

(1918) 05 PRI CK 0002

In the Privy Council

Lal Sripat Singh

APPELLANT

Vs

Lal Basant Singh

RESPONDENT

Date of Decision : 02-05-1918

Acts Referred:

Citation : (1918) AIR(PC) 77

Hon'ble Judges : Ameer Ali, John Edge, Sumner, Lords Dunedin, Viscount Haldane, JJ.

Advocate : Chester, Ford, Ranken, T.L. Wilson and Co., H.N. Sen, B. Dube, De Gruyther, for the Appearing Parties.

Judgement

Mr. Ameer Ali, J.

The sole question for determination in this appeal relates to the status of the plaintiff-respondent under the Oudh Land Laws, viz., whether he is an "under-proprietor" or, as the defendant alleges, a mere lessee. The suit was brought in the Court of the Subordinate Judge of Partabgarh to recover possession from the defendant, the talukdar of Rajapur, of the village of Daulatpur, lying within the taluka, on the ground that it was owned by the plaintiff as "under-proprietor," and that he had been wrongfully dispossessed therefrom by the defendant in execution of a rent decree. The defendant denied the plaintiff's title as "under-proprietor", and alleged that he was only a lessee, and was, therefore, liable under the Rent Law to ejectment for default in the payment of his rent. The Subordinate Judge held in favour of the plaintiff, and decreed his claim for possession and for mesne profits during the period he has been kept out of possession. And this decree has been affirmed by the Court of the Judicial Commissioner of Oudh. The defendant now appeals to His Majesty in Council.

A short statement of the facts will explain the relative position of the parties, as also the nature of their respective contentions. The plaintiff and defendant are closely related, being cousins in the first degree. The taluka of Rajapur, now held by the defendant, was settled with his father, Sheoamber Singh, in 1859. In 1861, in the course of the regular settlement, the plaintiff applied for a

settlement of a half share with him on the ground that he was jointly entitled to the estate with Sheoamber. On this petition he was directed to "bring a claim at the time of settlement". Six years later, whilst the regular settlement was still proceeding, he applied again to the settlement authorities to have his name recorded as a co-owner in respect of a moiety of the taluka.

In this petition the grounds of his claim were more specifically stated that his father, Lal Din Singh, and Sheoamber were full brothers and members of a joint family, and that the taluka had been acquired in the name of Sheoamber for the benefit of both brothers. This petition was entered as a suit before the Extra Assistant Commissioner of Partabgarh. Sheoamber contested the claim of the plaintiff to a half share of the property but admitted his right to maintenance as a junior member of the family. Before trial, however, the parties compromised the dispute. The terms of the settlement arrived at are embodied in a joint petition filed in Court on the 29th October 1867. By this compromise in consideration of the plaintiff withdrawing his suits and abandoning his claim to a share of the taluka, Sheoamber gave to him the village of Daulatpur, at a rent of Rupees 461-4-0 being the Government revenue payable thereon, together with certain lands situated in other villages at fixed rentals. As regards the village of Daulatpur the plaintiff was to pay besides the "rent", the wages of the patwari and choukidar and the village expenses. And then followed the conditions of the grant,

"That the plaintiff will pay to the talukdar defendant, the above-mentioned jama every year; that the plaintiff and his heirs will appropriate the profits of the above-mentioned village and lands, and that the defendant will have no right to resume them or to enhance the rent"

The prayer of the petition is important.

It runs thus :-

"The plaintiff prays therefore, that all the suits filed by the plaintiff, with the exception of these in respect of the village Daulatpur, 34 bighas land of village Jogapur, and 26 bighas (sic) land of village Rajapur, be dismissed, and that a decree for the under-proprietary right of the entire village Daulatpur, 34 bighas of village Jogapur, and 26 bighas (sic) land of village Rajapur be passed in favour of the plaintiff "

There is no dispute that the words qabiz darmiani in the original of this petition are correctly rendered as meaning an "under-proprietary right".

On the 1st November 1867, the Extra Assistant Commissioner made an order that the "under-proprietary right" in respect of the lands within his jurisdiction should be decreed to the plaintiff in terms of the compromise; and that as regards Daulatpur, which apparently lay outside his jurisdiction, the petition should be referred for final orders to the Settlement Officer.

The matter relating to Daulatpur then came before the Settlement Officer (Mr.

