

(1896) 03 PRI CK 0001

In the Privy Council

Bhaiya Ardawan Singh

APPELLANT

Vs

Raja Udey Partab Singh

RESPONDENT

Date of Decision : 05-03-1896

Acts Referred:

Citation : (1896) 23 IndApp 64

Hon'ble Judges : Watson, Hobhouse, Davey, Richard Couch, JJ.

Judgement

Watson, J. 1. The parties to this appeal are lineal descendants, through males, of Rajah Sheo Singh, who at the beginning of this century possessed the talook of Bhinga: the respondent being the descendant of Sarabjit Singh, his eldest, and the appellant of Umrao Singh, his second son. At the time of the Mutiny the talook was confiscated; but it was subsequently restored to the family, and was settled in 1856-57, and again in 1858-59, upon Rajah Kishen Dutt, the son of Sarabjit. Rajah Kishen Dutt died in 1862, and was succeeded by the respondent. 2. Jabraj Singh, father of the appellant, who was the son of Umrao Singh, died in 1881; and, in March, 1887, the present suit was brought by the respondent, in which he claims proprietary possession of two villages within the talook, Gutwa and Basthanwa, which are also known by the common name of Sochouli, and, in the alternative, that the appellant is bound to relieve him of the revenue payable to Government in respect of these two villages. The only ground of action disclosed in the plaint is, that the title upon which Jabraj held possession of the villages was a grant for maintenance, resumable by the talookdar upon his decease. 3. It is not disputed that, in point of fact, the villages in question were successively possessed by Umrao and his son Jabraj from a period long antecedent to the date of the Mutiny, and that, during their possession, revenue duty was invariably paid by the Rajah. On the re-settlement of the talook after the Mutiny, various disputes arose between the Rajah Kishen Dutt, on the one hand, and Jabraj, on the other, with regard to the nature and extent of the interest which the latter had in the talook. These disputes were submitted by Jabraj to a body of Oudh talookdars, with the late Maharajah Sir Maun Singh at their head, known as the British Indian Association, who, had undertaken the

amicable decision of claims preferred by cadets of a family against their talookdar. Rajah Kishen Dutt became a party to the submission; and the proceedings which followed upon it are of material importance in considering the merits of the present case. 4. Jabraj insisted, before the arbiters, in a claim for no less than thirty-one villages, including the two now in suit, and a third which was alleged to have been granted to him by the rajah "as a reward, by reason of his accidentally killing a tiger." The arbiters adjudicated upon his claim for these three villages, but declined to entertain his claim for the remaining twenty-eight, holding that it did not relate to any right by cadetship, constituting an incumbrance upon the talook belonging to the head of the family, but asserted an absolute proprietary title adverse to him, and therefore ought to be enforced by an action at law. They rejected the claim of Jabraj for the village said to have been granted to him by way of reward; and, in regard to the subjects now in controversy, they found "that the two villages Gutwa and Basthanwa, given as maintenance, be decreed in favour of plaintiff (to continue) as heretofore." That deliverance was confirmed by Maharajah Sir Maun Singh on July 6, 1869. 5. The award was thereafter approved by the Financial Commissioner, and was filed in Court upon July 16, 1869, which was more than six months after the passing of the Oudh Estates Act (I. of 1869); and it therefore did not come within the provisions of Section 33 of the Act, which, if the award, with the Commissioner's approval, had been filed ten days earlier, would have made it "enforceable as if a court of competent jurisdiction had passed judgment according to the award and a decree had followed upon such judgment." But the award was not on that account invalid. It did not constitute *res judicata*, in the proper sense of that term; yet it was obligatory upon both parties to the submission and upon those whose interests they represented. Raja Kishen Dutt at that time represented the talook, and had power to submit the dispute to the association, so as to bind his successors; and the award, if it gives the appellant a right to possess these two villages, is available to him in any question with the present respondent. The real controversy in this appeal turns upon the construction of the deliverance issued by the British Indian Association. It conclusively determines that the villages were "given as maintenance"; and the parties mainly differ as to the true import of the expression "(to continue) as heretofore." According to the appellant's argument, it signifies that he was to take by succession the same right of possession which had been previously enjoyed by his father and grandfather. The respondent maintains that it merely gave Jabraj a right of possession for his lifetime, determinable on his death by the talookdar for the time being. 6. The appellant has in this suit produced two pottahs or deeds of grant, which were also produced by Jabraj in the submission, as his title to the villages, dated respectively in 1804 and 1808, and bearing to be executed by the Raja Sheo Singh in favour of his son Umrao Singh. The first contains a grant of the village Gutwa, and the second of the village Basthanwa, both grants being "rent free." 7. The District Judge of Fyzabad held that the award, though per se invalid, was binding upon the parties because they had accepted and acted upon it; but he came to the conclusion that, although the appellant was entitled to retain

