculated. Similarly, it is the duty of the owner of the estate to make a return of the tenure-holders under him, and of the rents which they pay. On the basis of that return, the deduction allowable under section 41 (2) of the Act is entered in the valuation-roll. Where the rent of a tenure varies, as it has done in this case, so as to affect the liability to payment of cess as between the tenure-holder and his superior, it is open to the latter to proceed under section 37 of the Act and have the valuation altered. Where, as in this case, the area of the tenure has decreased since its inception, its valuation presumably alters as well as the rent payable by the tenure-holder.

Since the liability to pay cess, as between landlord and tenure-holder, depends as much on the valuation of the tenure as on the rent payable for it,

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we are of opinion that, so long as the annual value remains unchanged, the cess payable by the holder of the estate remains unaltered. A part of that cess he realises from the tenure-holder under section 41 (2), but to allow him to increase the tenure-holder's contribution when the rent but not the valuation alters, is to enable him to make an indirect profit in contravention of the principles of assessment on which the valuation-roll is based.

The roll itself suggests that this view is the correct view. Column 4 is headed "Revenue or rent "or *chaukidari* tax on which abatement is to be "allowed under section 41". In this column the rental figure is given as Rs. 1,511.

We think the Subordinate Judge has taken the right view of the matter and we, accordingly, dismiss this appeal. There has been no appearance for the respondents and there will be no order as to costs.

Appeal dismissed.

S. D.