
(1939) 09 AHC CK 0026
In the Allahabad High Court

Bajrangi Lal and Others

APPELLANT

Vs

Shaharyar Khan and Others

RESPONDENT

Date of Decision : 20-09-1939

Acts Referred:

Agra Pre-emption Act, 1922 — Section 4(1)

Citation : AIR 1940 All 83 : (1939) 9 AWR 863

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Iqbal Ahmad, J.—This is a defendants' appeal arising out of a pre-emption suit filed by two persons named Shaharyar Khan and Rahman Khan in respect of a sale deed dated 9th November 1935. The sale deed was executed by defendants' second party in favour of Munshi Bajrangi Lal, defendant 1 in the suit. By the deed, the following three villages in taluka Bara were transferred to the vendee: (1) the entire 16 anna village Bara, (2) the entire 16 anna village Firozpur, being one of "dakhli" villages to taluqa Bara; and (3) the entire 16 anna of mahal Munshi Raja Madho Lal, village Rohni being one of the "dakhli" villages of taluqa Bara.

2. The suit giving rise to the present appeal was for pre-emption of the third village mentioned above. The entire sale consideration was Rs. 1,40,000 and it was found by the Court below that the proportionate price of village Rohni was Rs. 5250. There is no dispute in the present appeal about the proportionate price attributable to village Rohni. The plaintiffs' suit was based on the allegation that they were cosharers in village Rohni and, as such, had a preferential right of pre-emption against the vendee who was admittedly a stranger to the village. The vendee contested the suit mainly on the allegation that the plaintiff's were mere petty proprietors and were not cosharers in village Rohni. The Court below accepted the contention of the plaintiffs on the point and decreed their claim conditional on the payment of Rs. 5250 by them. Out of this amount, for reasons

which it is unnecessary to state, the Court below directed the plaintiffs to pay Rs. 4539 to the vendee within four months and the balance of Rs. 711 was to be paid by the plaintiffs to the creditors of the vendor. No period was fixed by the Court below for the payment of this amount of Rs. 711. Being dissatisfied with the decree passed by the Court below Munshi Bajrangi Lal filed an appeal in this Court. He died during the pendency of the appeal and his widow and sons were brought on the record as his legal representatives.

3. The sole question that arises for consideration in the present appeal is whether or not the plaintiffs are cosharers in village Rohni. In order to decide this question, it is necessary to briefly state the constitution of taluqa Bara and in particular of village Rohni. Taluqa Bara originally consisted of twenty-four villages but later only seventeen villages were included within the ambit of that taluqa and one of these villages was village Rohni. The whole taluqa was in one mahal called mahal Bara. The taluqa was permanently settled in or about the year 1709. In village Rohni there was an area of 44 bighas 12 biswas of land which was mentioned in terij goshwara of village Rohni for the year 1840 as "muafi land of Nawab Ali Azam Khan." This area consisted of specified plots of land. Though the taluqa was settled for a lump sum in the permanent settlement, the muafi of Ali Azam Khan was not settled to revenues. About the year 1840, the taluqa was sold and purchased by one Abdulla, and it is common ground that the muafi of Nawab Ali Azam Khan was exempt from the operation of the sale. In the revision of settlement that took place in the district of Ghazipur in the year 1840, proceedings were taken for the assessment of revenue on the muafi land of Nawab Ali Azam Khan, and it appears from a rubkar of the Settlement Officer dated 7th January 1842 that this muafi land was assessed to a revenue of Rs. 30 and 5 annas was assessed on account of road-cess. The concluding portion of the order contained in the rubkar runs as follows:

The settlement of this land be made as zamindari with the first party after obtaining an application for admission of "jama" and an agreement for payment of revenue and village expenses and for responsibility according to the old rules, subject to confirmation by the members of the Board of Revenue.

4. In pursuance of this order, the holders of the resumed muafi land executed an agreement on 14th January 1842 and it was recited in that agreement that

a permanent settlement of this land as zamindari was made with us on a uniform annual "jama" of Rs. 30 revenue and 5 annas road-cess, in all Rs. 30-5-0 from the year 1249 Fasli.

