Krishna Chandra Maharaj And Anr. vs Bohra Ram Prasad on 29 March, 1951

Equivalent citations: AIR1952ALL636, AIR 1952 ALLAHABAD 636

JUDGMENT

Mootham J.

1. I have bad the advantage of reading my brother's judgment. The short question is whet
& the mahal consists of land of the same class for purposes of assessment to revenue. By

2. Now, Section 144 of the Act provides that the lambardar, through whom the revenue has

3. I agree with the order proposed by Agarwala, J.

Agarwala, J.

4. This is a deft's. appeal arising out of a suit for recovery of arrears of revenue under Section 224, U. P. Tenancy Act. The respondent is a lambardar while the appellants are some of the co-sharers in khewat No. 1 of Mohal eight biswas. In this khewat the appellants' share is 11 bighas & 6 biswas out of the entire area 472 bighas & 7 biswas. Out of 11 bighas & 6 biswas, 16 biswas of land is cultivated area while the rest, i. e., 10 bighas & 10 biswas consists of grove land. The entire mahal is assessed to a land revenue of Rs. 700 a year & Rs. 70 asscess. A settlement of revenue was made in this mahal in the year 1921. At the time of the settlement it was found that 24 acres of land of this mahal consisted of groves belonging to zamindars as well as to grove-holders out of which 13 bighas of land was capable of cultivation. Out of this 13 bighas of land the rent of only 8 bighas was taken into consideration & the income of the rest of the land was not taken into account. The plff. resp's. case was that the defts.-appellants were liable to pay land revenue proportionately to the extent of their share in the khewat irrespective of whether any area in their possession was assessed to land revenue or not. He, therefore, sued for the land revenue amounting to Rs. 57/13 due for three years 1850 fasli to 1359 fasli.

5. The defence in the suit was that the grove area in possession of the defts. was not liable to assessment of revenue & was not in fact assessed, & that, therefore, the defts. were not liable to pay to the plff. lambardar any amount qua that area.

6. The contention of the defts. was accepted by the trial Court which passed a decree for Rs. 5-4-0 only in favour of the plff. resp. The plff.-resp. appealed to the lower appellate Court. The lower appellate Court held that the liability for the payment of the revenue did not depend upon the question whether in making the assessment any particular property was excluded from assessment or included in it & that, therefore, even though the defts'. grove area may not have been taken into consideration in making the assessment of the mahal he was still liable to pay his proportionate share of the land revenue calculated upon the basis of the entire area of which he was the proprietor. It relied upon the Pull Bench ruling of this Court reported in Murari Lal v. Chotey, 1943 A.W. R. (H. C.) 71 and decreed the suit in full. Against this decree the deft, has come up in appeal to this Court.

7. The case came up for orders before me sitting as a single Judge & I ordered that it be laid before a Bench of two Judges for decision.

8. On behalf of the appellants it has been contended that under Section 63 A, Land Revenue Act, grove-land in possession of a zamindar is exempt from the liability to pay the land revenue & that therefore the appellants were not liable to pay the land revenue qua that land. It is urged that the Full Bench ruling reported in Murari Lal v. Ckotey, 1943 A. L. J. 153: 1943 A. w. R. (H. C.) 71, is distinguishable. The material sections which require consideration in the present case are Sections 58, 63-A to 63-D, 142 & 144.

9. Under Section 58 all land, to whatever purpose applied & wherever situate, is liable to the payment of revenue to Govt. except such land as has been wholly exempted from such liability by special grant of, or contract with, the Govt. or by the provisions of any law for the time being in force. Sections 63A to 63J deal with the mode of assessment of land revenue by the Settlement Officer. Section 63A defines the assessable area. It provides:

> "The area which shall ordinarily be assessed to revenue shall be the normal cultivated area, that is to say the area which has been cultivated in those of the thirteen years including & preceding the year of record in which remissions of revenue have not been granted. Land which in the year of record has been continuously out of cultivation for three years, & is then still out of cultivation, shall not be assessed to revenue unless : (a) it is pasturage for which the landlord receives rent, based on area ; (b) it is land producing sayar income of a kind liable to the payment of revenue ; (c) it is grove-land held by a grove-holder or included in the holding of a tenant."

The last Clause (c) was added by the U. P. Act XI [11] of 1941. This section makes clear the answer to two questions: (1) What sort of land is liable to be assessed to revenue ? The answer is: land which is the normal cultivated area. (2) What sort of land is not liable to be assessed to revenue ? The answer is: land which in the year of record has been continuously out of cultivation for three years & is then still out of cultivation subject to the three exceptions mentioned in the section. A zamindar's grove which is out of cultivation for three years & still out of cultivation in the year of settlement cannot be assessed to revenue. As the grove-land in question in the present case is zamindar's grove & not "a grove-land held by a grove-holder or included in the holding of a tenant" it does net fall under one of the three exceptions. It is not clear whether the grove-land in dispute was land which was

continuously out of cultivation for three years & was still, at the time of the settlement, out of cultivation. This fact will have to be ascertained by the Court below. Assuming, however, that this was so it is clear that the defts' grove-land could not be assessed to revenue.

