

MISCELLANEOUS CIVIL

Before Sir C. M. King, Knight, Chief Judge and
Mr. Justice Ziaul Hasan

1935
November, 25

THAKUR LACHHMAN SINGH AND OTHERS (DEFENDANTS-
APPELLANTS) v. RAJA DHANESH SINGH AND ANOTHER
(PLAINTIFFS-RESPONDENTS)*

Oudh Civil Rules, Rule 269A—Cesses, meaning of—‘Local rate’ and ‘cess’, distinction between—Pleadings—Objection as to valuation not pressed in trial Court or in grounds of appeal—Objection, if can be raised afterwards in appeal.

The word ‘cesses’ in rule 269A does not include a local rate. Although the purposes for which cesses are imposed and the purposes for which local rates are imposed are similar, it does not follow that a cess is the same thing as a local rate. A cess is recoverable if it is levied in accordance with village customs and if it has been recorded by the Settlement Officer, while a local rate is imposed by a District Board, in exercise of statutory powers, with the previous sanction of the Local Government, and its validity does not depend upon village custom or upon any record made by the Settlement Officer.

Ram Bakhsh Shukul v. Uma Raman Partap Bahadur Singh (1), referred to.

Where the defendant did not admit the valuation of the suit put down by the plaintiff but did not press the point and no issue regarding valuation was framed and in his appeal put down the same valuation but after the appeal had been admitted, applied for reducing the valuation, *held*, that he was not barred by the rules of estoppel or *res judicata* or any other rule of law from raising the point at that stage and getting the valuation altered.

Mr. *Kashi Prasad*, for the appellants.

Mr. *H. S. Gupta*, for the respondents.

KING, C. J. and ZIAUL HASAN, J.:—This is an application by the appellants praying that the valuation of the appeal be reduced, for the purposes of jurisdiction, from Rs.11,550 to Rs.9,900.

The parties are in agreement that paragraph 269 A(1), clause (b) of the Oudh Civil Rules lays down the rule

*Civil Miscellaneous Application No. 877 of 1935 in connection with F. C. A. No. 37 of 1935, against the order of Mr. Abid Raza, Subordinate Judge of Partabgarh, dated the 2nd of January, 1935.

(1) (1927) A. J. R., Oudh, 225.

for fixing the valuation for the proposes of jurisdiction. Under that rule the valuation must be fixed at thirty times the land revenue. There is no dispute as to the amount of revenue, which is Rs.330 per annum. It is laid down in rule 269A, paragraph v, that the word "Revenue" as used in the above rule shall be held to include cesses payable by the landlord. It is argued on behalf of the appellants that no cesses are payable by the landlord and therefore the valuation should be thirty times the land revenue which comes to Rs.9,900 only.

The learned Government Advocate argued for the respondents that, although no cesses are recorded as payable by the landlord under the name of cesses, the *khewat* shows that local rate is payable by the landlord amounting to Rs.33 per annum and that the local rate should be treated as equivalent to a cess within the meaning of this rule. The point for decision is whether the word "cesses" in rule 269A should be held to include the local rate.

The only provision in the United Provinces Land Revenue Act, 1901, which applies to cesses in Oudh, is section 86. The first sub-section lays down that "a list of all cesses other than those referred to in section 56 levied in accordance with village custom shall, if generally or specially sanctioned by the Local Government, be recorded by the Settlement Officer, and no cesses not so recorded shall be recoverable in any Civil or Revenue Court." Sub-section (4) enacts: "This section shall not apply to Oudh, unless and until a list of cesses as aforesaid has been recorded by the Settlement Officer at a revision of settlement in the manner prescribed in this section".

It appears therefore that the "cesses" referred to in section 86 are levied *in accordance with village custom*. The levy of the cess must be customary, and the custom must be sanctioned by the Local Government and the cess must be recorded by the Settlement Officer.

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If we now turn to consider local rates we find that they are quite different from cesses. Local rates are imposed under section 3 of the United Provinces Local Rates Act, 1914, as amended by section 109 of the United Provinces District Boards Act, 1922. This section empowers a District Board to impose, by notification in the Gazette, a local rate within the district to be assessed at a prescribed amount not exceeding $6\frac{1}{2}$ per cent. upon the annual value of the estate. Section 108 enacts that the imposition of the local rate is subject to the previous sanction of the Local Government. The procedure for imposing the local rate is also laid down in the District Boards Act. It is obvious therefore that the procedure by which the local rate is imposed is totally different from the procedure by which a cess is recognized as being enforceable. A cess is recoverable if it is levied in accordance with village custom and if it has been recorded by the Settlement Officer. A local rate is imposed by a District Board, in exercise of statutory powers, with the previous sanction of the Local Government, and its validity does not depend upon village custom or upon any record made by the Settlement Officer. There is therefore a substantial difference between a cess and a local rate.