5. It was stipulated by the persons executing the agreement that they would pay their revenue year after year "through Shaikh Abdulla, auction-purchaser and "lambardar" of mahal Adai...." In para. 8 of the agreement, it was stipulated that the persons executing the agreement "shall continue to pay the patwari"s due as provided in the apportionment amongst the cosharers." A rubkar of the Settlement Officer dated 18th March 1842 is upon the record and it is noted in

the rubkar that "the mahal of which a permanent settlement has been made consists of zamindari and the "arazi bagh" of "pattidari" as well." This document puts it beyond doubt that the resumed muafi referred to above continued, as it did before, to form part of mahal Bara. The next revision of settlement in the district of Ghazipur took place in or about the year 1882 and the wazibularz of mahal Bara prepared in that settlement is upon the record. In para. 1 of chap. I the seven, teen villages including village Rohni constituting taluqa Bara are specified. Para. 2 of chap. I provides about the payment of revenue through a lambardar and para. 3 of that chapter embodies the custom relating to the appointment of patwari. It is stated in the last mentioned paragraph that in the event of there being difference of opinion amongst the zamindars as to the appointment of a successor to a patwari the "Collector shall have power to appoint a patwari as provided in law." Chap. II deals with the "rights of cosharers with reference to custom or agreement" and in para. 2 of that chapter it is stated that Madho Lal is the lambardar of the mahal and that

at all events the lambardar...shall be appointed with the consent of all the cosharers and with the consent of the Collector.

6. Chapter III deals with "the rights of "qabzian mathat" (inferior proprietors.)" Para. 2 of this chapter runs as follows:

45 bighas 9 biswas 18 dhurs of resumed "muafi" land is situate in mauza Rohni within this mahal. Its settlement has been made with Hasnu Khan and other proprietors. Rs. 30, its revenue, is deposited in the public treasury through Lalu Khan, "lambardar". Its khewat is separate.

7. Though it appears from this paragraph that the lambardar of the resumed muafi was a man distinct from Madho Lal, the lambardar of the khalsa land, no custom or usage about the appointment of the lambardar of the resumed muafi plots was recorded in chap. III of the wazibularz. It would appear from this wazibularz that though in 1882 a separate khewat was prepared with respect to the muafi plots of Nawab Azam Ali Khan those plots continued to form an integral part of mahal Bara. Two khewats of 1343 Fasli (1935-36) were produced by the defendants. One of the khewats is "of mauza Rohni mahal Munshi Madho Lal" and the other khewat is "of mouza Rohni mahal Shaharyar Khan." The entire 16 annas khalsa land which was sold to Munshi Bajrangi Lal is entered in the former khewat, whereas the resumed muafi land is entered in the khewat of mahal Shaharyar Khan. In this khewat the shares of the various owners of the resumed muafi are described in annas and pies and the area of the total khewat is recorded as 44 bighas, 13 biswas, 6 dhurs. In the khatauni of 1343 Fasli the resumed plots held by various persons mentioned in the khewat are specified. It was contended by the learned Counsel for the appellants that the original mahal Bara continued to exist and that the entry in the two khewats suggesting that in village Rohni there were two mahals, viz. mahal Munshi Madho Lal and mahal Shaharyar Khan was erroneous. In the view that we take it is unnecessary to express any opinion as to the correctness or otherwise of this contention of the

learned Counsel, and we shall proceed to decide the case on the assumption that mahal Bara, as constituted in the year 1882, exists up to this day and has not been the subject of partition. The two plaintiffs in the suit are admittedly owners of certain specified plots of resumed muafi in village Rohni and, as already stated, the question that arises for consideration is whether the plaintiffs are mere petty proprietors or cosharers within the meaning of the Agra Pre-emption Act. "Cosharer" is defined by Section 4(1) of the Act as meaning,

any person, other than a petty proprietor, entitled as proprietor to any share or part in a mahal or village whether his name is or is not recorded in the register of proprietors.

8. The plaintiffs are undoubtedly proprietors of a part of mahal Bara as the resumed muafi plots are within that mahal, and as such they must, in view of the definition, be held to be "cosharers" in that mahal and in village Rohni unless they be held to be "petty proprietors" as defined by Section 4(7) of the Act. "Petty proprietor" is defined as meaning

the proprietor of a specific plot of land in a mahal, who as such is not entitled to any interest in the joint lands of the mahal, or to take part in the administration of its affairs.

