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JAGAN NATH v. AJUDHIA SINGH.

BY THE COURT:—The order of the Court is that we allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate court with costs of both hearings in this Court.

Appeal allowed.

1912. *July*, 17.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

SIS RAM AND OTHERS (DEFENDANTS) v. ASGHAR ALI (PLAINTIFF)*

Landholder and tenant —Agreement to deliver agricultural produce over and above cash rent—Cess—Agreement opposed to public policy.

Certain tenants holding under a registered qabuliat agreed therein to deliver to their landlord, over and above the sum specified as a money rent, certain agricultural produce, and further to supply the landlord with a cart and bullocks "when necessary" and in default the landlord might claim the cash value of the said dues along with the rent. *Held*, on suit by the landlord to recover the cash equivalent of such dues for several years, that the covenant in question was for various reasons unenforceable. *Abdul Hai* v. *Nathua* (1), *Sadanand Pande* v. *Ali Jan* (2) and *Sheoambar Ahir* v. *The Collector of Azamgarh* (3) referred to.

This was a suit to recover the money value of certain zamindari dues alleged to be realizable from the defendants under the following circumstances. The defendants were tenants of the plaintiff, holding under a registered *qabuliat*, by which they agreed to pay a certain rent in cash. Besides the payment of rent, they agreed to deliver to the plaintiff annually certain agricultural produce and to provide the plaintiff with a cart and bullocks "when necessary." In default the plaintiff might claim the cash value of the said dues along with the rent. The suit was filed in the court of a Munsif, who dismissed it. On appeal the District Judge remanded the case to the court of first instance, acting under sections 196 and 197 of the Agra Tenancy Act, 1901. Against this order of remand the defendants appealed to the High Court.

Mr. *D. R. Sawhny*, for the appellants.

Maulvi *Ghulam Mujtaba* and Maulvi *Shafi-uz-zaman*, for the respondent.

MUHAMMAD RAFIQ and PIGGOTT, JJ.:—In this case, the plaintiff is the landholder and the defendants are the tenants of

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*First Appeal No. 42 of 1912 from an order of C. H. Guiterman, Additional Judge of Meerut, dated the 15th of December 1911.

(1) (1903) I.A. L. J., 537. (2) (1910) I. L. R., 32 All., 193.

(3) (1912) I. L. R., 34 All., 358.

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certain land. The conditions of the tenancy are determined by a registered *qabuliat*, dated January the 3rd, 1907. By this instrument the defendants contracted to pay to the plaintiff for the use and occupation of this land an annual rent of Rs. 99, and they further contracted that they would also render to the plaintiff certain zamindari dues (*rasum zamindari*) which are set forth in detail, and that in the event of their failing to do so, the plaintiff might claim the cash value of the said dues along with the rent. It may be convenient at once to state what these dues were. The defendants were to deliver to the plaintiff annually 1 jar containing treacle or raw sugar, 25 bundles of cattle fodder, 2 bundles of *bhusa*, 4 jars containing sugarcane juice, 1 basket-load of cow-dung cakes, and 5 *pakka* seers of hemp. The defendants further undertook to give the plaintiff the use of a cart and bullocks "when necessary." We are not concerned in this case with the payment of the cash rent of Rs. 99. Either it has been paid, or at any rate it is not claimed in this suit. The suit as brought appears to be one for damages for breach of a contract in writing registered. It claims the cash value for five years of these zamindari dues which, it is alleged, the defendants failed to render though bound under contract to do so. The plaint itself suggests no basis of valuation in respect of the vague agreement to supply a cart and bullocks "when necessary," but the damages for breach of this stipulation are stated at Rs. 15. In respect of the remaining articles which the defendants contracted to supply, the claim appears to be for their cash value at certain rates. The court of first instance, the Munsif of Muzaffarnagar, framed four issues, the first two of which were whether the suit is in fact one for recovery of cesses, and therefore not maintainable by reason of the provisions of sections 56 and 86 of the United Provinces Land Revenue Act, Local Act No. III of 1901, and whether the suit is not cognizable by the civil court. Having found against the plaintiff on each of these issues, the Munsif dismissed the suit. On appeal the learned District Judge held that the suit was essentially one for arrears of rent. He held further that it ought to have been filed as a suit for arrears of rent in the court of an Assistant Collector, and that by reason of the provisions of sections 196 and 197 of the Agra Tenancy Act, Local Act No. II of

