

(1897) 03 CAL CK 0023
In the Calcutta High Court

Mahammad Mumtaz Ali

APPELLANT

Vs

Ram Autar and Others

RESPONDENT

Date of Decision : 20-03-1897

Acts Referred:

Citation : (1898) ILR (Cal) 853

Hon'ble Judges : Watson, J;R. Couch, J;Hobhouse, J;Davey, J

Bench : Full Bench

Judgement

Watson, J.—The respondent Rajah Mahammad Mumtaz Ali Khan (sic) died on the death of his uncle the Rajah Umrao Ali Khan to the Bilaspur (sic) te in district Gonda, which includes the taluka of Utraula. At that time respondent was a mere infant: and his estate remained under the charge (sic) the Court of Wards from the end of the year 1865 until October 1886 when he attained majority. In March 1889 he instituted the present suit before the District Court of Fyzabad against Ram Autar, Salig Ram and others, in which he prays for (1) a decree for possession of the entire village Mahammadpur Banjarha which is within taluka Utraula; (2) cancellation of an order passed by the Settlement Court on the 30th June 1871 which decreed the village Banjarha "for birt," to one Ram Ghulam; and (3) a decree for mesne profits.

2. The appellants are the original or substituted defendants in the suit; and with the exception of one who has acquired by purchase a share in the interest claimed by the others they are the lineal descendants of one Jawahir Lal to whom they allege that a perpetual under-proprietary right in the village was granted in or about the year 1838 by the Rajah Mahammad Khan Jeo, a predecessor of the respondent. Jawahir Lal had four sons, the eldest being Ram Ghulam the grandfather of the said Ram Autar, and the youngest Salig Ram who was an original defendant in this suit. On the death of Jawahir it is said that the members of his family succeeded to his under-proprietary interest in village Banjarha. Ram Ghulam obtained from the Settlement Court in 1871 the order sought to be cancelled as representative and for behoof, of the whole of the

members of the family. F(sic) many years prior to the death of Raja Umrao Khan in 1865, Salig Ra(sic) was employed by him as manager of the estate; and he continued to act in the same capacity during the whole period of its administration under the Court of Wards.

3. The case maintained by the respondent is in substance that Jawahir Lal had no grant of under-proprietary right from his ancestor, and that the defendants have no such interest in village Banjarha; that the decree of the Settlement Court in favour of Ram Ghulam was obtained by fraud and collusion; that no evidence was produced and no inquiry made as to the existence of the right then asserted by Ram Ghulam, and that the latter caused or induced his brother Salig Ram to give an admission on behalf of the Court of Wards in respect of which the decree passed. In their written statement the appellants allege that the original birtpatr of 1838 by Rajah Mahammad Khan Jeo to Jawahir Lal was produced at the summary settlement, but that the file of papers, including that document, had been destroyed during the Mutiny. If so the production of the document in the Settlement Court must have been of an earlier date than 1871. They also denied the Respondent's allegations of fraud and collusion, and averred that the admission of Ram Ghulam's claim was made "in accordance with instructions of the manager of the Court of Wards, who had after inquiry given him (i.e., Salig Ram) instructions to admit the same"; and that they and their predecessors had, since 1838, been in possession of the village as proprietors, under the talukdar of Utraula.

