
(1922) 06 PAT CK 0014
In the Patna High Court

Mahadeo Asram Prashad Sahi

APPELLANT

Vs

Mt. Jagatraj Kuer and Others

RESPONDENT

Date of Decision : 13-06-1922

Acts Referred:

Evidence Act, 1872 — Section 41

Citation : AIR 1924 Patna 298

Hon'ble Judges : Dawson Miller, C.J.; Mullick, J

Bench : Full Bench

Judgement

Dawson Miller, C.J.—This is an appeal from a decree of the Subordinate Judge of Chapra, dated the 31st May, 1919, dismissing the plaintiff's suit.

2. The suit was instituted by the Maharaja of Hatwa claiming to resume certain lands situated in three mauzas within his zwmindari which are now said to be in the possession of the first two defendants, the widows of the grantees. It is the plaintiff's case that the lands in suit were granted by his father, the late Maharaja, to two brothers, Daonarayan Singh and Brij Nandan Singh, the husbands of the first two defendants, for their lives as hazribashi jagir in lieu of salary and on condition of rendering services as physicians to the grantor. The original grant has not been produced by the plaintiff, but a patta or sanad book containing what purports to be a copy of the document as well as copies of a number of other deeds of the same and a later period has been produced by the plaintiff and is relied on as evidence of the grant. It is dated the 25th Assin 1286-F., corresponding to the 6th October, 1878, A.D. If this document is reliable and if it can be proved that the grant was then made to Deonarayan and Brijnandan there can be no doubt that what was conveyed was a life-estate only and the Maharaja would be entitled to resume the lands on the death of the grantees. The late Maharaja died in 1896, his son, the present plaintiff being then a child of about 3 years of age. Brijnandan, one of the grantees, survived his brother, Deonarayan, and died in 1901. Under Article 130 of the First Schedule of the Limitation Act the period during which a suit for resumption can be brought is 12

years from the date when the right to resume accrues and would consequently expire in the ordinary course in 1913 The plaintiff, however, attained his majority only in July, 1914, and the present suit was instituted within 3 years of that date, viz., on the 14th May, 1917, and as against the widow of Brijnandan and his brother the suit is not barred by limitation.

3. It is the case of the defendants that the grant relied upon by the plaintiff was never in fact made or accepted by the grantees. They claim the lands under grants of an earlier date made by the father and grandfather of the plaintiff in favour of the ancestors of their husbands alleging that an estate of inheritance was created under the earlier grants, or, if the interest was a life interest, that the lands were never resumed and descended from father to son, the right of resumption being now extinguished The plaintiff does not dispute that the earlier grants of the lands in suit relied on by the defendants were made to the ancestors of Deonarayan and Brijnandan but contends that they also were jagir grants conveying a life interest and that the lands were resumed in 1878 and re-granted by the instrument of that date to the two brothers whose father and grandfather before them had been acting as physicians to the father and grandfather of the plaintiff.

4. The villages, in which the lands are situated are named respectively Pipra Khas Swareji, and Harkhouh The earlier grants relied on by the defendants are three in number. The first in order of date is said to have been made in 1252-F., corresponding to 1844 or 1845, A.D. This grant has been lost but it is not disputed that it conveyed the lands now claimed in Mouza Pipia Khas as Jaqir to Hakim Shoo Prasad Singh the grandfather of Deonarayan and Brijnandan, who was at that time physician to the grantor, the grandfather of the present plaintiff.

5. The second in order of date has been produced. It is dated the 10th Assin 1254-F., corresponding to September, 1846r A.D. It related to the lands in Mauza Swareji. The grantor and the grantees are the same as in the earlier one. It recites that the lands have been gifted away by the grantor as rent-free jagir to the grantee on condition of loyalty, and directs that he shall ever remain faithful in the discharge of his duties.

6. The third is dated the 23rd Kartic 1277-F., corresponding to the 6th November, 1869, A.D. It relates to the lands in Mauza Harkhouli which were granted by the plaintiff's father to Hakim Ram Anugrah Singh,, the son of Sheo Prasad Singh and father of Brijnandan and his brother. It recites that the lands have been granted as jagir on the occasion of the Maharaja's recovery from illness and it directs that the grantee shall ever remain faithful in the discharge of his duties.

