

State of Rajasthan

Vs

Rao Raja Kalyan Singh, (Dead by his L. Rs.)

Civil Appeal No. 1241 of 1967

(S. K. Hegde, A. N. Grover JJ)

JUDGMENT

28.01.1971

HEGDE, J. -

1. This appeal by certificate is brought by the State of Rajasthan. It arises from a suit instituted by the District Board, Sikar. In the suit the District Board, Sikar, a statutory body, which has jurisdiction over the whole of Sikar District except the municipal towns in it sought to recover from the respondent a sum of Rs. 46,647/2/3 with costs and future interest. The case for the plaintiff was that it had the right to levy and realise certain cesses as well as contributions from the Thikanedars or Atiyadars in accordance with law; it had imposed certain cesses under Section 31 of the Jaipur District Boards Act, 1947 and it was entitled to collect the said cess as well as the contribution from the respondent who was the Thikanedar of Sikar, for the years 1951-52, 1952-53 and from April 1, 1954 to June 16, 1954, the date on which all zamindaris were abolished. The further case of the plaintiff was that the amount of the cess and the contribution due from the respondent was taken on September 15, 1953 and a detailed statement of account was sent to the respondent demanding from him sum of Rs. 55,791/1/- as arrears due from him. In response to the demand made by the District Board, the respondent paid only a sum of Rs. 18,291/1/0 and declined to pay the balance in spite of repeated demands and hence the suit had to be brought.

2. The respondent resisted the plaintiff's suit on various grounds. At present we are concerned only with two of the pleas taken by him, viz., (1) that the suit is not maintainable and (2) that the claim made in the plaint is barred by limitation. During the pendency of the suit, the plaintiff District Board was abolished and its functions were taken over the Government of Rajasthan. But this change-over does not change the nature of the suit in considering the question whether the suit as brought was maintainable. We have merely to see whether the District Board of Sikar was competent to bring the suit. The Rajasthan Government cannot and did not claim any right more than that possessed by the District Board, Sikar as the suit is continued by the Government as the successor of the former District Board.

3. The trial Court partly decreed the plaintiff's suit. It held that though the District Board was not entitled to claim the contribution from the respondent, it had the right to claim the cess collected by the respondent from sub-grantees and tenants. In appeal the High Court dismissed the entire suit holding that the claim was barred by limitation as it was governed by Article 62 of the Limitation Act, 1908. The High Court while being of opinion that the District Board had no right to maintain the suit, yet did not accept the plea of the respondent that the suit was not maintainable on the ground that the said plea had not been taken by the respondent in his written statement.

4. As we are of opinion that the suit was not maintainable we have not thought it necessary to go into the question of limitation. In our opinion, the High Court was wrong in holding that the respondent had not pleaded that the suit was not maintainable. In paragraph 1 of the written statement of the respondent, it was specifically pleaded that :

"... .. that the right of the District Board to levy and realise cess and contribution from the Government and the Thikanedars or Atiyadars is not admitted and is categorically denied."

5. This is a specific plea. On the basic of this plea as well as some other pleas, the trial Court had framed issue No. 1 which reads :

"Whether a sum of Rs. 38,075/10/3 is due from the defendant to the plaintiff on account of cess and contribution for the years 1951-52, 1952-53 and for the period from April 1, 1954 to June 15, 1954 ?"

6. Though this issue is not very specific but undoubtedly it covers the plea taken by the respondent in paragraph 1 of his written statement. That apart the plea of maintainability of the suit is essentially a legal plea. If the suit on the face of it is not maintainable, the fact that no specific pleas were taken or no precise issues were framed are of little consequence.

7. Now adverting to the question of maintainability of the suit, the provisions relevant for this purpose are Sections 31 (2), 32(b), 33 and 34(1) of the Jaipur District Boards Act, 1947. We shall now proceed to read those provisions :

"31. With the previous sanction of the Government a Board shall levy by means of a resolution -

(2) in non-Khalsa area -

(a) in settled villages and also in unsettled villages where rents are payable wholly in cash, a cess ranging from six pies to two annas per rupee on the rents payable;

32. (a) All sums due from tenants in Khalsa areas shall be realised by the Tehsildars along with the land revenue.

(b) All sums due from tenants in areas other than Khalsa including the tenants of sub-grantees shall be recoverable from the grantees and remitted by them to the Government.

The grantees shall be entitled to realise from their tenants and the sub-grantees, and the sub-grantees from their tenants, the sums due under Clause 2 of Section 3.

33. Government shall give a grant equivalent in amount to the cess levied in Khalsa area by the Board.

34. (1) Government shall realise from each State-grantee an amount equal to the aggregate of the amounts of cess payable to him by his tenants."

8. From a perusal of these provisions, it is clear that in the matter of collection of cesses by the

Thikanedar from his sub-grantees and tenants in Non-Khalsa area, he has to pay the same along with his contribution to the Government and the Government thereafter makes it over to the District Board. He has no liability to make over the collection of cesses to the District Board nor is there any right conferred on the District Board to demand and collect the same from the Thikanedar. Mr. Chagla appearing for the State of Rajasthan conceded that the claim made by the District Board in respect of the contribution due from the respondent is not sustainable as the same had to be collected by the Government but he tried to make a distinction between the claim in respect of the contribution due and that in respect of the cess collected by the respondent from his sub-grantees and tenants. No provision of the Act has been brought to our notice which either requires the Thikanedars to pay the cess collected by them from their sub-grantees and tenants to the District Board or which confers any right on the District Board to demand the payment of the same. In fact a perusal of the provisions quoted above clearly shows that the liability of the Thikanedars is to pay the cess collected by him to the Government.

9. For the reasons mentioned above, we hold that the suit from which this appeal arises was not maintainable. The appeal is accordingly dismissed with costs.

</html