

community, the plaintiff himself suggested the name of Babu Parbhu Dayal as the person whose help might be taken by the witness in the matter. Further, the evidence on oath of the defendant shows that Babu Parbhu Dayal asked him to accept a sum of Rs.11,000 in full settlement of his claims against Girdhari Lal, and also told him that he could not afford to fight with Girdhari Lal.

All the above circumstances show that even if the arbitrators mentioned in exhibit I be not partial to the plaintiff, they cannot command the confidence of the defendant, and it would in our opinion be wholly inequitable to compel the defendant to submit himself to their arbitration.—

We therefore agree with the learned Civil Judge in holding that the agreement in question should not be ordered to be filed, and we accordingly dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

QAZI NIZAMUDDIN AHMAD (PLAINTIFF-APPELLANT) *v.*
ZAKI HASAN AND OTHERS (DEFENDANTS-RESPONDENTS)*

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May, 8

Oudh Sub-Settlement Act (XXVI of 1866), section 1 and schedule, rule 7(3)—Rules contained in the schedule, whether have force of law—Malikana payable by under-proprietors—United Provinces Local Rates Act (I of 1914), section 8(1)(a)—United Provinces Local and Rural Police Rates Act (II of 1906), section 14—Under-proprietors' liability to pay rural police rates.

By section 1 of the Oudh Sub-Settlement Act of 1866 the rules contained in the schedule attached to that Act have the

*Second Rent Appeal No. 10 of 1935, against the decree of R. F. S. Baylis, Esq., I.C.S., District Judge of Bara Banki, dated the 22nd December, 1934, modifying the decree of Shankar Prasad, Esq., I.C.S., Sub-Divisional Officer of Nawabganj at Bara Banki, dated the 27th of November, 1933.

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force of law, and under rule 7(3) of those rules the amount of *malikana* payable by the under-proprietors to the taluqdar is 10 per cent. of the land revenue. *Widow of Shunker Sahai v. Kashi Pershad, Raja* (1), relied on.

Under-proprietors are liable for the rural police rate payable under the United Provinces Local and Rural Police Rates Act of 1906 and are consequently liable under sub-clause (a) of clause (1) of section 8 of the Local Rates Act of 1914 to pay local rates.

Mr. M. H. Qidwai, for the appellant.

Messrs. *Ali Mohammad* and *Mohammad Ayub*, for the respondents.

ZIAUL HASAN, J.: This second rent appeal against a decree of the learned District Judge of Bara Banki arises out of a suit for recovery of under-proprietary rent brought by the plaintiff-appellant against the defendants-respondents.

Two questions arise for determination in this appeal, namely, (1) whether the plaintiff-appellant is entitled to recover *malikana* from the defendants at the rate of 10 per cent. of the land revenue or at 5 per cent. and (2) to what amount of local rates the appellant is entitled.

On the first question the appellant relies on a statement prepared at the second settlement which is headed as "*naqsha nikasi barue parta bandobast binabar tafriq*" which records Rs.350 as land revenue and Rs.35 (that is, at 10 per cent.) *malikana* about defendants' under-proprietary share. On the other hand the defendants rely on the mahalwar assessment statement which in the remarks column gives the amount of *malikana* payable by the defendants as 5 per cent. of the land revenue. The learned District Judge has accepted the latter document chiefly on the ground that it is signed by both the assistant record officer and the settlement officer, whereas the former document is signed by the assistant record officer only.

I am of opinion, however, that having regard to the law on the subject, the appellant's case must be accepted. Rule 7(3) contained in the schedule attached to the Oudh Sub-Settlement Act of 1866 provide as follows:

"In no case can the amount payable during the currency of the settlement by the under-proprietor to the taluqdar be less than the amount of the revised Government demand with the addition of 10 per cent."

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It was argued by the learned counsel for the respondents that the rules contained in the schedule to the Oudh Sub-Settlement Act were meant for the guidance of the Settlement Officer only, but this is not so. By section (1) of the Act these rules have the force of law as was recognized by their Lordships of the Judicial Committee also in the case of the *Widow of Shunker Sahai v. Rajah Kashi Pershad* (1). Their Lordships say:

"That Act (meaning the Oudh Sub-Settlement Act) was passed to give the force of law to certain rules regarding sub-settlements and other subordinate rights of property in Oudh. They seem to apply to all persons possessed of subordinate rights of property in talooks in Oudh; and the third clause of the 7th of these rules says, 'In no case can the amount payable during the currency of the settlement by the under-proprietor to the talookdar be less than the amount of the revised Government demand with the addition of 10 per cent'."

and "Their Lordships conceive that they too are bound by this enactment."

I am therefore of opinion that the appellant is entitled to get *malikana* from the defendants at the rate of 10 per cent. of the land revenue.

As regards local rates, it is not disputed that the appellant is entitled to local rates under the first clause of section 8 of the United Provinces Local Rates Act of 114, but, it is contended that sub-clause (a) of that clause is not applicable to the present case as the

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defendants were not liable to pay the rural police rate under the United Provinces Local and Rural Police Rates Act of 1906. On this point also the case for the respondents appears to me to be untenable. In Police Department notification No. 274 dated the 2nd of May, 1881, published in the *N.-W. Provinces and Oudh Gazette* of 7th May, 1881, it is clearly laid down that in the absence of a special agreement or decree to the contrary in cases of sub-settlement, the under-proprietors must be held responsible for the maintenance of the village police, and section 14 of the Local and Rural Police Rates Act of 1906, which has now been superseded by Act I of 1914, also provided that the rural police rate shall be recoverable in whole or in part by the landlord or the under-proprietor or permanent lessee who is bound by law, decree or contract to provide wholly or in part for the maintenance of rural police. It is thus clear that the defendants as under-proprietors were liable for the rural police rate payable under the Act of 1906 and are consequently liable under sub-clause (a) of clause (1) of section 8 of the Local Rates Act of 1914.

The amount of land revenue being Rs.350 the local rate payable under clause (1) of section 8 comes to Rs.15-12 and that under sub-clause (a) to Rs.17-8, total Rs.33-4.

The appeal is therefore allowed with costs and the decree of the learned District Judge modified. The plaintiff-appellant's suit is decreed for Rs.402-3-3 land revenue (remaining due after payment of Rs.122-12-9 by the defendants) for the two years in suit, Rs.70 *malikana* and Rs.66-8 as local rates, total Rs.538-11-3, with proportionate costs in all the courts and future interest at 6 per cent. per annum.

Appeal allowed.