possession of the villages, the respondent was no longer bound to pay the Government duty, seeing that the award was silent upon that point. He accordingly dismissed the respondent's suit in so far as it prayed for proprietary possession, and decreed that the appellant should pay to him annually the amount of revenue assessed upon the villages. On appeal, the Additional Judicial Commissioner of Oudh reversed that decision, and gave the respondent decree for proprietary possession, in terms of the first alternative of his plaint. He was of opinion that the interest of Jabraj Singh in these villages before the Mutiny was nothing more than a right of maintenance during his lifetime; and that the award had merely the effect of keeping alive the personal right of Jabraj, and conferred no interest whatever upon the appellant. 8. The District Judge held that the two pottahs of 1804 and 1808 were receivable in evidence as ancient documents coming from the proper custody. On the other hand, the Additional Judicial Commissioner found that these documents "have not been proved either by evidence or by presumption of law." In that finding their Lordships cannot concur. Legal presumption appears to them to be in favour of the authenticity of the pottahs, and, so far as the terms of the grant which they contain are expressed, they are entirely consistent with the facts of the case which are aliunde admitted or proved. They expressly state that the grants to Umrao Singh were of the two villages in question, and that under them the possession of these villages was to be rent free; and it is either proved or admitted that since the date of the grants the villages were successively possessed by Umrao and the next male descendant of his body, the revenue duty being paid by the talookdar. 9. It is no doubt true that the grants made by these pottahs are, in some respects, as indefinite as the award of 1869. They do not state that the grant was confined to a right for maintenance; and they do not specify whether such grants, if given for maintenance only, were to Umrao Singh personally, or were to be inherited by his descendants. They are conceived in general terms, which are quite capable of being construed in either of these ways, and according to the nature, of the possession which was had under them with the assent of the talookdar. In the present case, their Lordships are of opinion that the state of possession which followed upon the grants, in the absence of any clear words of limitation, support the contention of the appellant. 10. In construing the final award of the British Indian Association, which determines that the right of maintenance then held by Jabraj Singh shall thenceforth continue as it had previously existed, their Lordships are of opinion that it is legitimate to refer, not only to evidence of antecedent possession bearing upon that point which is independent of the proceedings in the submission, but to those quasi-judicial acts of the arbiters upon which their ultimate award was based. All the evidence derivable from either of these sources leads, in their opinion, to the inference that the original grants to Umrao Singh, although intended for maintenance only, were not limited to him personally, but were in reality grants to him and his direct lineal descendants through males in the order of primogeniture; and, consequently, that the villages will not revert to the talookdar until that line of descendants has become extinct. 11. The respondent argued that it ought to be presumed as

matter of fact that, on the death of Umrao, the right which he had obtained from Rajah Sheo Singh ceased to be operative, and that his son Jabraj then received a new grant for his lifetime from the talookdar. There is no evidence, oral or documentary, tending to suggest that such a transaction ever took place. The possession of the appellant's predecessors has been persistently ascribed, both in the pleadings in this suit and in the submission proceedings, to the pottahs of 1804 and 1808. Yet neither the respondent in this case, nor his predecessor in the proceedings before the British Indian Association, ventured to meet that statement by the assertion that Jabraj's right to possess the villages was derived from a grant of later date, made to him after the death of Umrao. The arbiters have recorded the fact that, before them, Beni Singh, the Rajah's agent, objected to the pottahs, when produced as his title of possession by Jabraj, not that there was another and later grant to which his possession -was attributable, but that the pottahs had probably been forged by him, as he had at one time the seal of the Rajah under his control. The arbiters subsequently recorded their own opinion upon Jabraj's claim, holding that he was entitled to the two villages Gutwa and Basthanwa "by right of primogeniture," or, in other words, because he was the eldest son of Umrao. That finding was obviously the basis of their final award, which was merely delayed until they inquired how far the claims of Jabraj were "adverse" to the Rajah, when they decided that they were of that character, and beyond their jurisdiction, in so far as relating to the twenty-eight villages. 12. In that state of the facts their Lordships have had little difficulty in coming to the conclusion that Jabraj possessed the two villages in succession to Umrao, and under the same grant. To that extent, they concur in the result arrived at by the District Judge. But they are unable to assent to his view that the terms of the award are insufficient to confer upon the appellant a right to possess the villages rent free. The award expressly bears that the right of possession, whatever its quality might be, was to continue as before, which plainly imports that, so long as it may be held to exist, the extent and incidents of possession under it are to be precisely the same as they were before the Mutiny. It is beyond dispute that one of the incidents of possession under the right before that time was, that the burden of paying revenue for the two villages fell upon the. talookdar. 13. Their Lordships will for these reasons humbly advise Her Majesty to reverse the judgment appealed from, and to dismiss the respondent's suit with costs in both Courts below. The respondent must pay to the appellant his costs of this appeal.