APPELLATE CIVIL.

Before Mr. Justice Mookerjee and Mr. Justice Carnduff.

CHALHO SINGH

v.

JHARO SINGH.*

1911

May 30.

Teishkhana paper—Evidence—Official record—Road-cess returns—Bengal Cess Act (IX of 1880), s. 95—Road-cess return filed by a co-sharer landlord and assessment made on the basis of it—Whether such return is admissible in evidence against the other co-sharers.

Teishkhana paper is a register kept for the information of the Collector, but it is in no sense an official record; therefore, before a *teishkhana* paper could be used in evidence, it must be proved that it had been kept in due course by the registered patwari.

Baijnath Singh v. *Sukhu Mahton* (1) and *Samar Dasadh* v. *Juggul Kishore Singh* (2) distinguished.

Persons interested to the extent of an one-fourth share of the superior interest filed a road-cess return under the provisions of the Bengal Cess Act, and they stated therein, as they were bound to do under the law, the names of the tenants in occupation of specific lands. The statement which they made was against their interest. No similar return was filed by the persons who represented the remaining three-fourths share of the superior interest, and the Revenue authorities assessed the road cess, as they were entitled to do, upon the return filed by the one-fourth shareholders:

Held, that the return filed by the one-fourth shareholders is admissible in evidence as against the remaining shareholders of the superior interest.

Nusseerun v. *Gouree Sunkur Singh* (3) distinguished.

S. 95 of the Bengal Cess Act (IX of 1880) is not exhaustive. It was intended to restrict the operation of s. 21 of the Evidence Act, and a road-cess return may be admissible in evidence as against persons other than the one who has made the return.

* Appeal from Appellate Decree, No. 2057 of 1909, against the decree of S. S. Skinner, District Judge of Gaya, dated Aug. 24, 1909, reversing the decree of Jadu Nandan Pershad, Munsif of Gaya, dated March 22, 1909.

(1) (1891) I. L. R. 18 Calc. 534. (2) (1895) I. L. R. 23 Calc. 366.
(3) (1874) 22. W. R. 192.

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SECOND APPEAL by the plaintiffs, Chalho Singh and others.

This appeal arose out of an action brought by the plaintiffs to recover possession of 17 bighas of land on declaration of their title thereto. The plaintiffs alleged that they had been in peaceful possession of these 17 bighas as their *nakdi kasht* in the four anna *takhta* of mouzah Sripat Ratan Khap, for more than 20 years; that on the 23rd June 1908, the defendants Nos. 1 to 4, who were also proprietors of the said *takhta*, claimed four bighas out of the holding for their cultivation, and in consequence thereof there were criminal cases between the parties, and the result was that the plaintiffs were dispossessed of the entire 17 bighas of their *kasht* land. The plaintiffs further alleged that they had acquired right of occupancy in the disputed land.

The defendants pleaded, *inter alia*, that the plaintiffs never held the 17 bighas of *kasht* in the four anna *takhta* of the mouzah and that they had not acquired any right of occupancy therein; that all the lands comprised in the *takhta*, with the exception of four bighas only, were *khudkasht* lands of the proprietors who were in possession thereof according to their shares.

In support of their claim the plaintiffs filed, amongst other documents, *teishkhana* papers and a road-cess return. The Court of first instance held that both the *teishkhana* papers and the road-cess return were admissible in evidence, and decreed the plaintiffs' suit. On appeal, the learned District Judge reversed the decision of the first Court.

Against this decision the plaintiffs appealed to the High Court.

Babu Mahendra Nath Roy (with him *Babu Kulwant Sahay*), for the appellants. The learned

Judge of the Court below was wrong in holding that the *teishkhana* papers filed by the plaintiffs were not admissible in evidence. It is admissible: see *Samar Dasadh* v. *Juggul Kishore Singh* (1) and *Baijnath Singh* v. *Sukhu Mahton* (2). The road-cess return also was admissible in evidence. It was filed by a co-sharer landlord, and in it the names of the tenants in occupation of specific lands were stated; the other co-sharers did not file any other return and so assessment was made on the basis of it. That being so, the return is admissible in evidence against the other co-sharers. The provisions of s. 95 of the Bengal Cess Act are not exhaustive. The effect of it is only to qualify s. 21 of the Evidence Act. The Privy Council, in the case of *Hem Chandra Chowdhry* v. *Kali Prosanna Bhaduri* (3), held that a road-cess return is admissible in evidence against any person other than the maker thereof.

Babu Umakali Mookerjee (with him *Babu Sarat Chander Ghose*), for the respondents. The Court below was right in holding that the *teishkhana* papers were not admissible in evidence. It is not an official record at all. The learned Judge found that the man who filed the papers was not the registered patwari. Only in case where it is found that the registered patwari filed the *teishkhana* papers and they had been kept in due course by him, they might be admissible in evidence. In this respect the case of *Samar Dasadh* v. *Juggul Kishore Singh* (1) and the other case cited by the appellant are distinguishable. As regards the road-cess return it is submitted that it is also not admissible in evidence. Under s. 95 of the Bengal Cess Act, a road-cess return is admissible in evidence only against the person who filed it. That being so, it was

(1) (1895) I. L. R. 23 Calc. 366.
(2) (1891) I. L. R. 18 Calc. 534.
(3) (1903) I. L. R. 30 Calc. 1033; L. R. 30, I. A. 177.