Forbes) on the 8th June 1869, and he recorded the following order on the petition of compromise.

"Plaintiff has filed a deed of compromise setting forth that defendant has agreed to grant plaintiff an under-proprietary right in Mouza Daulatpur, subject to an annual payment of Rs. 461-4-0 and certain Sir in two other villages (which has been judicially recorded by the S.M.) Plaintiff to bear patwaris and chowkidar's dues. Defendant never to have the power, he or his posterity, of ever increasing the demand now fixed. This is verified by the parties in my presence. As, however, there is no grant or reservation of the right of transfer, the Court sends for defendant his agent being too ignorant and useless, and will have the matter formally cleared up before passing any orders."

On the 14th June the case was again placed before the Settlement Officer, when the final order which has given rise to the present contest was made. It is in these terms :

"Decree-on-under-proprietary right in Mouza Daulatpur in favour of plaintiff without right of transfer, subject to an annual payment of Rs. 461-4-0 and subject also to the other conditions contained in the deed of compromise."

On the 21st October, 1872, a further agreement was entered into between Sheombar and the plaintiff describing themselves respectively, as "the proprietor and under-proprietor" of the village of Daulatpur. The terms of this document have an important bearing on the contentions of the defendant and his attempt to reduce the plaintiff's status to that of a lessee. The first clause recites that:

"The Government has assessed the jama of this village at Rs. 450. The income from mines is separate from this. If any mine be discovered in our village, then we, the superior and under-proprietor will be liable to pay to the Government a share out of the income (of those mines)."

In the third clause Sheoambar Singh declares that he is the talukdar and "lambardar of Rajapur" that after his death the taluka would devolve in the male line to a single heir by rule of primogeniture. The description "lambardar" is significant; it shows that the Government revenue in respect of Daulatpur is paid through him.

The fifth clause among other matters records the under-proprietor's-under-taking to pay" the salaries of the patwaris and chowkidars along with the last instalment. And further that, the leases and receipts will be given to the tenants after getting them recorded by the pativari; "and the under-proprietor undertakes to" get the payments made by each tenant recorded in the patwarisiaha" :

In case of any fault being committed by a patwari or a chowkidar, the under-proprietor was at liberty to make an application to the Government for his dismissal, and in case of his dismissal to get other nominee of his appointed in the place of the dismissed patwari or chowkidar with the sanction of the

Government."

It is clear from this document that the acknowledged status of the plaintiff was quite different from what is now attempted to be fixed upon him.

Since 1869 the plaintiff's name stands recorded in the village register as "under-proprietor" and a sub-settlement appears to have been made with him. In August 1899, the defendant himself brought a suit against the plaintiff for arrears of rent in which he described their relative positions as that of "superior proprietor and under-proprietor" respectively, of the village of Daulatpur. From 1872 to 1909 there does not appear to have been any contest regarding the status of the plaintiff. In 1902 he mortgaged the village to one Safdar Hussain and let him into possession. This man defaulted in the payment of the rent and the defendant thereupon brought a suit against the plaintiff under S. 52 of the Oudh Rent Act (XXII of 1886) and obtained a decree. In execution of this decree the defendant ejected the plaintiff and took possession of the village. The plaintiff then brought a suit under clause 10, S. 108 of the Rent Act for recovery of possession and obtained a decree in his favour in the Court of the Deputy Collector, which, however, was set aside on appeal by the Commissioner whose order of dismissal of the plaintiff's action was affirmed by the Board of Revenue on the ground that so far as the Revenue Courts were concerned the matter was *res judicata* in consequence of the decision in the defendant's suit under S. 52 and that the plaintiff's remedy lay in the Civil Courts. This view of the Board as to *res judicata* has necessitated further litigation extending over six years.

The Board's order was made on the 30th November, 1911, and the present suit was brought on the 2nd August, 1912.

Their Lordships cannot help observing that, so far as appears from the record, the defendant for the first time in 1909, in the proceedings in the Revenue Courts, put forward the contention that the plaintiff was not an "under-proprietor" but only a "lessee". In his written statement in the present action he did not commit himself specifically to that contention. In paragraph 3 he simply states :-

"It is admitted that a compromise was entered into, but the power of transfer was never allowed. The word *qabiz* Darmiani during those days did not particularly mean what it now means in legal phraseology."

