

(1899) 05 PRI CK 0001

In the Privy Council

Hasan Jafar and Others

APPELLANT

Vs

Muhammad Askari

RESPONDENT

Date of Decision : 18-05-1899

Acts Referred:

Citation : (1899) 26 ILRPC 879

Hon'ble Judges : Hobhouse, Macnaghten, Richard Couch, JJ.

Judgement

Macnaghten, J. 1. This appeal relates to a claim by the appellants to one-fourth share of an Oudh estate which comprises the talukh of Goothia with certain villages in Zaidpur in the district of Daryabad and is now apparently known as talukh Goothia Zaidpur. 2. The appellants are the representatives of one Sadik Husain, the original plaintiff, who died after the suit had been disposed of in the Court of First Instance. 3. The respondent derives title under the will of the only child and sole heiress of one Karam Ali karam Ali died in 1879. His daughter died in 1887--on her death the dispute arose which led to the present litigation. 4. It is common ground that on the re-occupation of the Province of Oudh after the mutiny the three-year summary settlement of the estate was made with Karam Ali alone, and that the talukhdari sanad was afterwards granted to him as sole owner. The case on behalf of the appellants is that, although Karam Ali thus acquired the legal ownership of the entire estate, he became in the events which happened and was at the time of his death trustee as to one-fourth of the estate for Sadik Husain. 5. It appears that in September 1858 when the three-year summary settlement was in progress Karam Ali applied to have the settlement of the estate made with him. He stated that the estate was ancestral property in which he was a co-sharer. The first summary settlement on the annexation of the Province had been made, he said, with his co-sharers Ali Mehdi and Sadik Husain, but they had absconded, fearing that they would be called upon to pay what they had collected in excess during the mutiny. Search had been made, but no clue or trace of them had been found as yet. He offered to pay what was due to Government in respect of the whole estate. At the same time he declared that if his co-sharers re-appeared and paid up what he might have paid to

Government they should get their shares. In these circumstances the Settlement Officer entered the name of Karam Ali alone as mal-guzar and sent the papers up to the head office in Lucknow for confirmation. They came in the first instance before Major Barrow, the Special Commissioner of Revenue. His note so far as material was in these words: "Correct, but I would leave a door open to admit the other sharers if they explain their conduct by and bye." The papers then went to the office of the Chief Commissioner, Sir Robert Montgomery. His observation on Major Barrow's note written against it in the margin was this: "The man agrees to this, E. Montgomery, Chief Commissioner, Oudh." The papers were then returned to the Settlement Officer who accordingly retained the name of Karam Ali as sole mal-guzar recording in the column of the summary settlement statement headed "Abstract of the Case," an abstract in English of Karam Ali's statement which so far as is material is as follows: "I am entitled to half and those two," that is, Ali Mehdi and Sadik Husain, "to the remaining half. I want the settlement of the whole talukh. When the sharers come back if they pay up what they owe me I will willingly give up their share." 6. Sadik Husain seems to have come back in April 1859. It is beyond dispute that he returned openly on the invitation or by the written permission of the Government. The record contains a letter from the Commissioner at Lucknow to Daroga Wazid Ali, dated the 18th of April 1849, which, so far as material, is in the following terms: "I am in the receipt of your letter relating to the return of Sadik Ali," that is Sadik Husain, "and your request to permit him to settle himself, so I write to you that under the terms of the Queen's Amnesty Proclamation he can settle down and you are permitted to help him in doing so." There is also in the record a parwana of the same date addressed to Sadik Husain by the Deputy Commissioner assuring him that if he had committed no offence punishable under the Queen's | Amnesty Proclamation he would not be called upon to account for himself because he had not presented himself within the period specified in it. This parwana proceeds to say "you may present yourself without the least anxiety and show your loyalty and attachment to the British Government." 7. Following the summary settlement the sanad was granted to Karam Ali in 1862, and his name was entered in Lists I and II, referred in the Oudh Estates Act (I of 1869). 8. The question whether Karam Ali became a trustee of one-fourth of the estate for Sadik Husain upon his return depends, as it seems to their Lordships, upon the terms on which the Government made over the estate to Karam Ali. Owing to the confiscation of the province under Lord Canning's Proclamation the property was at the absolute disposal of the Government. Whatever Karam Ali took unclear the summary settlement and the sanad which followed it he took as a gift from the Government. It was of course competent for the Government when making the gift to impose upon the recipient of their bounty any terms they pleased not inconsistent with the law. If the intention of the Government is clear it cannot make the least difference whether the terms were imposed by the Government of its own motion or suggested by the grantee and assented to by the Government. Karam Ali did not found his claim to the favour of the Government on the misconduct of those who had been his co-sharers. In his