10. Section 63B refers to exemption from assessment of land reclaimed from waste. Section 63C deals with income which cannot be assessed to land revenue. Section 63D describes what the assets of a mahal shall consist of. In Clause (g) of this section the income from khudkasht & sir is to be calculated according to the rates applicable to occupancy tenants provided that the grove land planted with timber trees is excluded from such calculation.

11. It is obvious from a consideration of these that Sections 630 & 63D are concerned with the assets of a mahal, viz., what income shall be taken into calculation in assessing land revenue. But Sections 63A & 63B are different in nature & declare what land shall not be liable to assessment. This distinction is vital. When certain land is not liable to assessment it is not liable to pay land revenue but when certain income is directed not to be taken into account in making an assessment of a mahal no land is exempted from assessment & the fact that certain income is not taken into account does not affect the liability of any portion of the mahal for the payment of the land revenue.

12. It is true that under Sections 58, 141 & 142 a co-sharer is jointly & severally liable along with other proprietors for the whole of the revenue and with respect to whole of the land comprised in the mahal unless any area has been wholly exempted from such liability. But we are not concerned with the joint & several liability of the co-sharers of a mahal for payment of land revenue to the Govt. We are only concerned with the rights & liabilities of the co-sharers inter se. These rights & liabilities are dealt with in Section 144 which lays down that "the revenue shall be paid through the lambardar, who, subject to rules made under Section 234, shall be remunerated by such fees, to be paid by the other proprietors, not exceeding five per cent, on the revenue payable in respect of their shares."

13. Therefore the question is what revenue is payable in respect of the defts." share, & in determining this question it is necessary to take into account the fact that a certain area which is the exclusive property of a particular co-sharer is not liable to assessment. If a particular area is exclusively owned by a co-sharer & such area is not liable to assessment, that area cannot be taken into account in determining the proportion payable by that co-sharer of the total revenue. In such a case the share of land revenue of each co-sharer will have to be determined in proportion to his share in the mahal after excluding the non-assessable areas held by them. There is nothing in the Land Revenue Act which compels a person whose land is not assessable to land revenue to pay land revenue through the lambardar as between the cosharers themselves. The fact that he is jointly liable to the State for the payment of the whole of revenue is quite a different matter.

14. In Murari Lal v. Chotey, 1943 A. L. J. 153 it was held that the liability for the payment of revenue is not affected by the mere fact that in making an assessment a particular property was excluded from the assessment, because the fact that a certain property was not taken into consideration for the purpose of assessment does not mean that that property was exempt from assessment. In that case the Assessment Officer had not taken into account the income from a certain area in making

the assessment on the ground that that area was in excess of normal cultivation. It was held that this circumstance was not enough to exempt the defts. from payment of their share of the land revenue. It may be noticed that not taking of the income of a certain area on the ground that it was in excess of normal cultivation does not mean that that area is exempt from assessment of land revenue within the meaning of Section 63A. The Bench pointed out that "the land in possession of the defts. was not exempted from any assessment though it is true that it was not taken into consideration in making the assessment of the mahal."

It was contended before the Full Bench that the defts. were in possession of a graveyard, a tank & abadi land, & that they were not liable to pay land revenue in respect of this property. Their Lordships expressly stated that they expressed no opinion on that point. The Full Bench case, therefore, is applicable to cases in which the profits of certain land are not taken into consideration in assessing the revenue at the time of settlement, not because such land is not liable to assessment of revenue under Section 68A or Section 63B, but because the Settlement Officer did not take such income into consideration on other grounds. Where land is not liable to assessment of revenue under those sections it cannot be said that a co-sharer owning such land is liable to pay land revenue for such land as between himself & the other cosharers or the lambardar. If in the pre-sent case there is any portion of the area of the mahal which is exclusively owned by the defts.-appellants, which falls under Section 63A & which is under that section not liable to assessment the defts. appellants will not be liable to pay revenue in respect of that area. As the lower appellate Court did not definitely record a finding as to whether the defts. were owners of such land it is necessary to remand the case.

15. A reference has been made to rules framed for the guidance of Settlement Officers. These rules afford no help in the determination of the question to be decided in the present case.

16. I would, therefore, allow this appeal, set aside the judgment of the Court below & remand the case to that Court for disposal according to law. The lower Court will allow the parties to adduce further evidence upon the question whether the land in dispute fell within the purview of Section 63A, Land Revenue Act, or not. Costs here & hitherto shall abide the result.

17. By the Court.--The appeal is allowed. The judgment of the Court below is set aside & the case is remanded to that Court for disposal according to law.

18. The lower Court will allow the parties to adduce further evidence upon the question whether the land in dispute fell within the purview of Section 63A, Land Revenue Act or not.

19. Costs here & hitherto will abide the result.