1901, it was incumbent upon him to deal with the suit on its merits. He, therefore, remanded the case for trial of the remaining issues, and in the exercise of the discretion conferred upon him by section 197 aforesaid, he addressed his order of remand to the court of the Munsif. The defendants come to us in appeal against this order of remand. It is contended on their behalf that this is not a suit to which sections 196 and 197 of the said Act apply, and further that in any case the suit is one for the recovery of cesses, and that the Munsif's order dismissing the same should be maintained. We have heard arguments at considerable length on both points. In respect of the first point, we are content to remark that if we could have accepted the view of the learned District Judge as to the nature of the suit, we should have been prepared to hold that he had jurisdiction to deal with it under the sections of the Agra Tenancy Act already referred to. We are, however, of opinion that the other ground taken in appeal must prevail, and that the Munsif's order dismissing the suit was right. The learned District Judge says that this must be regarded as a suit for arrears of rent, because there is nothing to prevent a tenant from contracting to pay a portion of his rent in cash and another portion in kind. This view of the case is open to objections on various grounds. As a matter of fact, the contract before us is not one to pay a portion of the rent in cash and another portion in kind. There is nothing in the terms of the contract to suggest that the various articles which the defendants undertook to supply were to be the produce of the fields in suit. The cow-dung cakes certainly could not be the produce of their fields, nor had the covenant regarding the cart and bullocks anything to do with the produce of the fields. Nor would it be possible to understand the contract of lease as a whole as binding the defendants to cultivate sugarcane or hemp every year on some portion of the land in order to supply the products of such cultivation to their landholder. Moreover, the suit as brought was not a suit for arrears of rent. The covenant, if enforceable at all, was enforceable according to its terms, namely, that the cash value of the zamindari dues was to be claimed along with the rent. The fact that the plaintiff failed to do this, and endeavoured to bring his case before the court on a different basis, shows that he was

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conscious of some inherent weakness in his position. That weakness was undoubtedly an apprehension on his part that rent courts at any rate would treat his suit as a claim for cesses and nothing else. We would refer to Mr. M. L. Agarwala's valuable Commentary on the United Provinces Land Revenue Act (No. III of 1901), under section 56 of the said Act, for an elaborate discussion of the question of cesses in these provinces. The term is nowhere defined, and its meaning has been the subject of discussion by this Court in various reported cases. We may refer to *Abdul Hai* v *Nathua* (1), *Sadanand Pande* v. *Ali Jan* (2) and *Sheoambar Ahir* v. *The Collector of Azamgarh* (3). It is clear that the cesses referred to in section 56, aforesaid, cannot be payments for some purpose of public convenience such as were suggested by a Judge of this court as consonant with the primary notion of the word "cess" in the first of the rulings above referred to. Taking the words of the contract between the parties as they stand, the position seems to us fairly clear. The plaintiff in this case was giving the defendants a perpetual lease of certain land at a cash rent, and no doubt felt that in so doing he was conferring something of a favour. He had, or conceived himself to have, a claim for certain customary dues payable by his tenants on account of the occupation of the land, dues which are of the nature of rent and payable in addition to the rent of tenants. These customary dues have not been recognized by the Settlement Officer at the last settlement, and no doubt the plaintiff was aware that he could not maintain any suit for the recovery of the same apart from some special contract. He endeavoured, therefore, to bind the defendants by the express terms of the contract to pay him the said dues. We are, both of us, of opinion that this contract cannot be enforced. The test which the Board of Revenue has applied in its directions to Settlement Officers regarding the question of recording or not recording customary dues of this nature, is that a cess may be recognized when it is of the nature of a fixed sum calculated on the rent, or on some other defined basis. "Thus if the tenant is admitted to pay regularly on his rent one anna in the rupee, or one seer in the maund as *kharch* that will be a cess which should be deemed to form part of his

(1) (1903) 1 A. L. J., 537 (540). (2) (1910) I. L. R., 32 All., 193.
(3) (1912) I. L. R., 34 All., 358.

rent. If the so-called cess is said to be so many bundles of *bhusa* or cakes of fuel or the like, it cannot be admitted to be part of the rent and should not be recorded." In the opinion of one of us the claim in the present case can only be regarded as a claim for a cess within the meaning of section 56 of the Land Revenue Act, and is as such barred by the provisions of that section. The other of us inclines rather to treat the suit on its original basis as a suit for damages for breach of contract, and in this view the suit must fail, and this for two reasons: on the terms of the contract itself the cash value of the zamindari dues, if not rendered, was to be claimed along with the rent and not by way of separate suit for damages. In the second place the contract as it stands appears to be contrary to public policy and intended to defeat the object of the provisions of the Land Revenue Act, particularly of sections 56 and 86. The object of the Legislature seems to have been to rid the courts once and for all of claims for customary dues or services of a vague and uncertain nature, the precise value of which would be difficult, if not impossible, of determination. Landlords claiming to be entitled to receive by way of customary dues or services something more from their tenants on account of the use and occupation of their holdings over and above their rent were required to bring such claim before the Settlement Officer at the time of settlement, and the latter was to judge once and for all whether such claims could in their nature be admitted and recorded. The general policy of the Act is that the Government may be assured that land-holders were not receiving from their tenants on account of the use and occupation of their holdings any payments which were not recognized either under the head of rent or under the head of cesses in the public records which form the basis of assessment for the Government demand. The contract before us seems to be opposed to the policy of the law and in contravention of its provisions. We are, therefore, agreed that this appeal must prevail. We set aside the order of remand passed by the lower appellate court and restore the decree of the court of first instance dismissing the suit. The plaintiff will pay the costs of the defendants throughout.

Appeal allowed.