APPELLATE CIVIL

Before Mr. Justice Bennet, Acting Chief Justice, and Mr. Justice Verma

1938 *August*, 4

BHAGWAN SINGH (PLAINTIFF) *v.* IMRAT SINGH AND OTHERS (DEFENDANTS)*

Jurisdiction—Civil and revenue courts—Malikana due to superior proprietor—Land Revenue Act (Local Act III of 1901), sections 75, 76, 233(g)—Suit for recovery of Malikana cognizable by revenue court—Agra Tenancy Act (Local Act III of 1926), section 224—Malikana comes within the words "rent due".

A suit to recover malikana due to a superior proprietor from an inferior proprietor under the provisions of sections 75 and 76 of the Land Revenue Act, 1901, is cognizable by the revenue court, according to section 233(g) of that Act.

Further, such malikana due to the superior proprietor comes within the words "rent due to him as such" in section 224 of the Agra Tenancy Act, 1926, and the suit to recover it, being serial No. 13 in Group A in the fourth schedule to that Act, is cognizable by the revenue court.

Manohar Lal v. *Kashi Ram* (1), dissented from.

Dr. *N. P. Asthana* and *Mr. B. N. Sahai,* for the appellant.

Messrs. *B. Malik* and *Baleshwari Prasad,* for the respondents.

BENNET, A.C.J., and VERMA, J.:—This is an appeal by the plaintiff in a suit which he brought for the recovery of certain sums of money on account of revenue, cesses and malikana and in which his claim with regard to the malikana has been dismissed by both the courts below on the ground that the claim was not cognizable by the revenue court. The suit was brought in the court of the Assistant Collector who decreed it in respect of the amounts claimed for revenue and cesses and dismissed it in respect of the malikana.

*Second Appeal No. 518 of 1934, from a decree of S. Ali Muhammad, Additional District Judge of Agra, dated the 28th of February, 1934, modifying a decree of Zahurul Hasan, Assistant Collector first class of Agra, dated the 22nd of August, 1933.

(1) Weekly Notes 1908 p. 209.

This second appeal is confined to the claim for malikana.

The plaintiff is the superior proprietor and the defendants are inferior proprietors in the village Garhi Bhupal in the district of Agra, and by an order of the Settlement Officer, dated the 2nd of April, 1928, the plaintiff is entitled to a sum equal to 20 per cent. of the assets accepted at the settlement, as malikana. This is what the plaintiff sued for in respect of the Rabi 1336 Fasli. The courts below have held that this part of his claim was not cognizable by the revenue court, and have relied on a ruling of a learned single Judge of this Court in *Manohar Lal* v. *Kashi Ram* (1). The judgment in that case refers to section 162 of the Agra Tenancy Act, II of 1901, and lays down that the malikana claimed in that case does not come within the category of revenue or rent. We are unable to agree with the decision of the learned Judge in that case that a claim like the one which we have before us is cognizable by the civil court. The attention of the learned Judge does not seem to have been invited to the various sections of the U. P. Land Revenue Act, III of 1901, and of the Agra Tenancy Act. Section 75 of the Land Revenue Act provides that "In any mahal wherever several persons possess separate heritable and transferable proprietary interests, such interests being of different kinds, the Settlement Officer shall determine which of such persons shall be admitted to engage for the payment of the revenue, due provision being made for securing the rights of the others; and the manner and the proportion in which the net profits of the mahal shall be allotted to the several persons possessing separate interests as aforesaid." Section 76(1) of the Act provides: "If in any mahal coming under the provisions of section 75 the separate proprietors bear to each other the relation of superior and inferior, and settlement be made with the party possessing the superior right, the Settlement Officer may make, on behalf of

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the superior proprietor, a sub-settlement with the inferior proprietor by which such inferior shall be bound to pay to the superior an amount equal to the Government demand in respect of the mahal, together with the share of the profits thereof allotted to the superior proprietor under section 75."

Thus the Settlement Officer when he passed the order of the 2nd of April, 1928, was acting in accordance with these provisions of the Land Revenue Act.

Section 233 provides: "No person shall institute any suit or other proceeding in the civil court with respect to any of the following matters:—. . . . (*g*) any matters provided for in sections 75 to 83 (both inclusive)." It seems to us clear therefore that under this provision of the Land Revenue Act no suit could be brought by the plaintiff in the civil court with regard to the malikana payable to him. Further, section 224 of the Agra Tenancy Act, III of 1926, which corresponds to section 162 of the Act of 1901, lays down that a taluqdar or other superior proprietor may sue for arrears of revenue or rent due to him as such. We are of opinion that the sum of money which the plaintiff was claiming was rent due to him as such. As we have pointed out above, under section 75 of the Land Revenue Act the Settlement Officer had to determine the manner and proportion in which the net profits of the mahal were to be allotted to the several persons mentioned in the section. Section 76 of the Land Revenue Act authorised the Settlement Officer to make a sub-settlement with the inferior proprietor by which such inferior proprietor was to be bound to pay to the superior proprietor an amount equal to the Government demand in respect of the mahal, together with the share of the profits thereof allotted to the superior proprietor under section 75. In this case the plaintiff was admitted to engage for the payment of the revenue and the Settlement Officer by his order of the 2nd of April, 1928, fixed the share of

the profits payable by the inferior proprietor to the superior proprietor at 20 per cent. of the assets accepted at the settlement. We consider that by this order he made the sub-settlement contemplated by section 76 of the Land Revenue Act. That being so, the 20 per cent. of the profits payable by the inferior proprietor to the superior proprietor represents the latter's share of the rent payable by the tenants to the landholder, and so they come within the words "rent due to him as such." Now a suit of the nature provided for in section 224 of the Agra Tenancy Act is to be found in the fourth schedule of that Act, Group A, at serial No. 13. That being so, the provisions of section 230 of the Agra Tenancy Act become applicable, and any suit in respect of the malikana would not be cognizable by the civil court. We may further point out that the learned Additional District Judge failed to take into consideration the provisions of section 269 of the Agra Tenancy Act. If the suit had been filed in the civil court even then the appeal would have lain to the learned District Judge. The learned Additional District Judge therefore was not justified in affirming the dismissal of this part of the claim by the learned Assistant Collector. The section lays down that if all the materials necessary for the determination of the suit are before the appellate court, it shall dispose of the appeal as if the suit had been instituted in the right court, and if such materials are not before it, it can remand the case or frame and refer issues for trial or may require additional evidence to be taken. The learned Additional District Judge thus was wrong in upholding the dismissal of this part of the claim and in not taking action in accordance with the provisions of the section. Accordingly we set aside that part of the decree of the court below by which the claim of the plaintiff appellant for recovery of malikana with interest has been dismissed and remand the case to the trial court through the lower appellate court for determination of the amount, if any, payable by each

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of the defendants to the plaintiff on account of malikana. The trial court shall pass a decree in favour of the plaintiff for the recovery of the amount which is found by it payable to the plaintiff by the defendants The plaintiff appellant will have the costs which he has hitherto incurred in all the courts. The defendants shall bear their own costs throughout.

The plaintiff is entitled to a refund of the court fee paid by him on the memorandum of appeal in this Court as well as in the lower appellate court.