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not admissible in evidence against the respondents, and the learned Judge was right in so holding. *Nusseerun* v. *Gouree Sunkur Singh* (1) supports my contention.

MOOKERJEE AND CARNDUFF JJ. The subject matter of the litigation which has given rise to this appeal is a tract of 17 bighas of land in mouzah Sripat Ratankhap of which the plaintiffs-appellants seek to recover possession on the ground that it formed their *nagdi kasht* land. The defendants denied that the land in dispute was the *nagdi kasht* of the plaintiffs. The Court of first instance decreed the suit. Upon appeal the District Judge has reversed that decision.

The plaintiffs have now appealed to this Court. On their behalf the decision of the District Judge has been challenged on the ground that he has excluded from consideration two pieces of documentary evidence which are admissible in evidence and had been rightly admitted as such by the Court of first instance. The documents in question are certain *teishkhana* papers and a road-cess return.

In so far as the first document is concerned, it has been contended that it is admissible in evidence upon the authority of the decision of this Court in the cases of *Baijnath Singh* v. *Sukhu Mahton* (2) and *Samar Dasadh* v. *Juggul Kishore Singh* (3). In our opinion, the cases upon which reliance is placed are clearly distinguishable and are of no assistance to the appellants. They merely lay down that a *teishkhana* register prepared by a *patwari* under rules framed by the Board of Revenue under Regulation XII of 1817, though not a public document, is admissible in evidence if properly proved. In fact,

(1) (1874) 22 W. R. 192. (2) (1891) I. L. R. 18 Calc. 534.
(3) (1895) I. L. R. 23 Calc. 366.

the *teishkhana* paper is a document prepared in the office of the zemindar by a *patwari* who is paid by the zemindar but approved by the Collector. It is a register kept for the information of the Collector, but it is in no sense an official record. In the case before us, it was disputed on behalf of the defendants that the person who is said to have kept the *teishkhana* paper was a *patwari* approved by the Collector. It was therefore obligatory upon the plaintiffs, before the *teishkhana* paper could be used in evidence, to prove that it had been kept in due course by the registered *patwari*. They did not, however, examine Sukhi Lal, the alleged *patwari*; and the District Judge very properly says that their failure to call this witness shows that it cannot be treated as evidence. In our opinion, the District Judge has not treated the *teishkhana* paper as inadmissible in evidence. He has rejected it on the ground that it had not been proved to be kept by a registered *patwari*. This is obviously a valid ground why no reliance should be placed on it.

In so far as the second document is concerned, namely, the road-cess paper, it appears to have been filed on the 18th June, 1903, by the proprietors interested to the extent of an one-fourth share in the property. It was a return filed for the years 1306 to 1308; and, so far as we can gather, on the basis thereof cesses were assessed not merely in respect of the shares of the proprietors who made the return but in respect of the whole property. The learned vakil for the defendants-respondents has contended that the road cess return is admissible in evidence only as against the persons who made the return, and that it is not admissible in evidence as against a stranger. In support of this view, he has placed reliance upon s. 95 of the Bengal Cess Act of

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1880 and upon the decision of this Court in the case of *Nusseerun* v. *Gouree Sunkur Singh* (1). Now section 95 of the Cess Act provides that "every return filed by, or on behalf of, any person in pursuance of the provisions of this part 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." In our opinion, s. 95 on which reliance is placed is not exhaustive. It was intended to restrict the operation of s. 21 of the Indian Evidence Act which makes an admission ordinarily proveable as against the person who makes it or his representative in interest, but lays down certain exceptional cases in which admissions may be proved by or on behalf of the person who has made them or his representative in interest. The effect of s. 95 is to qualify s. 21 of the Indian Evidence Act to this extent that a road cess return cannot, under any circumstance, be admitted in evidence in favour of the person who has made the return. Section 95, however, does not lay down, expressly or by implication, that a road-cess return is not admissible in evidence against any person other than the maker thereof. In fact, such a view is contrary to the decision of the Judicial Committee in the case of *Hem Chandra Chowdhry* v. *Kali Prasanna Bhaduri* (2). In that case, certain road-cess returns were filed and were sought to be used as evidence against a person other than those who had made the returns. The Subordinate Judge treated the returns as admissible in evidence. Upon appeal, this Court observed as follows: "The road-cess returns are exhibits 1 to 4 and 6 and 7. None of these were submitted by the

(1) (1874) 22 W. R. 192.

