APPELLATE CIVIL

1937
May, 13

Before Justice Sir John Thom and Mr. Justice Iqbal Ahmad

MUHAMMAD ABDUL QAIYUM (PLAINTIFF) *v.* SECRETARY OF STATE FOR INDIA (DEFENDANT)*

Agra Tenancy Act (Local Act III of 1926), sections 73, 74—Remission of rent—Government ordering extensive remissions as part of a general scheme—Remission not in conformity with section 73—Ultra vires—*Landlord could recover full rent by suit—Suit against Government—Maintainability—Jurisdiction—Acts of state.*

Under a general scheme formulated by the Local Government the Collectors of several districts in the United Provinces issued slips to various tenants in the districts declaring remissions of rent payable by them and the tenants availed themselves of the remissions so granted. After this the Government also granted to the zamindars certain remissions of land revenue but not in proportion to the remissions of rent. One of the zamindars brought a suit against the Secretary of State for India in Council for a declaration that he had no authority to grant the remissions of rent, for an injunction restraining him from interfering with the rents settled with the plaintiff's tenants, and for damages sustained by the plaintiff on account of loss of the rents remitted:

Held that the suit was not barred by section 74 of the Agra Tenancy Act, inasmuch as the remissions of rent were not in accordance with the provisions of section 73, which provided that a remission or suspension of rent was to follow upon, and be in proportion to, a remission or suspension of land revenue. As these conditions were not fulfilled the remission of rent was not one under section 73, even if it purported to be so, and therefore section 74 did not apply.

Held, further, that as the remission of rent was not in accordance with section 73 the plaintiff could have ignored it, as being *ultra vires* and illegal, and proceeded to realise the full rents, by suit if necessary. As he did not do so, the loss of rent suffered by him was directly attributable to his inaction in not pursuing his legal remedy, and he was therefore not entitled to a decree for damages or to the declaration and injunction prayed for by him.

*First Appeal No. 276 of 1935, from a decree of A. P. Ghildial, Civil Judge of Bareilly, dated the 29th of April, 1935.

Messrs. *B. E. O'Conor, A. M. Khwaja, Kaleem Jafri* and *Rama Shankar Prasad,* for the appellant.

Mr. *Muhammad Ismail* (Government Advocate), for the respondent.

THOM and IQBAL AHMAD, JJ.:—By the suit giving rise to the present appeal the plaintiff appellant assailed the validity of the action of the revenue authorities in granting remissions of rent payable by agricultural tenants to the plaintiff in the years 1339 and 1340 Fasli. It is a matter of admission that under a general scheme formulated by the Local Government the Collectors of various districts in the United Provinces issued slips to the tenants in 1339 and 1340 Fasli declaring remissions in rent payable by them and that the tenants had the benefit of the remissions so granted.

The plaintiff appellant, who owns zamindari property in certain villages in the districts of Bareilly and Pilibhit, brought the suit out of which this appeal arises against the Secretary of State for India in Council for a declaration that the defendant was not legally authorised to issue remission slips to the tenants of the plaintiff or in any way to interfere, by means of "arbitrary executive orders", with the rates of rent settled between the plaintiff and his tenants, and for an injunction restraining the defendant from interfering with the contracts entered into between the plaintiff and his tenants as regards the rate of rent. The plaintiff further prayed for a decree for a sum of Rs.4,974-10-9 against the defendant on account of the damages sustained by him in consequence of the remissions in rent granted to the tenants.

The plaintiff's case briefly was that the rent payable by the tenants is usually fixed by means of contracts entered into between the plaintiff and his tenants or by decrees of revenue courts and that the defendant is not constitutionally authorised to ignore the existing contracts between the landlords and tenants, nor is he entitled to modify in any way such contracts by means

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of "arbitrary executive orders". The plaintiff added that the rent fixed by contracts or by decrees of revenue courts can be reduced or enhanced only by means of decrees passed in regular suits by the revenue court and not otherwise. He alleged that the tenants after getting remission slips refused to pay to him the amounts remitted and thus he was put to a loss of Rs.4,974-10-9. On these allegations the plaintiff prayed for the reliefs mentioned above.

