
(1926) 04 PAT CK 0006
In the Patna High Court

Midnapore Zamindari Co. Ltd.

APPELLANT

Vs

Kuktakeshi Patrani

RESPONDENT

Date of Decision : 30-04-1926

Acts Referred:

Citation : 96 Ind. Cas. 188

Hon'ble Judges : Ross, J;Kulwant Sahay, J

Bench : Division Bench

Judgement

1. The plaintiff brought this suit to recover Rs. 613-12-5 gandas on account of malikana from 1317 to 1327 for village Bhalubasa by sale of the village. The Subordinate Judge decreed the suit with certain deductions from the claim and the District Judge modified the decree in favour of the plaintiff, with the result that, the entire claim has been allowed except the claim for interest. The defendant Company appeals.

2. The plaintiff is the widow of the Sardar ghatwal of Taraf Tinsaya in Barabhum, one of the constituent villages of which is mouza Bhalubasa. Between 1881 and 1883 a survey of the ghatwalis of Barabhum was made in which Bhalubasa and other villages were entered as ghatwali villages. The entries were disputed by the zemindar of Barabhum and his ijaradar Messrs. Watson and Co., the predecessors of the defendant Company, who instituted Suit No. 174 of 1884 for a declaration that Bhalubasa was a mal and not a ghatwali village. The Sardar ghatwal and the villaga ghatwal, whose name was Gopal Singh, were defendants. The suit was decreed ex parte on the 15th of January 1885; but, subsequently, on the application of the manager of the encumbered estates under whose management the estate of the Sardar ghatwal of Taraf Tinsaya was, the ex parte decree was set aside as against the Sardar ghatwal and when the case came on for re-hearing, the plaintiff did not prosecute it further but undertook to abide by the Settlement which had in the meantime been made in 1884. It may be mentioned, however, that as the decree against the village Sardar had not been set aside, Messrs. Watson and Company took possession of the village.

2. The Settlement just referred to is known as the ghatwali rafa nama and is a general compromise of the whole question of "the lands recently surveyed as ghatwali of Barabhum" and was embodied in an instrument executed. on the 6th of March 1884 by the Government, the Sardar ghatwals and the village ghatwals of the one part and the zemindar of Barabhum and Messrs. Watson and Company of the Other part. It is on the construction of this agreement that the decision of the present appeal principally turns.

3. In order to understand the effect of the clauses which are the subject of particular controversy in this case, it is necessary to look at the scheme of the rafa nama as a whole. It is expressed to be executed with a view to settle the disputes that had arisen in respect of the title to and area of mal and ghatwali lands during the thakbast and survey of ghatwali lands in Pargana Barabhum. It was agreed in the first place that the document known as the isimnavisi of 1833 should be assumed to be accurate and that the ghatwali lands should be demarcated in accordance with the columns showing the quantity of ghatwali lands in each village. This was subject to the proviso that, where the ghatwali lands were not entire villages but had been demarcated more or less according to the isimnavisi, the demarcation should hold good in respect of cultivated land but not in respect of jungle or waste. A rule for calculating the areas is then laid down in order that effect may be given to the isimnavisi. The rafa nama then proceeds to require Messrs. Watson and Company to measure at once the entire area demarcated as ghatwali in the recent survey except entire villages entered in the isimnavisi. When measurement of a village or group of villages is completed, the Superintendent of Surveys is to select the ghatwali area. This must evidently refer to the isimnavisi ghatwali lands which were not entire villages. The next matter dealt with is jungle and it is provided that no absolute right over the jungles or waste lands shall be annexed to the possession of ghatwali lands (this expression appears to be used loosely and not in the restricted sense of isimnavisi ghatwali lands) but the ghatwai is given certain rights of pasturage and fuel, etc., subject to certain rules to be framed. Jungles on the lands not included in the isimnavisi are to be managed by Messrs. Watson and Company and one half of the net profits are to be divided among the Sardar ghatwals, Sadials and village Sardars in the manner and in the proportions therein laid down. Clause (12) deals with the abadi lands in excess of what is shown in the aforesaid isimnavisi of which the ghatwils are in possession at present. It is provided that this cultivated area is to be settled with the ghatwils on certain terms. These terms are that, the excess area shall be measured by Messrs. Watson and Company and the rents payable by the actual cultivators shall be fixed on the scale therein laid down. The Sardar ghatwals are to be admitted to take settlement of each village at a rent not exceeding 50 per cent, of the total rent payable by the cultivating raiyats, this proportion being fixed in perpetuity. But it is stipulated that if the rate of rent or the total rent payable is raised or reduced, the rent payable by the ghatwai would vary accordingly. There were certain restrictions on alienation. Each village was to be treated as a