4. Four issues were adjusted by the District Judge for the trial of the cause: (1) Is not plaintiff bound by the decree of 1871 (2) If not, is the present claim barred by limitation? (3) If not barred, are the defendants not entitled to hold the village as birt-holders? (4) If not so entitled, to what relief, if any, is the plaintiff entitled? The learned Judge, in their Lordships' opinion erroneously, Laid the onus of establishing the third issue upon the respondent. In the event of its being held that the decree of 1871 was not such as to constitute a bar to the action, the duty of proving their own title aliunde was incumbent upon the appellants. Upon the issue of limitation, both Courts below found against the appellants; and no question has been raised with regard to it in this appeal. The District Judge, on the 6th January 1890, found for the appellants upon the first and third issues; in consequence of which findings, it became unnecessary to consider the fourth issue, and the respondent's suit was dismissed by him, with costs. Upon an appeal by the respondent, the Judicial Commissioner reversed the decision of the District Judge upon the first and third issues, and found upon both of them for the respondent. He accordingly gave the respondent a decree for possession of the village Mahammadpur Banjarha in terms of his plaint. He dismissed the prayer of the plaint in relation to mesne profits, because no evidence had been adduced at the trial in support of the fourth issue; and he deprived the respondent of his costs in both Courts below, because forged interpolations had been made in certain documents put in by him, connected with the Settlement Court proceedings of 1871.

5. When the judgments delivered by the District Judge of Fyzabad and the Judicial Commissioner are examined, it becomes apparent that the only real difference of opinion between them was in regard to the third issue. The learned Judge of the District Court was of opinion that the appellants would not have been entitled to a finding in their favour upon the first issue, if it had stood alone. But seeing that, in his opinion, they were entitled to have a finding, under the third issue, that they were possessed of a valid under-proprietary right, independently of the decree of 30th June 1871, he appears to have thought that the decree of 1871 ought to be regarded as sufficient, inasmuch as, in his opinion, Earn Ghulam would have been entitled to, and would have obtained it, if due investigation had been made at the time, instead of its proceeding upon an admission given by Salig Earn, who was himself interested, to the extent of a 5 anna 4 pie share, in the right claimed by his brother Ram Ghulam. The reasoning of the learned Judge does not appear to their Lordships to be altogether satisfactory. If the circumstances attendant upon the granting of the decree of June 1871 were such that it could not be set up by the appellants as a title sufficient to exclude the possession of the talukdar, the finding upon the first issue ought to have been to that effect: and it would not have prejudiced the appellants' defence, in the event of their being able to establish under the third issue, that they had obtained an under-proprietary right from one of the respondent's predecessors.

6. It does not, in their Lordships' opinion, admit of reasonable doubt that, having regard to the facts disclosed by the proof, the settlement decree cannot be regarded as binding upon the respondent who was at its date a minor underth(sic) guardianship of the Court of Wards. The local manager of his estate under this Court of Wards was Salig Ram, for behoof of whom, as well as of himself and of other members of Jawahir Lal's family, the petition of Ram Ghulam was presented. Yet Salig Ram was the only person who appeared in the Settlement Court to represent the Court of Wards, and to protect the interests of the respondent against possible encroachment by Jawahir Lal's 1 descendants. It is obvious that the Deputy Commissioner, who was the chief officer of the Court of Wards in that district of Oudh, was induced to sanction the admission of their right, in consequence of representations made to him by his servant Salig Ram, whom he directed to report upon the application. It is hardly conceivable that an official in his position would have entrusted such an inquiry to Salig Ram, or would have acted upon his report, if he had known the reporter's relationship to the applicants, or his personal interest in the success of their application.

7. Salig Ram, as might naturally have been expected in these circumstances, made a report in all points favourable to his brother's claim. It states that the village Banjarha was birt of Ram Ghulam; that, in the commencement of 1844, he had cleared and populated the jungle according to the grant previously made by the Rajah; and that, from and after the time of the grant, he had possession by receipt of haq-i-chaharum, and by payment of the Government revenue to the Rajah; that, in 1857, settlement of the village was made with him as birtia, on

the same terms; that settlement was again made with him in 1859, recognising his birt tenure; and that, from the time when its administration began, the Court of Wards continued his possession, upon his payment of the Government revenue due for the village, under deduction of one-fourth, as haq-i-chaharum. Acting upon the faith of these representations by his manager, the Deputy Commissioner authorised an admission of the claim, which was duly filed by Salig Ram; and, in respect of. it, the Settlement Court issued its order affirming the under-proprietary right of Ram Ghulam. Notwithstanding the assertion made by the appellants in their written statement, there is no trace of the birtpatr or any similar document having been laid before the" Settlement Court either in 1857 or in 1859. On both these occasions, the village was temporarily settled w(sic) Jawahir Lal's descendants; but there way no inquiry into the question of their alleged under-proprietary right. These settlements were probably made because they were found in possession, and they may have been facilitated by the fact that Salig Earn was then, as he was in 1871, manager of the estate.