The defendant contested the suit. He pleaded that the remission was made under section 73 of the Agra Tenancy Act and that section 74 of the said Act was a bar to the suit; that if the plaintiff regarded the remission as unauthorised and illegal he could have sued the tenants for recovery of the full amount of rent, and, as he failed to do so, he was himself responsible for the loss suffered by him; that the Secretary of State did not issue any remission slips to the tenants and therefore a claim for the declaration of the invalidity of such slips was not maintainable; that the Secretary of State was not interfering with the rate settled between the plaintiff and his tenants and therefore no injunction could be issued against him; that the Secretary of State was not liable for the torts of his servants and the suit for damages was not maintainable against him even if the remission slips issued by the Collectors were unauthorised; and lastly that the suit was frivolous and vexatious and the defendant was entitled to compensatory costs under section 35A of the Code of Civil Procedure.

On the pleadings of the parties the material issues that arose for determination in the suit were:

(1) Was the suit barred by section 74 of the Agra Tenancy Act?

(2) Was any damage caused to the plaintiff by any illegal act of defendant's servants and was the defendant liable for the same?

(3) Was the defendant responsible for the remission slips issued by the district authorities and was the plaintiff entitled to the declaratory relief prayed for by him?

(4) Was the plaintiff entitled to the injunction claimed?

(5) Whether the suit for damages on the ground of tort of defendant's servants was maintainable against the defendant?

All these issues were decided by the learned Civil Judge of Bareilly in favour of the defendant and the suit was dismissed.

In appeal it is contended that the decision of the court below on all the issues noted above is erroneous and that the plaintiff was entitled to the reliefs claimed by him. The arguments before us extended over a wide range, in the course of which a number of decided cases were cited and discussed, and, having regard to the general importance of the questions raised and debated before us, we took time to consider our judgment, and after giving the matter our full consideration we find ourselves unable to endorse the findings on most of the issues recorded by the court below, though we have decided to dismiss this appeal and affirm the decree of that court.

It cannot be disputed that the rent payable by a tenant is ordinarily fixed by agreement between him and the landholder, and the rent so fixed is liable to enhancement or abatement either by mutual agreement between the landholder and the tenant, or by a decree passed by a revenue court in a suit brought for the purpose either by the landholder or by the tenant. There are certain exceptions to this rule and those exceptions are embodied in sections 71, 72 and 73 of the Agra Tenancy Act (Act III of 1926). We are concerned in this appeal only with the last mentioned section, the relevant portion of which is as follows: "When for any cause the Local Government, or any authority empowered by it in this behalf, remits or suspends for any period the payment

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of the whole or any part of the revenue payable in respect of any land . . . a Collector . . . may order that the rents of the tenants holding such land or any portion thereof . . . shall be remitted or suspended for the period of such remission or suspension of payment of revenue, to an amount which shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land."

It would appear that the remission or suspension of rent provided for by this section is subject to the following two important conditions: (1) That there should be remission or suspension of revenue by the Local Government for the period for which the rent is remitted or suspended; and (2) that the rent remitted or suspended must bear the same proportion to the whole of the rent payable as the revenue of which the payment has been remitted or suspended bears to the whole of the revenue payable. In other words, the remission or suspension of revenue is to precede the remission or suspension of rent and the proportion of the rent remitted or suspended must not be in excess of the proportion of the revenue remitted or suspended.