7. The defendants contend that the grants-so made conveyed an absolute estate of inheritance and could not be resumed on the death of the grantee. There can be no doubt, however, in my opinion, that jagir grant, unless clear words indicating a different intention appear in the instrument, conveys only an estate

for life. The effect of grants of this nature has been considered on more than one occasion by their Lordships of the Judicial Committee. I need only refer to the cases of *Gulabdas Gulabdase v. Collector of Surat* (1898) 3 Bom 186 (PC) and *Ram Narayan Singh v. Ram Saran Lal* (1919) 46 Cal 683. In the former decided in 1878, it was held that a jagir must be taken prima facie to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. In the latter decided in 1918, the earlier decision was referred to and followed, and it was further laid down that the terms which will make the grant of a jagir a grant of an estate of inheritance must, if they are to be considered alone, be terms which are not ambiguous, and must clearly show whether it was intended by the grantor that the right for inheritance should be general or should be confined to a particular class of heirs. Further, by Clause 15 of Bengal Regulation XXXVII of 1793 which relates to Badshahi grants, it is provided that jagirs are to be considered as life tenures only, and that all life tenures are to expire with the life of the grantee unless otherwise expressed in the grant. It has also been laid down in this Court in the case of *Pratap Udainath Sahi Deo v. Ganesh Narain Sahi* 70 Ind. Cas. 232 that the interest of a jagirdar is ordinarily that of a life tenant.

8. The learned Subordinate Judge who tried the case was of opinion that the grants in question conveyed an estate of inheritance and the lands were not resumable. He was influenced in coming to this opinion by the fact that the lands conveyed in the first two grants had descended without any attempt at resumption to the son of the original grantee. There is no direct evidence as to when Shoo Prasad, the original grantee of the lands in Swareji and Pipra Khas, died but it is conceded that it must have been not later than 1869 when the grant of the lands in Harkhouli was made to his son Ram Anugrah. It is likewise conceded that Bam Anugrah died in or before 1878 and that Brijnandan and Deonarayan, his sons, were in possession of the whole of the lands from that date until their death.

9. As already stated, I cannot accept the learned Subordinate Judge's view that a grant of a jagir conveys more than a life interest, and if it is proved that the lands were in fact resumed in 1878 and reconvened as jagir to the sons of Ram Anugrah under the alleged grant of that date the plaintiff would be entitled to resume as against the widows of the grantees.

10. The learned Subordinate Judge, however, refused to accept the evidence of the plaintiff as to the resumption and re-grant in 1878. He rejected the copy of the alleged grant in 1878 as a spurious document. It recites that the grant was made to Daonarayan and Brijnandan for their lifetime, in lieu of salary. There was evidence on the part of the defendants that Daonarayan and Brijnandan were in fact being paid a salary of Rs. 30 per month, and the plaintiff's witnesses admitted that there were accounts in the serishta of the Maharaja showing payments made to the servants of the Raj, both Raj servants and derohi servants, and that for each set of servants separate registers and bill bahis were

in existence for the period in question. These, however, although called for, were not produced and from this the learned Subordinate Judge drew the inference, which was a legitimate inference to draw, that these books, it produced, would have supported the defendants' allegation that Deonarayan and Brijnandan were in fact paid a salary for their services during their lifetime, a fact which, if established, was quite inconsistent with the terms of the alleged grant. He further considered from the internal evidence of the putta or sannad book itself that it was not a document which could be relied upon. Some of the documents in the book contained a copy of the signature of the late Maharaja in English, others contained what purported to be and were sworn to be his initials presumably appended by himself after the copies had been made, and in some cases it was pointed out before us that the copies were not in chronological order but entered after others of a later date. The book itself has not the appearance of being very old and the initials said to be those of the late Maharaja are apparently all made with the same kind of ink, although they extend over a period of many years. I am not prepared to hold that the book itself was a spurious document prepared for the purposes of this case, although there are circumstances which raise some suspicion as to its authenticity. The evidence, however, as to the resumption of the lands in 1878 and the re-grant thereof to the two brothers is not of a very convincing description. It consists of that of certain servants of the plaintiff who were also in the service of his father and who state in general terms that in the year in question the lands were under attachment for 2 or 3 months during which time the tenants were instructed not to pay rents to Brijnandan and his brother after which the lands were re-granted to them in lieu of salary. The evidence is not altogether consistent. It is stated by Debi Lal, the Patwari of Harkhouli, that the two brothers had been in possession for a year or two when the lands were resumed on account of some displeasure, whereas Sunder Lal, who says he was the Raj Amin since 1875, says the attachment was not on account of any fault of Deonarayan and his brother but by way of management. It is further conceded by the plaintiff's witnesses that no rents were ever paid to the Maharaja during the period of attachment but that the two brothers never ceased to collect the rents throughout. Further, there is no documentary evidence produced, such as parwanas to the patwaris and others of the villages, indicating that a resumption had taken place. It is further nowhere suggested that when Sheo Prasad, the grantee of the lands in Swareji and Pipra Khas, died any attempt was then made to resume. On the contrary, his son, Ram Anugrah, came into possession of the lands granted and was given a further grant of lands in Harkhouli. A further important fact is that the sanads granted to the father and grandfather of Brijnandan, were never returned to the Maharaja in 1878. DUG remain up to the present day in the possession of the descendants of the grantees. The learned Subordinate Judge rejected the plaintiff's evidence partly on the ground that it was confined to the statements of ill paid servants of the plaintiffs whose living depended upon the good wishes of their master. This consideration, although entitled to some weight where the evidence, as here is contradicted, is certainly not in itself a sufficient ground for