view they were co-sharers still, but they had gone away or disappeared. He was on the spot a loyal man and ready to pay to the Government every farthing of its dues. He asked to have the whole estate settled with him undertaking that if his co-sharers re-appeared, that is, of course, if they came back openly, he would give them their shares. When the papers went before Major Barrow he seems to have thought that some special arrangement ought to be made with a view to the restoration of the co-sharers if they should succeed in explaining their conduct to the satisfaction of the Government. But that was not the view of the Chief Commissioner. His note is very brief, but it is tolerably plain. He differed from Major Barrow. In his view no special provision was necessary. The applicant had undertaken to re-admit the co-sharers if they re-appeared. The Chief Commissioner thought that enough. On that undertaking or agreement, as he calls it, the settlement might be made as the Settlement Officer proposed with Karam Ali alone. And in the result the matter was carried out on that footing. 9. Their Lordships have dwelt at some length on this part of the case because it appears to them that both the Courts below misapprehended the effect of what took place when the settlement papers of 1858 came before the authorities at Lucknow. Both Courts seem to have thought that certain conditions were prescribed by Major Barrow, and that it was incumbent on Sadik Husain to show compliance with those conditions. The fact, however, seems to have been that the Chief Commissioner put aside Major Barrow's suggestions and authorised the settlement with Karam Ali in reliance on his assurances and representations. 10. If Karam Ali became a trustee for Sadik Husain on his return the fact that the sanad was granted to Karam Ali alone would not deprive Sadik Husain of his rights. It is not necessary to refer to authority for the purpose of establishing the proposition that the grantee under a sanad of this description takes subject to trusts which have been validly created. 11. It does not appear that Karam Ali or his daughter and heiress, who succeeded him, ever disputed Sadik Husain's right to share in the estate. It is satisfactory to find a statement made by Karam Ali himself after the sanad was granted to him to the effect that he was not sole and absolute owner of the whole estate. In 1862 the Government called on the talukhdars of Oudh to make a return of their history and services. In May of that year Karam Ali filled up the form which had been sent to him and stated distinctly that he had co-partners. Whether the word translated "co-partners" ought to have been translated subordinate co-partners or not the statement so far as it goes is consistent with Sadik Husain's claim, and at any rate it shows that Karam Ali did not even then consider himself to be absolute owner to the exclusion of everybody else. 12. The rest of the case may be disposed of very briefly. Sadik Husain alleged that he was admitted to share in the management of the estate. In that contention he failed. But it appears that from his return until the death of Karam Ali's daughter, he received a large and liberal allowance from the family estate. It was not contended by the Counsel on behalf of the respondent that the fact that he received less than one-fourth was conclusive against his present claim or operated to bar the suit. 13. On the whole, their Lordships are of opinion that the appellants have made out their case as to one-

fourth of the estate. They will therefore humbly advise Her Majesty that the appeal should be allowed. The decree of the District Judge and the decree of the Judicial Commissioner and Additional Judicial Commissioner must be set aside with costs in the Court of the Judicial Commissioner and the costs paid under either of those decrees repaid, and it should be declared that in the events which happened Karam Ali became and was as to one-fourth of the estates comprised in the sanad granted to him trustee for Sadik Husain, and that the appellants as representatives of Sadik Husain are now entitled to recover one-fourth of those estates. Their Lordships think that each party ought to bear their own costs in the Court of First Instance, as those costs were largely increased by certain unfounded claims on the part of the plaintiff. 14. The respondent will pay the costs of the appeal.