separate taluk; and separate pattas and kabuliyats embodying these terms were to be exchanged for each village. In villages where there was no Sadial, the village Sardar was entitled to settlement from the Sardar ghatwai of all mal lands in the village at a certain rate; and, where there was a Sadial as well as a village Sardar, the Sadial was first to get the settlement at a particular rate and then he was to settle with the village Sardar at a particular rate. The Sardar ghatwals were to be designated as bhumijani talukdars, the Sadials as Sadiali talukdars and the Sardars as bhumijanidar talukdars. Clause (13) provides that the isimnavisi land should be wholly separate from the ma I lands dealt with in Clause (12). The title to the latter will not be affected by the dismissal of a ghatwai from his office. Clause (14) provides for? hastbud to be made of the basin rent according to the local custom, in the course of the settlement, of which 50 per cent, is to go to the ghatwals to be divided among them in a specified proportion. Clause (17) provides that the village Sardar or Sadial might take settlement direct from the zemindar or Messrs. Watson and Company; and, in that case, a malikana of 12? percent, would be paid to the Sardar ghatwai or the Sadial. Finally, it was agreed that the jama fixed under the settlement should remain unchanged for ten years.

4. The contention on behalf of the appellant Company is that as Bhalubasa was admittedly jungle in 1884, the only right under this agreement which the, Taraf Sardar got over Bhalubasa was a right to a share in the net profits of the jungle under Clause (10); but no claim under Clause (10) has been made in the present case. The present claim is made under Clause (14) and (17) for 5 annas out of every rupee of the bastu rent and 12? par cent of the agricultural rant as malikana; but these clauses have no application. Clause (12) and, consequently Clause (17), which must be read along with it, apply only to the cultivated area then held by the ghatwals; in excess of the area shown in the isimnavisi while as to Clause (14) there was no bastu and consequently no bastu rent for Bhalubasa was in contemplation of the parties in 1884. The village has been reclaimed since 1892; and the fact that it is now a cultivated area with homesteads will not entitle the plaintiff to the homestead rent and the malikana which the rafanama provides for in the case of land then under cultivation.

5. The contention on behalf of the respondent, on the other hand, is that the rafanama in Clause (12) makes provision not only for the settlement of rent of the land then under cultivation, but for the settlement of the entire mal villages with the ghatwal at a rate fixed in perpetuity and that the clause is not to be read as if it were confined only to the land under cultivation in 1884. Learned Counsel for the appellant, however, lays stress on the words "at present" in Clause (12). Now it is clear that the meaning of Clause (12) is at least this, that where there was cultivated land in a mal village then held by a ghatwal, the ghatwal was declared to be entitled to a settlement of the village on payment of 50 percent, of the rent payable by the raiyats. The area in cultivation, therefore, was immaterial. It might be the whole village or it might be part of the village. But where there was cultivated land in a ma I village held by. the ghatwal, the

ghatwal was entitled to settlement of the village as a bhumijani talukdar. The rent would naturally expand as more and more lands were brought under cultivation. Is it then proper to construe this agreement as if it meant that where a village was jungle in 1884, the ghatwal in possession was not to be entitled to settlement when the village became cultivated but was simply to lose even his jungle rights with the disappearance of the jungle itself? This seems a very forced construction. It appears to me that the real meaning of the agreement is to provide (A) for jungle and (B) for cultivated land. When a jungle village is reclaimed, it ceases to be jungle and would, therefore, come under the provisions relating to cultivated land. The only difficulty in the way of this construction is the words "at present in Clause (12). But in my view these words do not relate to the word, cultivated," but to the words "held by the ghatwals."

6. The jungle village was also held by the ghatwals then; and, to say that, because it was not cultivated in 1884, therefore, the provisions of the rafanama for cultivated lands held by the ghatwals are not to apply to jungle land which has been reclaimed, seems to me inconsistent with the tenor of the whole document. It admittedly would leave a great gap in the completeness of the settlement; and it is unnecessary to suppose that any such gap was intended to be left or was ever left by oversight. The instrument lays down the rights in the jungle and in cultivated land; and the fact that Bhalubasa has passed from the one category to the other is no reason for excluding it from the terms of the rafanama.

