

1927

MAHABIS
v.
DWARKA.Stuart,
C. J. and
Hasan, J.

expressed therein. In the case of *Miles v. New Zealand Alford Estate Company* (1), BOWEN, L. J., said :—

“ If an intending litigant *bona fide* forbears a right to litigate a question of law or fact which it is not vexatious or frivolous to litigate, he does give up something of value. It is a mistake to suppose it is not an advantage, which a suitor is capable of appreciating, to be able to litigate his claim, even if he turns out to be wrong.”

We, therefore, allow this appeal, set aside the decree of the court below and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan.

1927

July, 28.

JANG BAHADUR SINGH (PLAINTIFF-APPELLANT) v.
SATNARAIN SINGH (DEPENDANT-RESPONDENT).*

Oudh Land Revenue Act (XVII of 1876) sections 16 and 17—Circulars issued for conduct of first regular settlement, whether have force of law—Jamabandis prepared at the last settlement—Khatounis prepared at the first regular settlement—Entries of rent in jamabandis and khatounis of last settlement, presumption of correctness of:

The first regular settlement was conducted under the rules of procedure formulated by the Revenue authorities with the sanction of the Chief Commissioner of the Province in the form of several circulars. These circulars have, therefore, the force of law.

The circulars containing the rules of procedure formulated by the Revenue authorities with the sanction of the Chief

*Second Rent Appeal No. 17 of 1927, against the decree, dated the 28th of January, 1927, of W. Y. Madgley, District Judge of Rae Bareilly, reversing the decree, dated the 29th of April, 1926, of Ram Rai, Assistant Collector, First Class, Partabgarh, decreeing the plaintiff's suit.

Commissioner of the Province, under which the first regular settlement was conducted, have the force of law. The *jamabandi* prepared at the last settlement and the *khatauni* prepared at the first regular settlement must be taken to fall within the provisions of sections 16 and 17 of the Oudh Land Revenue Act (XVII of 1876). Therefore, the *jamabandi* prepared at the last settlement and the *khatauni* prepared at the first regular settlement being part of the settlement record duly made and attested, the entries in them with regard to the amount of the rent of the holding must be presumed, until the contrary is proved, to be a correct record of the agreement of the parties in respect of the rental. [*Sarabjit Singh v. The Special Manager, Court of Wards, Rampur Mathura Estate* (1), referred to.]

Mr. Ali Zaheer, for the appellant.

Mr. Radha Krishna, for the respondent.

HASAN, J. :—This is the plaintiff's appeal from the decree of the District Judge of Rae Bareilly, dated the 28th of January, 1927, reversing the decree of an Assistant Collector of the first class of Partabgarh, dated the 29th of April, 1926, in a claim for arrears of rent under section 108, clause (2) of the Oudh Rent Act.

The area of the holding in respect of which the claim for rent is made is 25 bighas, 16 biswas and 5 dhurs. The rent is claimed at the rate of Rs. 62 a year.

The lower appellate court, in agreement with the court of first instance, finds that the plaintiff is the landlord and the status of the defendant is that of a tenant. It further finds that the defendant's liability to pay rent is undoubted. The lower court has, however, dismissed the suit on the ground that there is no evidence and no presumption that the rent has ever been fixed by a competent authority or agreed to by the parties.

In proof of the annual rental the plaintiff relied upon two documents—exhibit 3 and exhibit 4. Exhibit 3 is a certified copy of the *jamabandi* prepared at the last settlement of the district in the year 1298 Fasli.

1927

JANG
BAHADUR
SINGH
v.
SATNARAIN
SINGH.

1927

JANG
BAHADUR
SINGH
v.
SATNARAIN
SINGH.

Hasan. J.

Another copy of the same *jamabandi* has also been filed by the defendant and it is marked as exhibit A10. This *jamabandi* has an entry in respect of the land in suit as bearing an annual rental of Rs. 62. The rent is further described to be *riyayati* (favourable). Exhibit 4 is a certified copy of the *khatauni* prepared at the first regular settlement of the district, presumably some time in the year 1874-1876. This exhibit shows that the holding was then comprised of 21 bighas, 17 biswas and 9 dhurs of land only bearing a rental of Rs. 13-8 per year. These entries remained unchallenged until the recent revision of records in 1924 when a claim for an entry as a *guzaradar*, without the liability for payment of rent, was made by the defendant. The claim was withdrawn on an objection being raised by the plaintiff. The entries were, therefore, left as they were. It is agreed that no rent has ever been paid.

