

the sale by Sahadeo was to pay off his antecedent debt.

It was accordingly held that the transfer, so far as Sahadeo was concerned, was binding on his sons, Ram Rup and Lalji. As regards the transfer by Ram Das, it was held that Ram Das was bound by his own transfer, but Ram Prasad was entitled to have his fourth share recovered for himself. It was pointed out that, although there was a pre-existing debt incurred by Jagat, Ram Das or Sahadeo could not make a transfer without establishing a case of legal necessity. This view is quite in accordance with the view which we have expressed above. We are, therefore, of opinion that the decision as regards the binding character or otherwise of the transfer of the 30th of June, 1910, is not incorrect.

We send down the following issues to the court below for a decision. Parties will be allowed to adduce fresh evidence, and 10 days will be allowed to file objections :—

(1) Whether the mortgage of the 12th of July, 1919, was executed for legal necessity.

(2) Whether the mortgage of the 1st of September, 1916, was executed for legal necessity.

MISCELLANEOUS CIVIL

*Before Sir Lal Gopal Mukerji, Acting Chief Justice, and
Mr. Justice Rachhpal Singh*

SURAJPAL SINGH (PLAINTIFF) v. JAWAHAR SINGH
(DEFENDANT)*

1933
January, 17

*Agra Tenancy Act (Local Act III of 1926), section 3(4)—
"Sayar"—Weighment dues—Agra Tenancy Act (III of
1926), section 267(2)—Reference to High Court—Procedure
—Jurisdiction—Civil and revenue courts.*

Weighment dues,—i.e. money paid by the person who is licensed by the landholder or the lambardar to exercise his profession of weighing the goods of the tenants within the zamindari of the licensor and who in plying his profession uses the land of the zamindar and has, therefore, to pay this money for

*Miscellaneous case No. 562 of 1932.

1933

SURAJPAL
SINGH
2.
JAWAHAR
SINGH

the license,—came within the definition of “sayar” in section 3(4) of the Agra Tenancy Act, and a suit for recovery of weighment dues is cognizable by the revenue court.

A suit to recover weighment dues was filed in a civil court, and the plaint was returned for presentation to the revenue court. It was then filed in the court of an Assistant Collector, who decreed the suit. On appeal the Collector was of opinion that the suit was not cognizable by the revenue court, and “allowed the appeal” without saying whether he dismissed the suit or directed the plaint to be returned. A revision was presented to the Commissioner to be forwarded to the Board of Revenue. Thereupon the Commissioner directed the Collector to make a reference to the High Court under section 267(2) of the Agra Tenancy Act, and a reference was made accordingly. *Held* that although the procedure adopted was not strictly justifiable by the letter of the law, yet in substance it was right, and the reference should be entertained.

Dr. N. P. Asthana, for the plaintiff applicant.

The opposite party was not represented.

MUKERJI, A. C. J., and RACHHPAL SINGH, J. :—This is a reference by the Collector of Aligarh under section 267(2) of the Agra Tenancy Act in the following circumstances. The plaintiff, Raja Suraj Pal Singh, brought a suit for recovery of certain weighment dues from the defendant on the allegation that the defendant took a lease for the dues for 1335 Fasli in the village of Kailaura and failed to pay the said dues as agreed upon. The suit was filed in the first instance before the Munsif of Agra who returned the plaint for presentation to the proper court, the learned Munsif being of opinion that the suit was cognizable by the revenue court inasmuch as the weighment dues were in the nature of a “sayar” income. The learned Assistant Collector who heard the suit decreed it in part. No question of jurisdiction was raised before the learned Assistant Collector.

An appeal was filed before the Collector of Aligarh, who, being of opinion that the claim did not fall within the definition of “sayar” income, “allowed the appeal”, but he did not say whether he dismissed the suit or whether he

directed the plaint to be returned to the plaintiff for presentation to the proper court. The learned Collector evidently overlooked the very salutary provision of section 267, sub-section (2), which says that where once a civil court or a revenue court directs that a plaint should be returned for presentation to a revenue court or to a civil court, the court receiving the plaint, if it disagrees with the former court, should submit the record, with a statement of its reasons for disagreement, to the High Court. If this procedure had been followed by the learned Collector, his ultimate decision would have been in accordance with the decision of this Court. However, as we have said, the learned Collector "allowed the appeal". A revision was filed before the Board of Revenue, but, as we understand the practice is, it was presented before the Commissioner to be forwarded to the Board of Revenue. The Commissioner wanted to follow the procedure laid down in section 267, sub-section (2), and, therefore, directed the Collector to make the reference. The reason probably was that the Commissioner, as Commissioner, was not properly seised of the case, and it was in the court of the Collector that the question of jurisdiction had been raised. The procedure adopted by the learned Commissioner cannot perhaps be strictly justified by the letter of the law, but we think that in substance it was right. We accordingly entertain the reference. We may note that the learned Collector in his letter of reference is not quite accurate when he says that the "revisional application was dismissed by the Commissioner on the 29th of July, 1932". We have got that order of the Commissioner before us. There is nothing in it to suggest that the Commissioner has dismissed the revision. To start with, it would not be for the Commissioner to dismiss the petition of revision inasmuch as it is for the Board of Revenue to pass the final orders, and secondly, the Commissioner nowhere says that the petition should be dismissed. If the petition had been dismissed, we would not probably have taken the trouble to go into the merits of the case, because our opinion is meant

1933

SURAJPAL
SINGH
v.
JAWAHAR
SINGH

1933

SURAJPAL
SINGH
v.
JAWAHAR
SINGH

to be a guide to the revenue or civil court, as the case may be, and it is not to be given merely as a matter of academic interest.

Coming to the merits of the case, it appears to us that the weighment dues do come within the definition of "sayar" as contained in section 3, clause (4) of the Agra Tenancy Act. It will be noticed that the definition of "sayar" as given there is not exhaustive. It is only illustrative. It runs as follows: "'Sayar' includes whatever is to be paid or delivered to a landholder by a lessee or licensee on account of the right of gathering produce, forest rights, fisheries, tanks not used for agricultural purposes, the use of water for irrigation, whether from natural or artificial sources, or the like."

As we understand by the expression "weighment dues", it is money paid by the person who is licensed by the landholder or the lambardar to exercise his profession of weighing the goods of the tenants within the zamindari of the licensor. The licensee in plying his profession uses the land of the zamindar, and, therefore, he is called upon to pay some compensation to the zamindar. The majority of the people living in a village are agriculturists and mostly deal in agricultural produce that is weighed by the weighman, the licensee. In the circumstances, we are of opinion that we ought to class the weighment dues as "sayar". This, accordingly, is our opinion on the reference.

We direct that a copy of this judgment under the seal of the Court be sent to the learned Collector of Aligarh for his information. Nobody has appeared on the other side and we make no order as to costs of the reference.