

(1908) 03 CAL CK 0013

In the Calcutta High Court

Case No : Appeal from Original Decree No. 224 of 1905

Bhabeshwar Singh and others

APPELLANT

Vs

Rai Babu Ganga Pershad Singh Bahadur

RESPONDENT

Date of Decision : 12-03-1908

Acts Referred:

Citation : (1908) 03 CAL CK 0013

Final Decision : Dismissed

Judgement

1. This is an appeal in a suit to enforce a mortgage bond, dated the 27th February 1891, against the descendants of the mortgagor, Maharaja Babu Kumar Guneshwar Singh, who was one of the younger sons of Maharaja Rudra Singh of Durbhanga. In accordance with the kulachar or family custom, the Raj devolved upon, and was granted by the Maharaja to his eldest son Moheshwar Singh, afterwards Maharaja Moheshwar Singh, and a Pargana was granted to each of the younger sons including Babu Guneshwar Singh who obtained Pargana Padri. The bond in suit deals with certain mehals, comprised in Pargana Padri, which were hypothecated thereby, and the sole point for determination is whether the mortgagee is legally entitled to enforce his security against property which has now descended to the Defendants. The Subordinate Judge has given the Plaintiff a decree, "and the Defendants have preferred this appeal. The grant of Pargana Padri to Babu Guneshwar Singh by Maharaja Rudra Singh of Durbhanga was what is known as a babuana grant, that is a grant for maintenance of a Babu or younger son of the Maharaja. It admits of no doubt, and it is conceded, that Pargana Padri like other babuana properties was held by the grantee and after his death by his male descendants, - and that it will ultimately, on failure of the grantee's descendants in the male line, revert to the Durbhanga Raj. This was pointed out in the case of Rameswar Singh v. Jibendar Singh 9 C.W.N. 567: s.c. I.L.R 32 Cal. 683 (1905) where it was held babuana property is alienable. The Pargana alienated in that case was Pargana Jabdi, but in Ram Chandra Marwari v. Mudeshwar Singh 10 C.W.N. 978: s.c. ILR 33 Cal. 1158 (1906), the learned Judges considered the case of Pargana Padri, which is the property now in suit,

and observed--"Here the grant was made by the owner of the impartible Raj estate to enure for the benefit not only of Guneshwar Singh but of his direct male line. It was ancestral property, in the hands of the Raj, and did not lose its character by the transfer." This, also, was the view adopted by two of the Judges of this Court (Brett and Chitty, JJ.), in *Laliteswar Singh v. Bhabeswar Singh* 12 C.W.N. 958 (1908), wherein judgment was delivered on the 3rd March 1908, and it was said :--"The property being ancestral, the other members of the family have the rights in it which they can claim under the Mitakshara law, that is, the right to restrain alienation except in cases of legal necessity, and the right to claim partition." These observations were made in respect of the same Pargana (Padri) with which we are now concerned, and partition was enforced at the instance of one of the younger sons of Babu Guneshwar Singh against another son and five grandsons of Babu Guneshwar Singh.

2. Now, the bond, dated the 27th February 1891, recites that the mortgagor, Babu Guneshwar Singh, had borrowed from time to time large sums of money from the Plaintiff's firm, and that he had spent the same--"in meeting the valid necessities of the joint undivided family, and the joint undivided family, of which I am the manager and karta, was benefited thereby." In mortgaging certain mehals of Pargana Padri Babu Guneshwar Singh covenanted that " when the said mortgaged hypothecated properties devolve after my death on, and be taken possession of by, my sons and heirs, the said Mahajan (money-lender) shall release from mortgage liability the share of such of my sons and heirs as may pay, in accordance with the conditions laid down above, the proportionate share of debts principal and interest due from him; but the shares in the properties of the other sons and heirs shall remain mortgaged and hypothecated for the remaining debt left unpaid." The Subordinate Judge has found, and his finding has not been impugned, that the loan was incurred for antecedent debts and family necessities, and not for any immoral purposes, and that Babu Guneshwar Singh was not even extravagant. The evidence leaves no doubt that this finding is correct.

3. But it has been urged that the terms of the rajgi sanad, dated the 7th Falgun 1257 F.S. (1850), conferred upon Babu Guneshwar Singh a mere life interest in the usufruct, and no Interest in the corpus, of the Pargana, granted by way of maintenance, or power to alienate the same. The words used, however, are--"the profits of the tract of Pargana Padri together with the customary proprietary dues." These words certainly import an absolute estate, but they do not negative the other incidents attaching to a grant of babuana; that is to say, the grant was of certain property which remained part of the Raj though it was diverted for a particular purpose and continued subject to the rules of the Mitaksbara law, for so long as it was enjoyed by the grantee and his male descendants. It is impossible to conceive of a grant of successive life estates, with a reversion to the Raj between each and every devolution, and yet this must be the only logical result of the Defendant's contention that Babu Guneshwar Singh had no power of alienation, but had a mere life interest in the profits.

4. Although the original grant of Pargana Padri is not forthcoming, the rajgi sanad, already mentioned, coupled with the other evidence in the case, proves that the grant was to a younger son and his issue in the male line, and that the property would revert to the Raj upon failure of male descendants, of the grantee. Such a tenure or interest was resumable only upon the contingency specified in the grant. See *Maharaj Kumar Jagat Mohan Nath Shah v. Brinda Saha* 1 C.L.J. 557 (561) (1905), and, meanwhile, that interest is not inalienable. The documents in favour of alienability are over-whelming; they are set forth in the judgment of the Court below. In this state of the evidence, we are unable to accept the vague statements of some of the witnesses, on the side of the Defendants, that babuana grants are not transferable by the grantee or any subsequent holder of the same. The case of *Rani Sartaj Kuari v. Rani Deoraj Kuari* L.R. 15 I.A. 51 (1888) dealt with an impartible Raj, and not with a derivative or limited interest carved out of such a Raj, but we may regard it as an authority for the proposition (see page 65) that when part of a Raj is granted devoid of the peculiar customs of that Raj the part so granted retains, nevertheless, the ordinary attributes of the Mitakshara law to which the Raj itself would be subject but for the peculiar customs necessary for its continuance as a Raj.

5. We have shown that Pargana Padri was all along an ancestral property, that the mortgage bond in suit was executed for legal necessities and not for any immoral purposes, and that the alienation by Babu Guneshwar Singh was not in excess of his powers as karta. The mortgage, therefore, can be enforced against the mortgaged villages. The appeal is dismissed with costs.