The lower appellate court is of opinion that the entries afford no evidence or presumption in respect of the amount of rent and in support of that opinion relies upon a decision of a learned Judge of the late Court of the Judicial Commissioner of Oudh in the case of *Sarabjit Singh v. The Special Manager, Court of Wards, Rampur Mathura Estate* (1). In my judgment the learned Judge has taken a wrong view of the evidentiary character of exhibits 3 and 4. Both these exhibits form part of the settlement record, the one of the first regular settlement and the other of the last regular settlement of the district. They are not the annual village papers prepared by the patwari and it is not necessary to express any opinion in this case as to the evidentiary value of such papers.

The first regular settlement was conducted under the rules of procedure formulated by the Revenue authorities with the sanction of the Chief Commissioner of

the Province in the form of several circulars. These circulars have, therefore, the force of law, and so far back as the year 1860-1861 circulars were issued directing the preparation of *jamabandis* by the Settlement Officers: See circular No. 13090 of 1860 and circular No. 18-3994 of 1861. Both these circulars were explained in circular No. 1 of 1863, dated the 2nd of January, 1863. In paragraph 2 of the last-mentioned circular the object of the preparation of *jamabandi* was explained to be "to obtain a trustworthy record of the rent roll of a village as adjusted after the declaration of the revised *jama* by the Settlement Officer." The nature of a *khatauni* and its purpose is also explained in paragraph 3 of the same circular. Subsequent paragraphs, that is, 4th and 5th, prescribe directions to the Settlement Officers to be followed in the preparation of the *jamabandis*. One of such directions is: "The adjustment of the rents should be left entirely to be arranged between landlord and tenant." It is thus abundantly clear that the record of the rent roll contained in the *jamabandi* must be presumed to be a record of the adjustment of rent founded upon an agreement between the landlord and the tenant in respect of the rent of the holding.

The two exhibits produced in this case must be taken to fall within the provisions of sections 16 and 17 of the Oudh Land Revenue Act (XVII of 1876) then in force but now repealed. Under section 16 certain documents shall form the settlement record and the mode in which such record is prepared, the facts to be therein entered and the manner in which the entry shall be attested shall be subject to rules framed by the Chief Commissioner of Oudh with the sanction of the Governor-General in Council. According to section 17 every entry in such settlement record duly made and attested shall, until the contrary is proved, be presumed to be a correct record of the fact entered. The two exhibits

1927

JANG
BAHADUR
SINGH
v.
SATNARAIN
SINGH.

Hasan. J.

1927

JANG
BAHADUR
SINGH
v.
SATNARAIN
SINGH.

Hasan, J.

under consideration being part of the settlement record duly made and attested, the entries in them with regard to the amount of rent of the holding must be presumed, until the contrary is proved, to be a correct record of the agreement of the parties in respect of the rental. The judgment in the case, on which the lower appellate court relies, does not disclose the nature of the revenue papers which were produced as evidence in proof of the amount of rent in that case. I am, therefore, of opinion that the entries prove the case of the plaintiff as to the amount of the rent of the holding and it is agreed that there is no rebutting evidence against the evidence furnished by the entries.

I, therefore, allow this appeal, set aside the decree of the lower appellate court and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan.

1927

A. S. No. 1, 1927.

SHIVA DAYAL SINGH (DEFENDANT-APPELLANT) v. RAM NARAIN AND OTHERS (PLAINTIFFS), AND MUSAMMA' T RAJ KUMARI AND OTHERS (DEFENDANTS) (RESPONDENTS).*

Oudh Rent Act (XXII of 1886), section 108, clause (15)—Suit by a co-sharer against a lambardar for share of profits—Lambardar's liability to pay interest—Fiduciary position of lambardar—Co-sharer, whether entitled to profits on the basis of gross rental as well as interest.

Held, that a lambardar's liability to pay interest on the arrears of profits due to a co-sharer could not be based on the provisions of the Indian Contract Act, 1872, nor on those of the Interest Act, 1839, but he could be charged with

*Second Rent Appeal No. 15 of 1927, against the decree, dated the 18th of December, 1926, of Mahmud Hasan, District Judge of Hardoi, modifying the decree, dated the 15th of May, 1926, of Shahzad Ali Khan, Assistant Collector, First Class, district Hardoi, decreeing the plaintiff's claim.