9. The plaintiffs undoubtedly are the proprietors of specific plots of land and, as such, they will be deemed to be petty proprietors unless it is shown that they are entitled to any interest in the joint lands of the mahal or are entitled to take part in the administration of the affairs of the mahal. It is conceded on behalf of the plaintiffs that they have no interest in the joint lands of the mahal. They can therefore be held to be cosharers only if it is proved that they are entitled to take part in the administration of the affairs of mahal Bara.

10. It is impossible to lay down an exhaustive list of matters that may be deemed to constitute the affairs of a mahal, but it cannot be doubted that the appointment of the lambardar and of the patwari of a mahal is undoubtedly a matter concerning the affair of the mahal. A lambardar, in view of the definition of lambardar contained in the Land Revenue Act (3 of 1901), represents the entire body of cosharers and is charged with the performance of certain statutory duties. In particular, in the absence of a custom to the contrary, he is entitled to file suits for ejectment, to realize rent and is responsible for the payment of Government revenue. The realization of rent and the payment of revenue is a matter that concerns all the cosharers of the mahal and is undoubtedly an affair of the mahal. Similarly, the patwari has to maintain the khasra, siaha, khatauni jamabandi, khewat, etc., of the mahal. The maintenance of these records is again of vital importance to the cosharers of the mahal. That being so, any proprietor who has a voice in the appointment of a lambardar or patwari must be deemed to be entitled to take part in the administration of the affairs of the mahal concerned. A reference to the rubkars and wazibularzes of the various revisions of settlement noted above shows that the owners of specific plots of the

resumed muafi had a voice in the appointment of the lambardar and of the patwari of mahal Bara. In the agreement dated 14th January 1842 referred to above there was a stipulation by the owners of the resumed muafi plots to pay the patwari's dues in conjunction with other cosharers of the village. When we turn to the wazibularz of 1882 we find that the right to nominate a patwari was given to the "zamindars" of the mahal. In the wazibularz in certain paragraphs the word "hissedar" has been used, but in the paragraph relating to the patwari the word "zamindars" occurs. The use of the word "zamindars" in that paragraph stands in special contrast to the word "hissedar" used in certain other paragraphs of the wazibularz and points to the conclusion that even the owners of the resumed muafi plots were entitled to take part in the nomination of the patwari of the mahal.

11. It has already been stated that in chap. II of the wazibularz of 1882 the custom relating to the appointment of lambardar was set forth. It must however be conceded that custom was limited in its scope to the appointment of the lambardar of the khalsa land and had no application to the appointment of the lambardar of the resumed muafi plots of which a separate khewat had been formed. It is however clear that in 1882 one LaluKhan was the lambardar of the khewat constituting the resumed plots. No entry about any usage or custom relating to the appointment of the lambardar of the khewat was however recorded in the wazibularz. In the absence of any such record, the rules framed by the Board of Revenue under Act 19 of 1873 as regards the appointment of a lambardar must hold the field. One of those rules was as follows:

Where no village custom can be ascertained, the Collector may...appoint the nominee of either the majority of the proprietors, or of the proprietors who represent the largest amount of annual value in the mahal, as he may consider advisable.

12. In view of this rule the owners of the resumed plots specified in the separate khewat had the right to nominate a lambardar. The conclusion therefore is irresistible that the two plaintiffs were entitled to take part in the appointment of the patwari and lambardar of mahal Bara and, as such, they were entitled to take part in the administration of the affairs of that mahal. That being so, they were cosharers in the mahal within the meaning of the word "co-sharer" as defined by the Agra Pre-emption Act. The resumed muafi plots are in village Rohni in which the property, the subject of the suit, is situated; that being so, the plaintiffs came within class 5 laid down by Sec. 12 of the Act and had a right of preemption against the vendee. The plaintiffs' suit was therefore rightly decreed by the Court below, and we dismiss this appeal with costs. An affidavit has been filed on behalf of the vendors in the present appeal from which it appears that the sum of Rs. 711 that the plaintiffs were directed to pay to the creditors of the vendors has been paid by the vendors themselves to those creditors. This affidavit remains uncontradicted. In view of this affidavit we, in modification of the decree passed by the Court below, direct the plaintiffs to pay

the sum of Rs. 711 to the vendors and not to their creditors.