APPELLATE CIVIL.

Before Das and Adami, JJ.

SHAIKH ABDUL HASAN

v.

SHAIKH TAJ ALI.*

1926.

June, 4.

Cess Act, 1880 (Ben. Act IX of 1880) sections 4 and 41 (3)——"cultivating raiyat" definition of——person cultivating land and paying rent not exceeding Rs. 100 per annum, whether "cultivating raiyat"——rate at which cess is payable.

Where a person cultivates land and pays rent not exceeding Rs. 100 per annum, such a person is a "cultivating raiyat" within the meaning of section 4, Cess Act, irrespective of the character of his holding under the Bengal Tenancy Act: and he is liable to pay cess at half the rate paid by a tenure-holder.

Appeal by the defendants.

These three second appeals arose from three suits in which the plaintiffs as landlords sought to recover from the defendants as tenure-holders arrears of cess for the years 1326 to 1329 at the rate of one anna in the rupee. The defendants contested the suit on the ground that they were not tenure-holders but cultivating raiyats and were liable only to pay at the rate of half-anna in the rupee.

It appeared that there was a tenure of 300 bighas on an annual jama of Rs. 560. This tenure came to be held by a number of co-sharer tenure-holders who subsequently agreed with the landlord that each should pay his share of the jama according to the amount of land he held in the tenure. The defendants in the three suits were co-sharer tenure-holders, the amount of whose annual jama did not amount to as much as Rs. 100.

*Appeals from Appellate Decrees nos. 752, 819 and 820 of 1924, from a decision of Babu Krishna Sahay, Additional Subordinate Judge of Bhagalpur, dated the 19th March, 1924, reversing a decision of Babu Charu Chandra Coari, Munsif, 2nd Court, Bhagalpur, dated the 10th March, 1923.

1926.

SHAIKH ABUL HASAN v. SHAIKH TAJ ALI.

The trial Court found that as a matter of fact the defendants were cultivating raiyats within the meaning of the Cess Act, and, therefore, they were liable to pay at the rate of half-anna in the rupee only.

On appeal the Subordinate Judge came to a different finding. He stated that though he agreed with the Munsif that the liability to pay cess was based upon the provisions of the Cess Act and not upon the Bengal Tenancy Act, he still found it difficult to agree with the Munsif that, having regard to the definition given in section 4 of the Cess Act, the respondents must be taken to be cultivating raiyats. He referred to the fact that the defendants were entered in the record-of-rights as tenure-holders, and he also refered to and relied on the fact that the defendants were co-sharer tenure-holders within the meaning of the Bengal Tenancy Act. He held that a division of a tenure could not change its character, nor would the distribution of its rental convert it into a different species of holding. He noticed that in the record-of-rights, though the defendants were entered as tenure-holders, the cess to which they were liable was stated to be at the rate of half-anna per rupee, but he held that this was due to a mistake.

Manohar Lal, with him, *Jagannath Prasad*, for the appellants.

S. M. Naim, with him *A. H. Fakhruddin*, for the respondents.

ADAMI, J., (after stating the facts set out above, proceeded as follows:)

It is clear that the learned Subordinate Judge has taken a wrong view. The Cess Act in section 41, sub-section (*3*), states that every cultivating raiyat shall pay to the person to whom his rent is payable one half of the local cess calculated at the prescribed rate upon the rent payable by him. The rate which is payable under the notification of the Government is one anna and, therefore, a cultivating raiyat

1926.

SHAIKH ABUL HASAN v. SHAIKH TAJ ALI.

ADAMI, J.

would have to pay half-anna in the rupee. The term " cultivating raiyat " is defined in section 4 as meaning a person cultivating land and paying rent therefor not exceeding Rs. 100 per annum; and a " tenure " is defined as including every interest in land, whether rent paying or not save and except an estate as defined in the Act and save and except the interest of a cultivating raiyat. The Act thus clearly states that where a person cultivates land and pays rent not exceeding Rs. 100 per annum such a person is liable to pay at the rate of half the rate paid by a tenure-holder. The denomination " cultivating raiyat " has nothing to do with the Bengal Tenancy Act, nor has the Bengal Tenancy Act anything to do with the realisation of the cess. In deciding whether the defendants are liable to pay as tenure-holders or not, we have to consider the definitions given in the Cess Act and find out who is liable, and if a person cultivates the land himself and pays rent not exceeding Rs. 100 he is a cultivating raiyat whatever may be the character of his holding under the Bengal Tenancy Act. The defendants in this case pay a rent under Rs. 100 and, if they cultivate the land themselves, they will be liable only to pay cess at the rate of half an anna per rupee. These is nothing in the judgment of the lower appellate Court to show us whether these defendants do actually cultivate the lands themselves, and the case must go back to the lower appellate Court for a consideration of the evidence and decision whether these defendants do cultivate the lands themselves. If they do, since they fall under section 41, they are cultivating raiyats and can only be liable to pay cesses at the rate of half-anna in the rupee.

The decree of the lower appellate Court must be set aside and the case must go back to it for decision according to the directions given above. Costs will abide the result.

DASS, J. I agree.

Case remanded.