

Reporter should require the memoranda to be stamped in accordance with the rule laid down in *Dhanukdhari Prosad Pande's*⁽¹⁾ case.

Order accordingly.

APPELLATE CIVIL.

Before Kulwant Sahay and Khaja Mohamad Noor, JJ.

SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

RAMASRAY SINGH.*

Cess Act, 1880 (Beng. Act IX of 1880), sections 4, 5, 6, 24—riyat, when required to submit return of the annual value—section 24, scope of—cultivating riyat deriving income by allowing dealers of cattle to hold hat on the land—assessment of cess on the basis of income so derived, whether legal—scheme of the Act—persons holding the hat, whether lessees or licensees—cultivating riyat allowing persons to hold hat on his lands, whether can be construed to have the status of tenure-holder.

Section 24 of the Cess Act, 1880, provides :—

"The Collector may, whenever he may think fit, cause a notice in the form no. 1 in Schedule (B) contained, to be served on any person holding any lands or possessing any interest therein, although such person may have been mentioned in any return as a cultivating riyat; and thereupon such person shall be bound to make a return of the annual value of such land within one month from the service of such notice in the form in Schedule (A) contained and the provisions of sections 17 and 18 regarding extension of time for lodging a return and regarding fine, respectively, shall be applicable to such person."

Held, that section 24 contemplates the case of a riyat who is not cultivating the land himself directly but has let it out to under-riyat for actual cultivation. If there is no under-riyat and if the riyat is himself cultivating the land, he cannot be called upon to furnish a return of the annual value which he derives in respect of the land.

* Appeal from Appellate Decrees nos. 696 to 708 of 1928, from a decision of Rai Bahadur Jyotirmoy Chattarji, District Judge of Saran, dated the 14th February, 1928, confirming a decision of Maulavi S. A. Hamid, Munsif of Chapra, dated the 18th December, 1926.

(1) (1933) I. L. R. 12 Pat. 188.

1933.

SIDESHWARI
FRASAD
v.
RAM
KUMAR
RAI.

JAMES, J.

1933.

February,
10.

1933.

SECRETARY
OF STATE
FOR INDIA
IN
COUNCIL
v.
RAMASWAMY
SINGH.

The scheme of the Cess Act appears to be that the holder of the estate has to pay cesses upon the rent that he receives in respect of the estate. The tenure-holder in his turn has to pay cesses upon the rent that he receives from the raiyat under him and the raiyat has to pay the cesses not upon what he receives from the land but upon what rent he pays to his superior landlord. Where, therefore, the plaintiffs who were the cultivating raiyats of certain lands in a village had allowed the dealers of cattle to hold a sort of *hat* upon their holding for which they charged a certain fee, and they were assessed with a certain amount of cess upon the income they derived from these dealers of cattle, *held*, that the assessment on the basis of the income derived by the plaintiffs was illegal.

Held, further, that in view of the definition of the term "tenure" in the Act, the plaintiffs cannot be construed to have the status of a tenure-holder in respect of the lands held by them when they allow the dealers in cattle to come upon the land and hold a *hat* there.

Persons holding a *hat* upon the land of the cultivating raiyat are not lessees under them but are mere licensees.

Khudan Lal Singh v. Hafizuddin(1) and *Secretary of State for India v. Karuna Kanta Chowdhury*(2), followed.

Appeal by defendant no. 1.

The facts of the case material to this report are stated in the judgment of the Court.

Rai Gurusaran Prasad, Government Pleader, for the appellant.

B. P. Sinha and *Harinandan Singh*, for the respondents.

KULWANT SAHAY AND KHAJA MOHAMAD NOOR, JJ.
—These are appeals by the defendant no. 1, the Secretary of State for India in Council, against the decision of the District Judge of Saran confirming the decision of the Munsif and decreeing the plaintiffs' suits for a declaration that the assessment of road cess made upon them under the Road Cess Act was

(1) (1932) 13 Pat. L. T. 648.

(2) (1907) I. L. R. 35 Cal. 82, F. B.

ultra vires and without jurisdiction and the realisation of the cess so assessed was illegal and for a refund of the same.

The plaintiffs are admittedly the cultivating raiyats of certain lands in village Anandpur which adjoins the lands of Sonepur where the Sonepur Fair is held annually. It appears that the plaintiffs allowed the dealers of cattle to hold a sort of *hat* upon their holdings for which they charged a certain fee per head of cattle from those dealers. These plaintiffs were called upon to submit a return under section 24 of the Cess Act (Bengal Act IX of 1880) and thereafter they were assessed with a certain amount of cess upon the income they derived from the dealers of cattle who hold the *hat* upon their land. They protested that they were not liable to be assessed on the income they derived which could not be treated as the annual value of the land within the definition of the expression as given in the Cess Act. Their objections were disallowed up to the Board of Revenue. They then instituted the present suits for a declaration that they were not liable to assessment and for a refund of the cesses realised from them.

The defence of the Secretary of State for India in Council was that the plaintiffs were the holders of tenures within the definition of the term as given in the Cess Act and that, therefore, they were liable to assessment and they have been rightly assessed and the cesses have been legally recovered from them.

Both the Courts below have held that the assessment on the basis of the income derived by the plaintiffs from the dealers of cattle was illegal and ultra vires and they made a declaration entitling the plaintiffs to a refund of the cess realised from them and granted them a decree as prayed for.

The argument advanced by the learned Government Pleader on behalf of the appellant is that under section 5 of the Cess Act an immovable property is

1983

SECRETARY
OF STATE
FOR INDIA
IN
COUNCIL
T.
RAMASRAY
SINGH.