In the case before us a statement showing the remissions in rent and revenue was prepared in the court below, and the learned advocates of the parties in that court admitted the correctness of the statement so prepared. It appears from that statement that in some cases 23 to 25 per cent. of rents were remitted while revenue was remitted to the extent of about 9 to 10 per cent. only. In other cases the percentage of rent remitted varied from 2 to 9 per cent. while the revenue remitted was 12 to 15 per cent. Further it appears from the evidence that the remission of revenue did not precede the remission of rent. It follows that the provisions of section 73 of the Agra Tenancy Act were not strictly followed by the revenue authorities who issued remission slips as

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ordered by the Local Government in pursuance of some scheme prepared by it. That this is so is manifest from a communique issued by the Revenue Department and published in the United Provinces, Gazette, dated November 28, 1931, part VIII, page 864, which runs as follows:

"REVENUE (B) DEPARTMENT

Dated Lucknow, November 23, 1931

COMMUNIQUE

"In the communique, dated November 5, 1931, the Governor-in-Council announced the adjustments necessary to bring the land revenue of the province into conformity with the present range of prices and with the adjustments already announced in rents. The land revenue adjustments have been calculated on the land revenue demand for each district as a whole. The question as to how the reduction should be distributed within each district was one regarding which a clear difference of opinion existed among the members of the Rent and Revenue Committee. The distribution could be made either in proportion to the rental remissions given in each mahal or on a percentage basis distributed over every mahal in the district. After a very close consideration of the respective merits of these two methods the Governor-in-Council has decided in favour of the percentage principle. This method has the merit that the greatest benefit of the distribution will not be conferred on the landlord who has pushed his rents up to the highest level, but the small cultivating zamindars who constitute numerically the greater portion of the land-owning class will receive an equal share in proportion to the revenue they pay. Another merit of the method is that the relief to be given permits of easy calculation and check both by the officers who will be responsible for calculating it and by the landlords immediately concerned. Every district officer has been informed that the relief given to his district is a certain percentage or represents so many annas in the rupee. This rate will be easily and readily applied, and there should accordingly be complete assurance that the relief given will reach those for whom it is intended.

"2. Government have instructed district officers to take up any special cases where the application of the accepted formula discloses a sufficient reason for the further adjustment of relief.

By order,
G. M. HARPER,
Secretary to Government,
United Provinces."

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It is argued on behalf of the plaintiff appellant that as the remissions in rent were not in conformity with the provisions of section 73 of the Tenancy Act the action of the revenue authorities in issuing remission slips was contrary to law and as he suffered damage in consequence of that action he is entitled to the relief sought by him. The learned Government Advocate on behalf of the Secretary of State for India in Council on the other hand contends that as the remissions were under section 73 of the Tenancy Act the present suit is barred by section 74 of the Tenancy Act. Section 74 runs as follows:

"(1) An order passed under sub-section (1) or sub-section (2) of section 73 shall not be questioned in any civil or revenue court.

"(2) A suit shall not lie for the recovery of any rent of which the payment has been remitted in accordance with the provisions of section 73, or, during the period of suspension, of any rent of which the payment has been suspended in accordance with the provisions of section 73."

In our judgment the contention advanced on behalf of the defendant is not well founded. By section 74 finality is attached to "an order passed under . . . section 73", and not to an order which is not in conformity with the provisions of that section. We have already pointed out that the remissions in rent were not in compliance with the provisions of section 73, and, therefore, it cannot be said that the remissions were under that section.

The present suit is a suit of a civil nature and it is entertainable by the civil court unless its cognizance is expressly or impliedly barred by any provision of law. The only bar to such a suit is provided for by section 74, but in order to invoke the application of that section it must be shown that the order as regards remission or suspension of rent was in accordance with section 73 of the Act. It may be assumed that the remissions in rent purported to be under section 73 of the Act but that by itself is not enough to invoke the application of section

74, as by that section finality is attached only to orders passed under section 73 and not to orders *purporting* to be passed under that section. The view that we take is in consonance with the decision in the case of *Chairman, Rajpur Municipality* v. *Nogendra Nath Bagchi* (1). That was a case under the Bengal Municipal Act of 1884 and by that Act an assessee was entitled to object to the assessment of tax and the objection so made was to be decided by Municipal Commissioners whose decision was to be final and the civil court had no power to reopen the question of assessment which had been heard and decided by the Municipal Commissioners. But it was held that the Act does not take away the jurisdiction of the civil court in a case in which it is alleged and established that the assessment is open to objection on the ground that it is *ultra vires* and not in strict compliance with the provisions of the Act. In the case before us we have given reasons for holding that the remissions in rent were in violation of the provisions of section 73 and not in accordance with that section. For the reasons given above we hold that section 74 of the Tenancy Act was not a bar to the suit.