8. Salig Ram was examined as a witness in his own behalf in this suit, and he explained that, in reporting upon his brother's application to the Settlement Court, "I did not think it necessary to say that Bam Ghulam was my brother, as everyone knew he was my brother;" but he does not explain why he failed to communicate the fact that the application was partly made for his personal benefit, and that he had a substantial pecuniary interest in its success. What he does state in evidence amounts to nothing more than this, that those persons who happened to be acquainted with Jawahir Lal's family were aware of his relationship to the petitioner Earn Ghulam. Their Lordships agree with the observation of the District Judge that "this amounts to an admission that he did not report that Earn Ghulam was his brother, and this fact tells strongly against his bond fides in the whole transaction." Their Lordships may add that, in their opinion, it is sufficient to justify a suspicion that, in 1871, Salig and his brother Ram Ghulam were not possessed of documents showing the under-proprietary right which they claimed, or at least that they had some good reason for desiring to avoid submitting their documents to the examination of the Settlement Court. Their Lordships must assume that the Deputy Commissioner was kept in ignorance of the facts which made Salig Earn an interested and unreliable adviser. Had he known these facts, his acceptance of Salig Ram's report would, in their opinion, have constituted a grave breach of duty, sufficient in itself to prevent the decree of the Settlement Court from becoming binding upon the respondent.

9. The only question remaining to be considered is, whether the respondents have succeeded in establishing an under-proprietary right in the village Banjarha, derived from the talukdar of Utraula, before the Mutiny? Upon that point, the learned Judges of the Courts below have come to opposite conclusions.

10. It appears to be the fair result of the evidence, and may be assumed, that Jawahir Lal and his family were in the occupation under some title or other, of

the village in dispute, from the year 1838 until the Mutiny. The question between the parties is therefore narrowed to the issue, whether the occupation which they had during that period was attributable to a tenure under the Rajah, of a temporary character or in perpetuity. The respondents, besides leading oral testimony, which is per se inconclusive upon the matter of title, have produced and founded upon a mass of documents, some of which are not proved at all, and others of which are of no value as evidence, in a question with the talukdar; whilst the genuineness of other documents, which bear most directly upon the nature of the appellants' title, is disputed by the respondent.

11. One main reason which induced the learned Judge of the District Court to come to a conclusion favourable to the appellants upon the third issue, is expressed in the following sentences: "The others (i.e., documents) prove beyond any doubt that one Bam Ghulam held possession of this village as birt-holder from before the Mutiny until 1861; and this is not denied by the plaintiff, but evidence on behalf of the plaintiff has been given to show that the Earn Ghulam who held the village was one Ram Ghulam, Misr, and not the Earn Ghulam who obtained the decree in 1871, who is a Kayesth. The plaintiff when he filed this suit never asserted that the village had been held by one Earn Ghulam, Misr, and it was only on 16th November 1889, when the remarks in Column 16 of the muafi statement for the tillage in suit were read, that this contention was raised on behalf of the plaintiff. It is perfectly clear to me that the remarks in Column 16 are a clerical error. Another village called Amhawa was held by one Ram Ghulam, Misr, and the clerk who drew up the two statements thought that both the Ram Ghulam of Amhawa and Ram Ghulam of Mahammadpur were one and the same person, hence the error."