KULWANT
SAHAY
AND
KHAJA
MOHAMAD
NOOR, JJ.

1933.

SECRETARY
OF STATE
FOR INDIA
IN
COUNCIL
C.
RAMASRAY
SINGH.

KULWANT
SAHAY
AND
KHANA
MOHAMAD
NOOR, JJ.

liable to the payment of local cess. Under section 6 the local cess is to be assessed on the annual value of lands. Under section 4 "annual value of any land estate or tenure" means the total rent which is payable, or if no rent is actually payable, would on a reasonable assessment be payable during the year by all the cultivating raiyats of such land, estate or tenure, or by other persons in the actual use and occupation thereof. It is contended that the plaintiffs' interest in the land is an immoveable property within the meaning of section 5 and that, therefore, under section 6 they are liable to assessment upon the annual value which is to be determined upon the sum they recover which is to be treated as the annual value within the definition of the term as given in section 4. It is clear that the argument of the learned Government Pleader cannot be accepted as sound. Under section 41 of the Cess Act every cultivating raiyat has to pay to the person to whom his rent is payable a certain proportion of the local cess calculated under the provisions of the Act or upon the annual value ascertained under the provisions of section 24 or 25 of the Act in respect of the land held by him. The amount upon which the plaintiffs are sought to be assessed is not the amount of the rent which is payable by the plaintiffs to their landlord and, therefore, they cannot be assessed with cesses upon this amount, nor is the amount the annual value ascertained under the provisions of section 24 or 25 of the Act. Section 24 empowers the Collector to cause a notice in the prescribed form to be served on any person holding any lands or possessing any interest therein, although such person may have been mentioned in any return as a cultivating raiyat. This section merely empowers the Collector to call upon the cultivating raiyat to submit a return and the cultivating raiyat has to submit a return of the annual value of the land held by him. According to the definition of the term "annual value" he has to mention in the return the rent which is payable to him. That supposes that the

raiyat has got an under-raiyat under him from whom he recovers rent. If there is no under-raiyat and if the raiyat is himself cultivating the land, it is clear that he cannot be called upon to furnish a return of the annual value which he derives in respect of the land. The note to section 4 printed in the Bihar and Orissa Cess Manual of 1927 clearly indicates that section 24 contemplates the case of a raiyat who is not cultivating the land himself directly but has let it out to under-raiyats for actual cultivation. For ought we know, the provisions contained in section 24 might have been introduced for the purpose of enabling the Collector to check the accuracy of the return filed by the proprietor or the tenure-holder, who in his return has described certain lands as in the possession of cultivating raiyats. Section 26 provides that if it shall appear to the Collector that any person upon whom a notice has been served under section 24 has been wrongly classed in the return as a cultivating raiyat, the Collector may direct that the entry be corrected and that such person be classed as a tenure-holder. This clearly refers to the return submitted by the superior landlord or tenure-holder. In any event when as a matter of fact in the present case there is no actual cultivating raiyat under the plaintiffs, the plaintiffs cannot be called upon to submit a return of the annual value of their lands. The scheme of the Road Cess Act appears to be that the holder of the estate has to pay cesses upon the rents that he receives in respect of the estate. The tenure-holder in his turn has to pay cesses upon the rent that he receives from the raiyat under him and the raiyat has to pay the cesses not upon what he receives from the land but upon what rent he pays to his superior landlord. In the present case the plaintiffs are the cultivating raiyats. There is no dispute on the point that they are the cultivating raiyats. As cultivating raiyats they are liable under the Act to pay cesses upon the rent they pay to the superior landlord in respect of the land forming their raiyati holding. If the plaintiffs make any profit out of the land, that profit is not to

1933.

SECRETARY
OF STATE
IN
COUNCIL
v.
RAMASRAY
SINGH.

KULWANT
SAHAY
AND
KHAJA
MOHAMAD
NOOR, J.J.

1933.

SECRETARY
OF STATE
FOR INDIA
IN
COUNCIL
v.
RAMASRAY
SINGH.

KULWANT
SAHAY
AND
KHAJA
MOHAMAD
NOOR, JJ.

be taken into consideration in assessing the road cess in respect of the land. It is only the income derived by the holder of the estate or of the tenure upon which cess is to be assessed and in so far as the cultivating raiyat is concerned it is only upon the rent payable by him that cess is to be assessed. Under the circumstances it is clear that the plaintiffs cannot be assessed to cesses in respect of any profit which they make out of the holding.

The question is whether the plaintiffs can be construed to have the status of a tenure-holder in respect of the lands held by them when they allow the dealers in cattle to come upon the land and hold a *hat* there. The definition of the term "tenure" as given in the Act precludes such a contention. It expressly provides that the interest of a cultivating raiyat is not included in the term "tenure". The plaintiffs are admittedly cultivating raiyats and they cannot be treated to be tenure-holders for the purposes of assessment of cesses. The persons who hold the *hat* and deal in cattle upon the land are not lessees under the plaintiffs. They are mere licensees who have been granted license to come upon the land and to sell their cattle. The difference between a lessee and a licensee has been pointed out in the case of *Khudan Lal v. Hafizuddin*(1), and the Full Bench decision of the Calcutta High Court in *Secretary of State for India v. Karuna Kanta Chowdhry*(2) is a clear authority on the point. It is, therefore, clear that the decision of the learned District Judge was correct.

These appeals must, therefore, be dismissed with costs.

Appeals dismissed.

(1) (1932) 13 Pat. L. T. 648.

(2) (1907) I. L. R. 35 Cal, 82, F. B.