It has been argued that a cess ordinarily means a tax imposed for some purposes of public convenience such as sanitation, police and the like. It is further argued that a local rate is undoubtedly imposed for public purposes, i.e. for carrying out the duties, including sanitation, which have been imposed upon District Boards by statute. We are asked to hold that because cesses and local rates are imposed or enforced for similar purposes therefore they are so similar that the word "cesses" in rule 269A includes local rates. Although it may be conceded that the purposes for which cesses are imposed and the purposes for which local rates are imposed are similar, it does not follow that a cess is the same thing

as a local rate. We have already given reasons for holding that there is a clear distinction between cesses and local rates. Only one judicial authority has been brought to our notice on this point. In *Ram Bakhsh Shukul v. Babu Uma Raman Partab Bahadur Singh* (1) it was held by a learned Judge of this Court that section 86 of the United Provinces Land Revenue Act, which applies to cesses, does not apply to local rates. In this decision the distinction between cesses and local rates was clearly recognised.

It has further been contended for the respondents that it is not open to the appellants at this stage to raise the question of valuation. In the trial Court the respondents were the plaintiffs and they valued the suit at Rs.11,550. The defendants did not admit the valuation but did not press the point and no issue regarding valuation was framed. When the defendants appealed they put the valuation of the appeal at Rs.11,550 and it is only now, after the appeal has been admitted, that they have applied for reducing the valuation. It is argued that they acquiesced in the valuation put upon the suit by the plaintiffs and have no right to demand an alteration in the valuation now. In our opinion the appellants are not barred by the rules of estoppel or *res judicata* or any other rule of law from raising the point at this stage. A decision on this point is required for the purpose of deciding whether the record need be printed or not.

In our opinion therefore the application for reducing the valuation is well founded. The valuation must be fixed at thirty times of the land revenue which comes to Rs.9,900. No cesses are shown as payable in respect of the property and we hold that the local rate cannot be taken into account for the purpose of valuation under rule 269A.

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We accordingly allow the application with costs. A week's time is allowed to the learned Advocate for the appellants for amending the valuation. When the valuation has been altered to Rs.9,900 it follows that the record need not be printed.

Application allowed.

APPELLATE CIVIL

*Before Sir G. M. King, Knight, Chief Judge and
Mr. Justice E. M. Nanavutty*

1935
December, 4

NAND LAL MANUCHA AND ANOTHER (DEFENDANTS-
APPELLANTS) v. AJODHYA BANK, LTD.,

FYZABAD, PLAINTIFF AND OTHERS (DEFENDANTS-RESPONDENTS)*

Mortgage—Subrogation—Suit by prior mortgagee joining subsequent mortgagee—Subsequent mortgagee paying off prior mortgagee, whether entitled to obtain final decree and execute it—Civil Procedure Code (Act V of 1908), Order XXXIV, rule 4, and Appendix D, form 9—Interpretation of para. 7, form 9, Appendix D—United Provinces Agriculturist Relief Act of 1934, section 30(2)—Interest—Appellate Court's power to reduce interest.

If a subsequent mortgagee pays up the amount found due to the plaintiff—the prior mortgagee—then the subsequent mortgagee is subrogated to the rights of the prior mortgagee and is entitled to apply for a final decree, and would be entitled to apply for sale in execution of that final decree.

Paragraph 7 of form no. 9 of Appendix D to the Code of Civil Procedure must be interpreted as authorising the Court to pass suitable orders so as to safeguard the rights of the subsequent mortgagees, if any, to obtain a final decree or to sell the property.

The question of the reduction of interest under the Agriculturists Relief Act is for the determination of the Court which passed the original decree and not for the Appellate Court.

Messrs. *Ram Bharose Lal and Suraj Sahai*, for the appellants.

Mr. *K. P. Misra*, for the respondents.

*First Civil Appeal No. 114 of 1933, against decree of Babu Mahabir Prasad Varma, Subordinate Judge of Lucknow, dated the 18th of September 1933.