

(1932) 03 PRI CK 0007

In the Privy Council

Case No : Privy Council Appeal No. 119 of 1930

Lal Indra Shah

APPELLANT

Vs

Sheoshankar and others

RESPONDENT

Date of Decision : 08-03-1932

Acts Referred:

Citation : (1932) AIR(PC) 129

Hon'ble Judges : Dinshah Mulla, Lord Thankerton, Viscount Dunedin, JJ.

Advocate : J.M. Parikh, L. De Gruyther, for the Appearing Parties.

Judgement

Sir Dinshah Mulla, J.

The appellant is the zamindar and superior proprietor of Mauza Deosur in the Ambagarh Chowki zamindari situated in the Drug District in the Central Provinces. The respondents are inferior proprietors of the mauza. The suit out of which this appeal arises was instituted by the respondents in the Court of the Additional District Judge of Raipur against the appellant for a declaration that the respondents as inferior proprietors were entitled to all rights over the forest and banjar within the boundaries of the mauza as the zamindar himself had over the rest of his estate subject only to the annual payment of Rs. 90, and that the entries in the Wajibularz of 1925 which declared the zamindar to be entitled to those rights were not correct, and they prayed that those entries should be cancelled.

The trial Court dismissed the suit. On appeal the Judicial Commissioner of the Central Provinces reversed the decision of the trial Court, and decreed the respondent's claim. From that decree the zamindar has brought the present appeal to His Majesty in Council. The respondents did not appear before their Lordships at the hearing of this appeal.

Ambagarh Chowki zamindari was formerly in the Chanda District, and was transferred to the Drug District in 1907. The first regular settlement of the zamindari was made in 1862-69, but to inferior proprietors were created at that

settlement. The next settlement of the zamindari was in 1902-04. At that settlement the respondents' predecessor-in-title was recorded in the khewat as inferior proprietor of the mauza and a sub settlement was made with him. A Wajibularz of the Mouza was prepared which consisted of several clauses each with a distinct heading. Cl.19 of the Wajibularz is headed "rights of inferior proprietors over the village waste and the forest produce." There are no entries under that heading, but there appears the mark-X-below the heading of that clause in the official copy filed by the respondents and the mark in official copy filed by the appellant. It appears from the evidence of respondent 1 given in this suit that his predecessor claimed at that settlement the rights which are now claimed by him, but his claim was rejected.

The last settlement was made in 1924-25, and a fresh Wajibularz of the mauza was prepared which recorded that the zamindar was entitled to sell the timber growing in the mauza and to the grazing and mahua dues and to another rights which are now claimed by the respondents. The respondents objected to these entries before the Settlement Officer, but the objection was disallowed. They then appealed to the Settlement Commissioner, but the appeal was dismissed.

The respondents then instituted the present suit in January 1926. The ground of their claim was that they and their predecessors had been in enjoyment of the rights claimed by them in this suit long before 1864, and that they were entitled to those rights by custom. They also claimed that the very status of inferior proprietors implied those rights, that those rights were not taken away by the Wajibularz of 1904, and that the entries in the Wajibularz of 1925 in so far as they declared, the zamindar to be entitled to those rights were incorrect and should be cancelled.

The trial Judge found that the respondents had not enjoyed the rights claimed by them before 1903, and that even after 1903 they enjoyed them only occasionally and they were therefore not entitled to them by custom. He held that the status of inferior proprietors did not carry with it the rights claimed by them, and that the absence of entries in Cl. 19 of the Wajibularz of 1904 showed that inferior proprietors had no rights in respect of the village waste and the forest produce and he dismissed the suit.

This decree was reversed by the Judicial Commissioner on appeal. The Judicial Commissioner in his judgment said that an inferior proprietor in the Saugor and Nerbudda territories and in the Bilaspur District had all such rights over the forest and banjar in his village as the zamindar himself enjoyed over the rest of the zamindari, and that an inferior proprietor in the Chanda District must be presumed to have the same rights and privileges as were enjoyed by an inferior proprietor in the other districts of the province. Starting with this presumption he proceeded to inquire whether those rights were cut down or curtailed by the Wajibularz of 1904, and he held that they were not, and decreed the respondents' claim. As to the marks in the Wajibularz of 1904 he observed that if the Settlement Officer wanted to say that the inferior proprietor had no such

rights, he could have easily used the word nahi (nil) instead of leaving the entry blank and not writing anything under that heading.

Their Lordships are unable to adopt this view. There is no presumption that the rights which an inferior proprietor enjoys in other districts of the province are enjoyed by an inferior proprietor in this mauza. The respondents therefore can only succeed if they show either that they acquired those rights by custom as alleged by them or they were granted to them in 1902-04 when the sub settlement of this mauza was made with their predecessor. As regards custom, their Lordships see no reason to differ from the finding of the trial Court that it has not been proved. They also think that no such rights as are now claimed by the respondents were conferred upon them at the settlement of 1902-04. Further there being no proof of the existence of these rights before that settlement, the absence of any entry in the Wajibularz of 1904 cannot be interpreted as a reservation of any such rights.

Their Lordships are therefore of opinion that the respondents have failed to establish their case, and they will humbly advise His Majesty that this appeal should be allowed, the decree of the Judicial Commissioner reversed, and the decree of the Additional District Judge restored. The respondents must pay the appellant's costs throughout.