rejecting the evidence. It is admitted that no written orders were sent to the patwaris or tahsildars of the villages to resume the lands and no proceedings took place in Court with that object. There is also nothing except the verbal statement of some of the witnesses to show that Deonarayan and Brijnandan ever accepted the alleged grant of 1878. It is highly improbable that they, having succeeded to the lands granted to their grand-father and held by their father without opposition, would give them up and accept a life interest only without a struggle, and, in the absence of more convincing evidence than that adduced by the plaintiff, I am not prepared to differ from the findings of the Subordinate Judge that the lands were not in fact resumed and re-granted in 1878. If proof of this grant fails, as I held it must, it follows that the suit not having been instituted within 12 years from the date when the cause of action arose, viz., in 1878 at latest it is now barred by limitation and must be dismissed.

11. A further point was raised by the defendants which may be mentioned here, although in view of the findings I have arrived at it is unnecessary to decide it. The suit was originally instituted against the first two defendants alone on the 14th May, 1917. By their written statement, which was filed on the 4th June, 1918, they alleged that Mt. Chanderma Kueri, the defendant No. 2, with the authority of her late husband, Brijnandan Singh, adopted a son, Hakim Chandra Sekhar Prasad Singh, in Baisakh 1323 F. corresponding to April 1916 and that he, as heir of his adoptive father, was alone in possession of all the lands in suit and that the suit was not maintainable against them but only against the adopted son. The plaintiff apparently was not aware of the alleged adoption until he received the written statement of the widows in June, 1918, by which time the period of limitation as against the adopted son had expired even assuming that the grant of 1878 could be proved. The adopted son was, however, added as a party by an order of the Judge of the trial Court on the 19th December, 1918. In April, 1919, he filed a written statement pleading, inter alia, that the suit was barred by limitation. If in fact his adoption was valid which is not admitted by the plaintiff it would appear that there is no answer to this plea. At the date when the judgment was delivered by the trial Court in May, 1919, a suit to set aside the adoption had been brought by the reversioners of Brijnandan against Mt. Chanderma Kueri and her adopted son and judgment had been delivered in that suit by the Subordinate Judge of Saran declaring against the validity of the adoption. An appeal, however, from that decision was pending to the High Court and on the 24th January last the appeal was allowed, the decree of the Subordinate Judge being set aside and the suit dismissed. From that decision an appeal is now pending to His Majesty in Council. In the present suit no evidence was given either as to the fact of adoption or as to its validity, but the learned Judge assumed that if the appeal then pending to the High Court in the adoption suit should succeed the present suit would be time-barred as against the defendant No. 3. During the hearing of this appeal the respondents presented a petition with a certified copy of the judgment of the High Court in the adoption suit and asked us to admit it as evidence of the adoption. That judgment,

however, was not a judgment in a suit between the parties to the present case and cannot be regarded as *res judicata*. Nor is it, in my opinion, a judgment in rem binding upon all the world. See *Kanhya Lall v. Radha Churn* 7 WR 338 and *Yarakamma v. Anakala Naramma* 2 MHC 276. Moreover, in this country by Section 41 of the Evidence Act judgments, orders or decrees which are conclusive proof of the legal character of a person are confined to those of a competent Court in Probate, Matrimonial, Admiralty, or Insolvency Jurisdiction. They do not include judgments of the character now relied upon. Further, in my opinion, the judgment relied upon being *res inter alios judicata* and not relating to matters of a public nature is not even admissible as evidence in the present case of the truth of the matters therein decided. It is, however, in view of the findings already arrived at, unnecessary to determine this question. In my opinion this appeal should be dismissed with costs.

Mullick, J.

12. I agree.