Allahabad High Court
Ram Kishun Das vs Maheshar Prasad And Ors. on 19 January, 1916
Equivalent citations: 32 Ind Cas 556
Author: Tudball
Bench: Tudball
JUDGMENT Tudball, J.

1. This second appeal arises out of a suit brought by lambardars to recover from a co-sharer sums of money which had been paid by them to the Collector as canal dues. The suit is brought in virtue of the terms of Section 47 of the Canal Act (VIII of 1873) and Section 159 of the Tenancy Act. Five points have been raised before me. The' first point is that under Section 47 the plaintiffs are only entitled to first collect those arrears of canal dues from the other zemindars and then to pay them to the Government and that all that the Collector can do is to direct the lambardar to collect and pay the money; but in the present case the lambardars having paid the money first to the Government out of their own pockets cannot bring a suit under Section 47 of the Canal Act and Section 159 of the Tenancy Act in the Revenue Courts, and that all that they can now do is to go to the Civil Court and sue the defendant. In other words, the argument is that a lambardar by reason of the fact that he had paid the Government before he collected from the subordinate zemindars loses his power to collect from the latter under the terms of Section 47 of the Canal Act. It is evident that there is no force whatsoever in: this plea. The section might probably enable a lambardar to plead to Government that he, the lambardar, cannot be forced to pay Government before he has collected from the subordinate zemindars; but the bare fact that, in order to save himself from worry and trouble, he pays to Government first, before he collects from the subordinate zemindars, cannot affect his right under the i above-mentioned section. The next point taken is that Section 47 only enables a lambardar or a person under engagement to pay the land revenue to collect such sums from the subordinate zemindars, raiyats (tenants or sub-tenants), that the defendant is not a subordinate zemindar and that, therefore, no suit can be brought against him under this section. The facts are briefly as follows. The village consists of two classes of tenure. One class is khalsa land, that is, pure zemindari, and makes up 1/3rd of the village. Two- thirds (the balance) is what is called muafi, that is to say, the Government does not take any revenue from these two-thirds, although under the law that land is liable to pay revenue and the Government could at any moment resume and assess it. The water rate which is being recovered is water rate assessed on the two-thirds muafi and these plaintiffs are co-sharers in this muafi as well as the present defendant-appellant. The plea is that there being no engagement to pay revenue, the appellant is not a subordinate zemindar but only a muafidar. A muafidar is a person who is liable to pay revenue to Government if the Government were to assess revenue upon the land as it is empowered to do. The bare fact that the Government refrains from taking revenue from him makes no difference whatsoever in the appellant's position. He is a zemindar within the meaning of the word used in the section. There is no magic in the word muafidar and muafidar is not different from a zemindar, except in one respect. As a matter of fact cesses, etc., have to be paid by him and other demands are paid by him and he is in the strict sense of the word a land-holder or zemindar. In the present case in so far as the canal dues are concerned, the appellant is subordinate to the plaintiffs who have been called upon by the Collector to recover the amount from him. There is equally no force in this plea. The next plea taken is that the whole village has been irrigated, that the assessment should have been spread upon the

whole village, khalsa and muafi, and should not have been placed on the muafi alone and that the plaintiffs themselves are personally responsible for part of the amount which they now seek from the defendant. It has been found by the Court below on the evidence on the record that the muafi land was assessed by the Government, that no assessment was apparently made upon the khalsa and that the amount which is now sought to be recovered is part of what has been assessed by the Government on the muafi and is not part of the sum which might have been assessed upon the khalsa. In other words, the Court has found clearly that the amount now claimed is part of the assessment on the muafi, alone. The plaintiffs, I note, have pleaded that the khalsa pays no canal dues because the liability of the khalsa for canal dues has been combined with the revenue assessed upon the land. This may or may not be correct. The finding of the Court below is that the canal dues were duly assessed on muafi and the appellant must pay his share of that assessment. I agree on this point with the Court below. The fourth point raised is that the suit as to a portion of the claim is barred by limitation. This issue was decided by the Court of first instance in favour of the plaintiffs. The defendant, the present appellant, appealed to the Court below. There the question of limitation was not pressed or perhaps not even raised. If it were a pure question of law, there is no doubt that this Court in second appeal could and ought to go into it. A suit under Section 159 of the Tenancy Act is serial No. 8 in group (a) of the Fourth Schedule. The period of limitation laid down on the fourth column is three years from the date when the arrears become due. The plea taken is that the date on which the time began to run is the date on which the canal dues became due to the Government. Assuming this to be so without agreeing, there remains the question of fact, when did the arrears of canal rate become due to the Government? The question is a question of fact. It was not raised in the Court below. The question of limitation, therefore, is not a pure question of law but a mixed question of law and fact and I decline to go into it at this stage of the case. There being no finding on the question of fact by the. Court below and that point not haying been raised there, there is no decision on which I can base my finding on limitation. The last point is on the question of interest. It is urged that the Court below has allowed interest at the rate of 12 per cent. per annum. Land revenue does not carry interest, therefore no interest should be allowed on arrears of canal dues, secondly, if interest should be allowed at all, it should be only at the rate of 6 per cent.-per annum. In the first place, this is not a suit for arrears of land revenue: It is true that the arrears of canal dues are collected in the same manner in which land revenue is collected and that a lambardar who pays them can sue to recover them in the same way in which he sues to recover land revenue. Nevertheless the money due is not due, as land revenue and there is nothing in law to forbid the Court below in granting interest on arrears of canal dues. The rate of interest allowed by the Court below is the rate allowed by law to be recovered by a zemindar from a tenant from whom arrears of rent are due. It is the common rate in the mofussil and I can see no reason to interfere with the exercise by the Court below of its discretion in the matter of the rate of interest, that rate not being unusual or exorbitant. The result is that the appeal fails and I dismiss it.