

APPELLATE CIVIL.

Before Justice Sir Asutosh Mookerjee and Mr. Justice Carnduff.

SEWDEO NARAIN SINGH

1912

v.

Jan. 9.

AJODHYA PROSAD SINGH.*

*Road-cess returns—Evidence—Road-cess return filed by a temporary lessee—
Bengal Cess Act (IX of 1880), s. 95—Evidence Act (I of 1872), s. 21.*

The provisions of section 95 of the Bengal Cess Act are not exhaustive. They merely limit the application of section 21 of the Indian Evidence Act, and exclude road-cess returns when they are sought to be admitted in favour of the person by or on behalf of whom they have been filed.

A road-cess return filed by a person in his capacity as a temporary lessee of a certain property is admissible in evidence in favour of the superior landlord, inasmuch as he could not be regarded as a person by or on behalf of whom the return was filed.

SECOND APPEAL by the plaintiffs, Sewdeo Narain Singh and others.

This appeal arose out of a suit brought by the plaintiffs landlords for recovery of arrears of rent. The plaintiffs alleged that the defendants held the land at a produce rent. The defendants pleaded that they held the land at a money-rent. On behalf of the plaintiffs a road-cess return, filed in 1896 by a *ticcudar* of the property, was filed, which would go to show that the rent payable by the defendants was produce-rent.

The Court of first instance decreed the plaintiffs' suit at the rate admitted by the defendants. On appeal by the plaintiffs the lower Appellate Court having held that the road-cess return was not admissible in

* Appeal from Appellate Decree, No. 167 of 1910, against the decree of C. W. E. Pittar, District Judge of Patna, dated Oct. 12, 1909, affirming the decree of Durga Das Bose, Subordinate Judge of Patna, dated July 8, 1908.

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evidence against the defendants respondents, affirmed the decision of the first Court.

Against this decision the plaintiffs appealed to the High Court.

Babu Umakali Mukherjee (Babu Ganesh Dutt Singh with him), for the appellant. The road-cess return was wrongly rejected by the Court below. It was filed by a temporary lessee of the property during the continuance of the lease. Therefore it could not be said that it was filed by or on behalf of the superior landlord. It was sought to be used in evidence in favour of the superior landlord. That being so, section 95 of the Bengal Cess Act has no application, and the road-cess return should have been admitted in evidence.

Babu Sajani Kanta Sinha, for the respondent. Section 95 of the Bengal Cess Act applies to the facts of the present case. The road-cess return filed by the *ticcadar* must be taken to have been filed, although not by the superior landlord, but on his behalf. Therefore, the Court below was right in not admitting in evidence the road-cess return. During the continuance of the *ticca*, a part of the proprietary interest of the property was acquired by the *ticcadar*; therefore on the expiry of the lease the plaintiff must be deemed to have acquired a part of the interest through the *ticcadar*.

MOOKERJEE AND CARNDUFF JJ. This is an appeal on behalf of the plaintiffs in a suit for recovery of arrears of rent. The substantial question in controversy between the parties relates to the character of the holding, whether it is a holding at a money-rent as the tenants allege or at a produce rent as the landlords contend. The Courts below have concurrently decided this question in favour of the tenants. That

decision has been attacked in this Court as erroneous in law, because relevant evidence has been excluded. The evidence in question is a road-cess return filed in 1896 by a *ticcadar* of the property, by name Biswanath Singh. The learned vakil for the appellant has contended that the road-cess return is admissible in evidence—*first*, because it was used in evidence against the plaintiffs by the defendants in another suit for declaration of title; *secondly*, because section 95 of the Bengal Cess Act of 1880 does not present a bar to the admission of the road-cess return; and, *thirdly*, because the person by whom it was filed was no other than a *benamidar* for the grand-father of the defendants themselves.

In so far as the first reason assigned by the appellants is concerned, we do not feel impressed by it. The mere circumstance that the road-cess return has been successfully used in evidence by the tenants against their landlords for the purposes of another litigation does not show that it is admissible in evidence in the present litigation on behalf of the landlords themselves.

In so far, however, as the second ground is concerned, it is in our opinion well founded. Section 95 of the Bengal Cess Act has no application to the case before us. That section provides that every return filed by or on behalf of any person in pursuance of the provisions of the Act shall bear the signature and address of such person or his authorised agent, and shall be admissible in evidence against such person but shall not be admissible in his favour. Now, as was pointed out in the cases of *Mohan Pandey v. Lala Bhagwati Charan* (1) and *Chalho Singh v. Jharo Singh* (2) the provisions of section 95

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(1) (1909) 1 Ind. Cas. 813

(2) See *ante*, p. 995.

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of the Bengal Cess Act are not exhaustive. They merely limit the application of section 21 of the Indian Evidence Act and exclude road-cess returns when they are sought to be admitted in favour of the person by or on behalf of whom they have been filed: *Hem Chandra Chowdhry v. Kali Prosanna Bhaduri* (1). It has not been disputed that if a road-cess return is not admissible in favour of such person, it is equally inadmissible in favour of a person who claims through him or who may be deemed to be his representative in interest. Now, in the case before us, the road-cess return was not filed by the present plaintiffs, nor was it filed on their behalf. It was filed by Biswanath Singh in his capacity as temporary lessee of the property. The question, therefore, arises whether when the plaintiffs seek to have the document admitted in evidence, they can rightly be regarded as persons by or on behalf of whom the return has been filed. In our opinion, the question ought to be answered in the negative. The learned vakil for the respondent has ingeniously contended that as during the subsistence of the *ticca* a part of the superior interest was vested in the *ticcadar*, upon the expiry of the term of the *ticca* when the landlord became the sole owner, he must be deemed to have acquired a part of the interest through his *ticcadar*. This argument is obviously unsound. The landlord cannot be said to claim through his tenant in whose favour he had created an interest limited for a time. We are, therefore, of opinion that the road-cess return is admissible in evidence, notwithstanding the provisions of section 95 of the Bengal Cess Act.

As regards the third reason assigned on behalf of the appellant, it is obvious that if the road-cess return was as a matter of fact made by a predecessor in

(1) (1903) I. L. R. 30 Cal. 1033.

interest of the defendants, its evidentiary value in favour of the plaintiff and against the defendants is very considerable. This does not appear to have been appreciated by either of the Courts below, and consequently the question of *benami* has not been investigated.

The result is that this appeal is allowed, the decree of the District Judge set aside and the case remanded to him for reconsideration. The road-cess return will be treated as admissible in evidence, and the question of *benami* must also be determined. The parties will be at liberty to adduce additional evidence in regard to this point. Such evidence may be taken either by the District Judge himself or under his direction by the Subordinate Judge.

We may add that a subsidiary question has been raised before us, namely, whether in the event of a finding adverse to the landlords the amount of rent payable in cash should not be assessed in this proceeding. We are of opinion that the question ought not to be determined in this suit. If the plaintiffs are unable to establish that they are entitled to recover the amount claimed by them, the only decree they can legitimately obtain is a decree for the sum admitted by the defendants. What is a fair rent in respect of this land must be determined in a proceeding properly framed for that purpose. The costs of this appeal will abide the result.

S. C. G.

Appeal allowed ; case remanded.

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