But it is argued on behalf of the defendant that if the order as to remission of rents was not one under section 73 of the Act the plaintiff could have ignored that order and could have sued the tenants for recovery of the rents payable by them irrespective of the remissions announced by the revenue authorities and if he failed to do so the loss sustained by him was the direct result of his omission and cannot be attributed to the orders passed by the revenue authorities. It is therefore urged that he is not entitled to a decree for damages or to the declaration and injunction prayed for by him. In our judgment this contention has force and must prevail. The remissions were either in accordance with section 73 of the Act or they were not. In the former case the suit is barred by section 74 and in the latter case the plaintiff

(1) (1919) 50 Indian Cases 394.

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was entitled to treat the remission as *ultra vires* and to realise the rent payable by the tenants by means of suits, ignoring the remissions notified by means of slips issued by the revenue authorities. We have already held that the remissions were in contravention of the provisions of section 73 and the plaintiff therefore had the right to enforce payment of the rents payable by tenants by instituting suits in the revenue courts and taking those suits up, if necessary, to the ultimate court of appeal. This, however, the plaintiff failed to do. The loss sustained by the plaintiff because of the alleged unwarranted interference by Government is the loss of rent payable by tenants and this loss is directly attributable to the inaction of the plaintiff in not pursuing his remedy by means of suits for arrears of rent, and not to the remission slips issued by the revenue authorities. The present suit against the defendant was therefore not maintainable.

It is true that the plaintiff was entitled to remission of revenue at least in proportion to the remissions in rent announced by means of slips and the action of the Local Government in not remitting revenue in proportion to the rent remitted was opposed to law and the plaintiff was wrongly made to pay revenue in excess of what would have been payable by him if the provisions of section 73 in the matter of remission of rent were strictly complied with. In other words, the plaintiff was entitled to a further remission of revenue and this was wrongly denied to him, but the plaintiff had his remedy with respect to this wrong by a suit under section 183 of the Land Revenue Act (Act III of 1901). By section 235(*m*) of that Act the cognizance of claims connected with, or arising out of, the collection of revenue "other than claims under section 183" of the Act, by civil courts is barred. Section 183 of the Act provides that whenever proceedings are taken under the Act against any person for the recovery of any arrear of revenue, he may pay the amount claimed under protest to the officer taking

such proceedings, and then may sue the Government in the civil court for the amount so paid. The obvious remedy of the plaintiff was, therefore, to have paid the revenue demanded by the revenue authorities under protest in the manner provided for by section 183 and then to have sued for recovery of such amount of revenue that ought to have been remitted in accordance with the provisions of section 73 of the Tenancy Act. This, however, the plaintiff unfortunately failed to do. It is to be noted that the present suit was not a suit under section 183 of the Land Revenue Act but was a suit for damages as regards the loss sustained by the plaintiff on account of the remissions in rent.

In the view that we take the present suit must fail and it therefore becomes unnecessary to decide the other points of law argued before us. But we may in passing note the respective contentions of the parties. It was argued on behalf of the defendant that the issue of remission slips by the revenue authorities was in contravention of the statutory provision contained in section 73 of the Tenancy Act and amounted to a tort with respect to which the plaintiff was entitled to be compensated in damages, and in support of this contention reliance was placed on the decision in *Hari Bhanji* v. *Secretary of State for India* (1) which was confirmed on appeal in *Secretary of State for India* v. *Hari Bhanji* (2). It was held in these cases that the acts of state of which the municipal courts of British India are debarred from taking cognizance are acts done in the exercise of sovereign powers which do not profess to be justified by municipal law, and that where an act complained of is professedly done under the sanction of municipal law and in the exercise of powers conferred by that law, the fact that it is done by the sovereign power and is not an act which could possibly be done by a private individual does not oust the jurisdiction of the civil court. These decisions support the contention of the plaintiff that the mere fact

(1) (1879) LL.R. 4 Mad. 344. (2) (1882) I.L.R. 5 Mad. 273.