12. Their Lordships see no reason to doubt that the entry in the muafi statement which represents Ram Ghulam of Banjarha as a Misr by caste, was due to an error of the clerk who prepared it. The statement was made up in the year 1861, at a time when the same Ram Ghulam, who subsequently obtained the decree of 30th June 1871, had been placed in temporary possession by the Settlement Court. But they are of opinion that the learned Judge erred in assuming, as he appears to have done, that the respondent had, in the course of the suit, practically admitted that Ram Ghulam must be held to have possessed the underproprietary title which the appellants claim, if it could be shown that the Ram Ghulam, called a Misr, was in reality a Kayesth. Their Lordships can find nothing in the record to warrant that assumption. The muafi statement of 1861, if evidence of title at all, is a mere adminicle of proof, and, per se, inconclusive. It is not shown upon whose information it was prepared, or that its terms were known to the Rajah although they may possibly have been within the knowledge of (sic) manager Salig Ram. The sole object of the evidence led by the respondent to which the learned Judge refers—that of Gupta, the son of Ram Ghulam, Misr---was to show that the document produced in aid of the appellants' title did not support it.

13. The most important by far of the writings produced and relied on by the appellants are three in number, all of which purport to be documents emanating from the Rajah, and are the only documents of that character which are to be found in the record. As stated by the learned Judges in both Courts below, their genuineness was disputed, and it has not in this appeal been conceded by the respondent. The Judicial Commissioner decided against the appellants upon the assumption, and without deciding, that they were genuine; and their Lordships, upon considering the tenor of the documents, are not prepared to differ from the result at which he arrived.

14. The first of these documents purports to be a receipt granted to Jawahir Lal, dated in the year 1838, under the seal of the Maharajah Mahammad Khan, for Rs. 141, "on account of birt zamindari of village Mahammadpur alias Banjarha." It also contains these words: "Hence this receipt has been executed so that it may remain as a sanad." The document is represented by the appellants to be an acknowledgment by the Maharajah for the sum paid to him by Jawahir Lal as consideration for the grant of a perpetual under-proprietary right to the village. It must be observed, however, that no mention is made in it, either of the conditions of the tenure or of its duration. These are supposed to have been expressed in the deed of grant itself, or birt-pair, which the appellants allege to have been produced at the summary settlement, and to have been destroyed during the Mutiny.

15. The second document is a lease of 1844 in favour of Jawahir Lal, under the seal of the Rajah Umrao Ali Khan, for clearing jungle in "village Mahammadpur alias Banjarha," the area of which "is one thousand five hundred and five (1,505) bighas, standard." The duration of the lease is thus defined: "He may for seven years enjoy free of rent (khanti bunti) the forest produce and after seven years he shall have to divide (with me) the grain produce at the batai rate prevailing in jungle villages, and he may take his hissa chaharum (I share) on account of his zamindari birt, out of his: Government revenue."

16. The third document is a lease, dated in 1850, also under the seal of the Rajah Umrao Ali Khan, and in favour of the same Jawahir Lal. It demises to the latter, for the period of four years, the same village Mahammadpur Banjarha, on a jama of Rs. 282, and it provides that "he (i.e., Jawahir Lal the tenant) should without any anxiety cultivate and bring under tillage (lands), settle, and get others to settle there, and pay the Government revenue year by year, and instalment by instalment, and should take (sic) out of the Government revenue as his zamindari due."

17. The receipt of 1838 is, in their Lordships' opinion, quite insufficient to show that Jawahir Lal in that year obtained from the Rajah a perpetual grant of an under-proprietary right to the village as the appellants assert. The existence of such a right is inconsistent with the fact that Jawahir Lal subsequently accepted from the Rajah, in 1844 and 1850, leases, for a short period, of the same subjects which, according to the appellants' contention, already belonged to him

absolutely and of right as under-proprietor.

18. Their Lordships will humbly advise Her Majesty to affirm the judgment appealed from and to dismiss the appeal. The appellants must pay to the respondent his costs of this appeal.