(2) (1903) I. L. R. 30 Calc. 1033; L. R. 30 I. A. 177.

appellants, and exhibits 3, 4, 6 and 7 relate not to the tenancy under either of the plaintiff's estates, but to the tenancy under estate No. 122, which represents the 10 annas share of the perganah, and are, we consider, on that ground inadmissible. We cannot hold that there is a separate and distinct tenancy under the plaintiff as proprietor of one estate so as to admit of his enhancing the rent payable to him, and at the same time hold that there is one and the same tenancy under him and the proprietors of estate No. 122, so as to make a statement relating to the tenancy under the latter estate admissible. If the tenancies are distinct, the statement to be admissible must, we think, relate to the tenancy which is in question. In this view, all but exhibits 1 and 2 must be excluded." Upon appeal to the Judicial Committee, their Lordships held that the road cess returns were admissible in evidence, not merely as against the persons who made the returns but also as against other persons. No doubt, the purpose for which the returns were used in that litigation is not identical with the purpose for which the return is sought to be used in the case before us. But the decision of the Judicial Committee is an authority for the proposition that s. 95 of the Bengal Cess Act, 1880 is not exhaustive and that a road-cess return may be admissible in evidence as against persons other than the one who has made the return. The question, therefore, that arises in the case before us is, whether the road-cess return is admissible as against the defendants. In support of the contention that the return is so admissible, reliance has been placed by the learned vakil for the appellants upon the principle deducible from the cases of *Kowsulliah Sundari Dasi* v. *Mukta Sundari Dassi* (1) and *In re Whiteley and Roberts' Arbitration* (2).

(1) (1885) I. L. R. 11 Calc. 588. (2) [1891] 1 Ch. 558.

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In the case first mentioned, reliance was placed by Sir Richard Garth, C. J., upon a passage from Taylor on Evidence (Vol. I, s. 743) to the following effect: "When several persons are jointly interested in the subject matter of the suit, the general rule is that the admissions of any one of those persons are receiveable against himself and fellows, whether they be all jointly suing or sued, provided the admission relates to the subject matter in dispute and is made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered": *Kemble* v. *Farran* (1) and *Lucas* v. *De la Cour* (2). The learned Chief Justice then went on to explain that the principle of this rule is, that for the purpose of making these statements with reference to the joint concern or common subject of interest, one partner or co-contractor is considered to be the agent of the others; and this rule is enacted, though in a somewhat concise form, in s. 18 of the Indian Evidence Act. The same principle is recognised in the second case on which reliance is placed: *In re Whiteley and Roberts' Arbitration* (3). In that case Mr. Justice Kekewich points out that "as a rule, the admission of any one party, though it can be produced in evidence against himself, cannot be adduced in evidence against any other party. There are well-known and recognised exceptions to that rule which may be classed under two heads. One of them is, when the party against whom the admission is sought to be read has a joint interest with the party making the admission in the subject matter—in the thing to which the admission relates. That, of course, depends upon the legal principle that persons seized jointly are seized of the whole: each

(1) (1829) 3 C. & P. 623. (2) (1813) 1 M. & S. 249.
(3) [1891] 1 Ch. 558.

being seized of the whole, the admission of either is the admission of the other, and may be produced in evidence against that other. That is applied from real property law to other matters. The other exception is, where the party against whom the admission is sought to be used takes what he claims in the subject matter from the person who made the admission, as in the case where it is sought to read against the heir, an admission made by the ancestor. He stands in the shoes of the party making the admission. He can only claim what he claims because he derives title in that way; and therefore it is only fair, according to legal principles, that he should be bound by the admission of him through whom he claims." The substance of the matter is that an admission is admissible either because it has been made by the person or by the predecessor or the agent of the person, against whom it is sought to be used. In the case before us, it is fairly clear that the land to which the plaintiffs lay claim is not held by them under all the proprietors. Persons interested to the extent of an one-fourth share of the superior interest made the return under the provisions of the Bengal Cess Act and they stated therein, as they were bound to do under law, the names of the tenants in occupation of specific lands. The statement which they made was against their interest. So far as we can gather, no similar return was made by the persons who represented the remaining three-fourths share of the superior interest, and the Revenue authorities appear to have assessed the road cess, as they were entitled to do, upon the return filed by the one-fourth shareholders. Under such circumstances, we are of opinion that the return filed by the one-fourth shareholders is admissible in evidence as against the remaining shareholders of the superior interest. We may add

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that the case of *Nusseerun* v. *Goure Sunkur Singh*(1), upon which reliance is placed by the vakil for the respondent, is distinguishable. There the learned Judges held that another return must have been filed on behalf of the five annas shareholders who were persons other than the 11 annas shareholders who had made the return. As we understand that decision, it does not lay down any inflexible rule of law that a return under the Cess Act is admissible in evidence only against the person who made the return. In fact, if that case professes to lay down any such rule, it cannot be treated as a binding authority in view of the decision of the Judicial Committee already mentioned.

The result is, that this appeal is allowed, the decree of the District Judge set aside, and the case remanded to him in order that he may rehear the appeal treating the road-cess return as admissible in evidence. Costs to abide the result.

S. C. G. *Appeal allowed ; case remanded.*

(1) (1874) 22 W. R. 192.