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that an act is done in pursuance of an executive order issued by the Local Government does not bar the jurisdiction of the civil courts to grant redress with respect to wrong done by such act if the act is purported to be done under the colour of some municipal law. On the other hand the decisions in *Nobin Chunder Dey* v. *Secretary of State for India* (1), *Jehangir Cursetji* v. *Secretary of State for India* (2), *Municipal Corporation of Bombay* v. *Secretary of State for India* (3) and *Ram Shankar* v. *Secretary of State for India* (4) are authorities for the proposition that the Secretary of State can only be sued in respect of those matters for which the East India Company could have been sued, viz., matters for which private individuals or trading corporations could have been sued, or in regard to those matters for which there is express statutory provision, and that the Secretary of State for India in Council cannot be sued in respect of acts of state or acts of sovereignty. It has been laid down in *Municipal Corporation of Bombay* v. *Secretary of State for India* (3) (at page 717), that apart from commercial transactions of the Secretary of State, there are only three exceptions in respect of which he could be made liable and those exceptions are: (*a*) Trespass to immovable property, (*b*) an obligation imposed by a statute, and (*c*) where it can be shown that benefit has resulted to Government from a tort of its servants.

The Madras decisions referred to above are in conflict with the other decisions just noted and if for the decision of the present appeal it was necessary to express an opinion on the question of law that formed the subject of decision in these cases we would not have decided this appeal without referring the case to a larger Bench, but, as already observed, it is unnecessary to decide the question about the liability of the Secretary of State to be sued in municipal courts with respect to acts done under the colour of a municipal law and we therefore refrain

(1) (1875) I.L.R. 1 Cal. 11.
(2) (1902) I.L.R. 27 Bom. 189.
(3) (1932) I.L.R. 58 Bom. 660.
(4) (1932) I.L.R. 54 All. 879.

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from expressing an opinion on the point. We have already given our reasons for holding that the decree of the court below dismissing the plaintiff's suit is correct and we accordingly dismiss this appeal.

The question of costs, however, remains and in considering this question we cannot overlook the fact that the Local Government did not comply with the provisions of section 73 of the Tenancy Act in the matter of remission of revenue and the plaintiff has had to pay revenue in excess of what he should have been made to pay. We, therefore, while dismissing this appeal, direct the parties to bear their own costs both here and in the court below.

Before Mr. Justice Bajpai and Mr. Justice Hamilton

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SULTAN AHMAD KHAN (PLAINTIFF) *v.* SIRAJUL HAQ AND OTHERS (DEFENDANTS)*

Registration Act (XVI of 1908), section 28—Fraud on the law of registration—"Fictitious" inclusion of a property for purposes of registration—Whether the deed related to the property for any effective purpose—Refusal to register as against the owner of that property—Effect on territorial jurisdiction and validity of presentation—Registration Act, section 35—Document executed by one person on behalf of another—Admission of execution by executant sufficient, production of power of attorney not necessary—Refusal to register—Wrong refusal of registration does not justify treating the document as registered—Practice and pleading—Question of fraud on the law of registration—Family arrangement—Deed of settlement of disputes—Whether transfer of property—Inclusion of outsiders (transferees) in family settlement—Guardian and minor—Powers of guardian in entering into a family settlement touching the minor's property but not transferring any part.

In a deed of family settlement of disputes relating to properties, primarily as between two branches of the family but also, in a few particulars, as between members of the same branch, one of the items of property dealt with was a house standing in the name of one member. There was no dispute

*First Appeal No. 4 of 1932, from a decree of Charu Deb Banerji, Civil Judge of Azamgarh, dated the 17th of August, 1931.