He does not say, however, what it actually meant. This was left to his pleader to develop in the statement recorded by the Court under the provisions of the Civil Procedure Code. It was then that he expressly took up the position that the plaintiff was a mere "lessee" and, therefore, liable to ejection. And he based his contention on the words "without right of transfer," introduced as would appear, *ex abundanti cantela* by the Settlement Officer (Mr. Forbes) in his order of the 14th June, 1869, on the petition of compromise jointly executed by Sheoambar and the plaintiff.

The position of a qabiz darmiani or "under-proprietor" was fully understood in Oudh before the passing of Act XIX of 1868, which definitely crystallized and gave statutory recognition to his rights and status. It had come into being from the circumstances of the times; the exactions of the revenue Collectors under the old regime had forced many small proprietors to protect themselves against oppression by engaging with some more powerful neighbour to pay the Government revenue through him, but retaining their right in the property. In 1866 the Indian Legislature recognised their right to obtain a sub-settlement of their property, and the Act of 1868 clearly defined their position.

It recognizes three classes of persons and three only, as having an interest in and entitled to hold land for the purposes of the Act in the province of Oudh, viz., "proprietor", "under-proprietor" and "tenant". It defines a "proprietor" thus:

"Proprietor", does not include an under-proprietor. Where there are two private rights of property one superior and the other subordinate in the same land, "proprietor" means the holder of the superior right only. (The importance of the words "rights of property" cannot be overlooked in connection with the present dispute.)

An "under-proprietor" is defined in the following words : "Under-proprietor" means any person possessing a heritable and transferable right of property in land, for which he is liable to pay rent."

And a "tenant" is defined to mean any person, not being an under-proprietor, who is liable to pay rent.

That the Act does not recognise any other status except the three it defines is clear from S. 102, which gives the right to sue under its special provisions for the recovery of land from which the "applicant" has been illegally dispossessed to "landlord, under-proprietor, and tenant." "Tenants" are divided into two classes, viz., those with the right of occupancy and those without such right. Tenants with a right of occupancy have a "heritable" but not a "transferable" right, and all tenants are entitled to a lease and are liable to be ejected for default in the payment of rent, which they may resist on different grounds.

It is thus absolutely clear that the Act draws a sharp distinction between an "under-proprietor" and a "tenant". And this was the law when Mr. Forbes made his "decree" on the 14th June 1869. The parties had come to a compromise and embodied the terms in a document which both had signed. Sheoambar had given to the plaintiff, in consideration of his withdrawing his suits, then pending, for a half share of the taluka the "under-proprietary right" in the village in question on a rent which was the exact amount of the revenue payable thereon to Government, and had expressly abandoned any right to take back or resume the property so given. Nothing could be clearer than the intention of the parties expressed in this document, that Sheoambar intended to give and the plaintiff intended to take the properties as "under-proprietor". When the matter went before the settlement officer, he, in an excess of caution, wanted to ascertain

from Sheoambar whether the talukdar wished to convoy to the plaintiff "the right to transfer." Sheoambar was sent for, but failed to attend; and the plaintiff, to avoid further harassment, appears to have agreed to the passing of a decree without "right of transfer". The Settlement Officer's order involves a contradiction in terms. He "decrees" to the plaintiff the status of an under-proprietor, "and then adds the words" "without right of transfer" which totally nullifies the previous declaration. He must have been aware of the law, and must have used the word "under-proprietor" in its statutory, and, what is more, its ordinary sense, the sense in which the parties had, their Lordships have no doubt, used it in their deed of compromise. As the Commissioner in the suit under S. 52 observed, Mr. Forbe's decree "created a tenure which is quite outside the Rent Act as it now stands." More correctly, it created a tenure unknown to the law as it then stood.

A good deal of stress has been laid on the fact that the plaintiff agreed to a decree with those words added, showing that he himself gave up before the Settlement Officer his right to transfer. The plaintiff was declared to be an "under-proprietor" in accordance with the terms of the compromise; the law attaches certain rights to that status; so long as he retains that status he remains clothed with those rights, and he cannot be divested of those rights, unless and until he loses that status. Their Lordships are of opinion that the words "without right of transfer" in Mr. Forbe's decree do not affect the rights of the plaintiff as under-proprietor; and that the decrees of the Courts in India are perfectly right. Their Lordships will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.