Kishan vs Hafiz Sir Mohd. Ahmad Said Khan on 21 October, 1953

Equivalent citations: AIR1954ALL211, AIR 1954 ALLAHABAD 211

JUDGMENT

Sapru, J.

1. This appeal is directed against the judgment and decree dated the 22nd March, 1945 of a learned single Judge of this Court.

2. The facts which have given rise to this appeal may be stated shortly. The plaintiff-respondent is the proprietor of a village of which the defendant is a resident. The defendant-appellant is a weaver, being a Koli by caste. The plaintiff-respondent's case was that he was entitled to recover from the defendant-appellant a sum of Rs. 3/- as parjaut for a period of three years. The case as put forward by the plaintiff-respondent was that the defendant-appellant, being a Koli by caste, was carrying on weaving work in the village, that in connection with that work there exists a garha or a loom inside his house and that in accordance with the custom as recorded in the wajib-ul-arz the plaintiff-respondent was entitled to claim a sum of Re. 1/- a year as parjaut for the use of the land on which the garha exists.

3. The suit was resisted by the defendant-appellant on the ground that he was a riaya from the time of, his ancestors, that he had been carrying on weaving business in his residential house, that the riayas in the village pay no rent for their houses and that he was not liable to pay any ground rent, the charge claimed being in the nature of a cess.

4. The learned Munsif decreed the plaintiff-respondent's claim holding that the defendant-appellant was liable to pay it as ground rent, the charge being not a cess or a tax on profession. Aggrieved by the judgment and decree of the learned Munsif, the defendant-appellant went in appeal to the lower appellate court. The view taken by the learned Additional Civil Judge was different from that which had appealed to the learned Munsif. He came to the conclusion that the plaintiff-respondent was not entitled to the relief claimed by him as the sum claimed was in the nature of a cess which could not ba levied by any zamindar in view of the provisions of section 91 of the U. P. Tenancy Act, the Provincial Government not having sanctioned its collection under that section. The learned single Judge who heard the appeal did not find himself in agreement with the learned Additional Civil Judge. He allowed the appeal, reversed the decree of the lower appellate court and decreed the plaintiff-respondent's suit. As the question was an important one, he gave the defendant-appellant leave to appeal under the Letters Patent as it was then called.

5. The question for consideration is whether the amount in dispute was in the nature of a cess and was therefore in view of the provisions of section 91 of the U. P. Tenancy Act not recoverable from the defendant-appellant. From the wajib-ul-arz it would appear that no rent is payable by ryots for their houses in the abadi. It, however, states that a Koli, i.e., a weaver is liable to pay Re. 1/- annually as parjaut for each garha, i.e., loom, used by him. This garha has been found by the learned Additional Civil Judge to be inside the defendant-appellant's house. From the evidence of Kamta Prasad, general attorney of the plaintiff, it is clear that this amount was annually chargeable only from those Kolis who did weaving work. It was dependent upon their doing weaving work. If no weaving work was done, it was not charged at all. On these facts, the learned Additional Civil Judge came to the finding that the amount levied was not in the nature of a rent for land but a tax on profession. Being a tax on profession, he looked upon it as a cess and held that the suit was barred by section 91 of the U. P. Tenancy Act.

6. There can be no doubt that the wajib-ul-arz furnishes prima facie evidence, as held in the Full Bench case of this Court, -- 'Allah Dia v. Akhtar Ali', AIR 1944 All 29 (A), that the charge is in the nature of what is described in it, i.e., a parjaut or something in the nature of a ground rent. The learned single Judge has, however, taken the view that where a site in the village abadi is occupied by a ryot for the purpose of a profession other than that of agriculture, he is liable to pay some due to the zamindsr which is not a cess, provided such payment is warranted by the wajib-ul-arz and that this due is not house rent. It is in the nature of a ground rent for utilising the site for the purpose of his profession. The matter, however, is capable of being looked at from a different angle. It is conceded by learned counsel for the plaintiff-respondent that if it cannot be looked upon as a ground rent, it is not a legal charge.

Whatever be the description of the charge in the wajib-ul-arz we fail to understand how in the face of the clear findings in this case that the charge is levied only for weaving work done inside the house it can be looked upon as analogous to parjaut or ground rent. It is clear that it is only chargeable from those Kolis who actually weave. If they do not weave, they would not be charged at all. Section 91 of the U. P. Tenancy Act is in the following terms :

> "Notwithstanding that a cess had been recorded under the provisions of section 56 or section 86 of the United Provinces Land Revenue Act, 1901, no cess which is levied in accordance with village custom, other than a payment in kind which forms part of the rent payable for a holding shall, after such date as may be notified by the Provincial Government in the official Gazette, be recoverable in any civil or revenue Court unless such cess is sanctioned under the provisions of Sub-section (2)."

7. In interpreting this section it must be re-membered that no suit can lie for the recovery of any cess which is levied in accordance with village custom unless it is sanctioned by the provisions of Sub-section (2) of Section 91. Sub-section (2) authorises the Provincial Government to sanction the collection of any cess levied on account of any bazar or fair and impose on the collection of such cess any such condition regarding conservancy, police or other establishments as it thinks fit. Obviously the levy in this case is not of the character contemplated by Sub-section (2). The object of the Legislature in enacting this section appears to have been to curtail the right of the zamindar to levy

customary dues or services of a vague and uncertain nature.

8. The levy is in the nature of a cess or tax prohibited by law. Reference on this part of the case may be made to -- 'Sri Kalyanraiji v. Mofussil Co. Ltd.', 14 Bom 526 (PC) (B). In that case the question was whether the Managing Proprietor of the temple in Broach was entitled to a lago, or perquisite, or tax, of two annas per bale on all cotton brought in and exported from Broach; inasmuch as Act XIX of 1844 had abolished all taxes and cesses of every kind on trades and professions, under whatsoever name, levied within the Presidency of Bombay, and not forming part of the land revenue, it was held by their Lordships of the Privy Council of the Judicial Committee that the tax was in the nature of a cess not leviable by the Managing Proprietor of the temple. On the analogy of that case we think it correct to hold that the payment was not on the facts established in this case in the nature of a compensation for land but for tarrying on the work of the profession of a weaver inside the defendant-appellant's house and, as such, not leviable.

9. It may be mentioned that according to the view taken by the Full Bench in AIR 1944 All 29 (A), the question whether a particular demand is a cess or ground rent has to be determined on the circumstances and evidence of each case, though the name by which the the demand is generally known and is recorded in the wajib-ul-arz furnishes 'prima facie' evidence of the purpose for which the demand is levied and is helpful in determining the true nature of the demand. We have shown that in this case, having regard to all the surrounding circumstances and evidence, the levy was in the nature of a cess.

10. The result is that we allow this appeal, set aside the judgment and decree of the learned single Judge and restore that of the lower appellate Court. In the circumstances of the case, we make no order as to costs.