7. The Courts below in their judgments on this part of the case relied on the actings of the parties. Learned Counsel contended on the authority of *North Eastern Railway Co. v. Lord Hastings* (1900) A.C. 260 : 69 L.J. Ch. 516 : 82 L.T. 429 : 16 T.L.R. 325 that the words of an instrument must be construed according to their natural meaning; and, as the present instrument is plain, no evidence of the actings of the parties is admissible. The controversy that had arisen over the interpretation of the document is sufficient to show that it is not plain or unambiguous in its terms. And this seems to me to be very plainly a case in which the words of *Park, J., in Chapman v. Black* (1838) 4 Bing. N.C. 187 : 5 Scott 515 : 1 Am. 27 : 7 L.J.C.P. 100 : 2 Jur. 200 : 132 E.R. 760 are applicable: "The intention of the parties must be collected from the language of the instrument and may be elucidated by the conduct they have pursued." quoted in *Watcham v. East Africa Protectorate* (1919) A.C. 533 : 87 L.J.P.C. 150 : 34 T.L.R. 481 : 120 L.T. 258. I think therefore, that evidence of the actings of the parties was admissible in this case. This consists of Ex. 6 and Ex. 3. Exhibit 6 was a kabuliyat, executed on the 13th of July 11 83, by Messrs. Watson and Co. in respect of 1 "araf Tinsaya in favour of the manager of the encumbered" estates. The kabuliyat contains the following, among other terms: " During the term of the lease we shall have the right to make fresh, settlement, measurement and assessment of rate of rent with all kinds of raiyats and tenants of the lands included in this ijara, in respect of the lands in their possession as well as to make nayabadi settlement in respect of patit lands.... Besides the fixed rent, out

of the amount of bastukar which is realised from the household lands according to the long standing practice, of the pargana, we shall pay separately the five annas share which is due to the Sardar ghatwal of Taraf Tinsaya according to para. 14 of the rafanama, dated the 6th of March 1881, regarding mal ghatwali of pargana Barabhum.... As regards the jungles in the lands included in the ijara, we shall proceed to act according to para. 10 of the said rafanama."

8. This kabuliyat covers 28 villages including Bhalubasa and all its terms apparently apply indiscriminately to all. There is nothing to suggest the construction of the rafanama now contended for by the appellant. Exhibit 3 is a petition, dated 21st April 1898, for execution of a decree against the present plaintiff by which Messrs. Watson and Co., the decree-holders, prayed for the sale of 15 villages including Bhalubasa with this note--"According to the rafanama, dated the 6th of March 1884, the rent for the judgment-debtors" bhumijani talukdari right in these mauzas has not as yet been assessed. It will be assessed without delay." This was in 1898 after the reclamation had begun. Learned Counsel contends that if the right was not there, the use of these words will not confer it. But the question for decision is whether the right is there or not ; and the use of these words is certainly an indication that in the contemplation of the parties it was, I therefore, think that both on the construction of the instrument and on the evidence of the actings of the parties, the Courts below were right in holding that the plaintiff was entitled to malikana and to a share of the bastu rent of Bhalubasa.

9. It was next contended on behalf of the appellants that the plaintiff was estopped from bringing this suit on the basis of the rafanama because in two previous suits, in Suit No 539 of 1891 she herself as defendant, and, in Suit No. 484 of 1899, she through her tenant Bahadur Singh as defendant, had repudiated the rafanama as having been obtained by coercion and undue influence. The plea was accepted and it is contended that unless the plaintiff restores to the defendant the villages Jagudih and Erka which were the subject-matter of these suits, she is not entitled to sue on the rafanama which she then successfully repudiated. Reference was made to the decisions in *Srimut Rajah Moottoo Vijaya Raganadha Bodha Gooroo Sawmy Periya Oodya Taver v. Katama Natchiar* 11 M.I.A. 50 : 10 W.R.P.C. 1 : 2 Sar. P.C.J. 212 : 20 E.R. 20 *Girish Chandra Bit v. Bepin Behari Khan* 44 Ind. Cas. 159 : 27 C.L.J. 535 and *Bhola Singh v. Babu* 59 Ind. Cas. 503 : 1 L. 464 : 77 P.W.R. 1920 : 2 L.J. 431 : 52 P.L.R. 1921. But the facts of these cases were different from" the facts of the present case. In the first case referred to the plaintiff had in an earlier litigation disclaimed title under a certain instrument as a Will and in a later suit the same plaintiff set up the instrument as a valid Will and testament. The Judicial Committee held that this could not be done. In the second case, the defendants set up a lease in an earlier litigation as a bar to the plaintiffs' claim for possession and succeeded; and in a second suit by the same plaintiffs, they contended that the lease had terminated before the first suit was instituted. It was held that this plea was not open. In the third case, it was held that the

plaintiffs could not rely upon a Will when they had in a previous litigation obtained, a declaration of its invalidity against the same defendants. In the present case the plaintiff, who in the earlier litigation had been resisting the rafa nama as defendant now pleads that this village is a ghatwali. village and there had been disputes and the Government had intervened and a rafa nama had been drawn up to settle the disputes and she, therefore, claims such rights as the rafa nama gives her, not because it represents her real rights, but because she cannot get anything more. I can see no prejudice to the defendant in her adopting this position and nothing contrary to natural justice. Moreover, as the learned District Judge has pointed out, by two judgments (Ex. 11 in Suit No. 83 of 1903 and Ex, 12 in Suit No. 49 of 1901) the rafa nama had been affirmed. If there is an estoppel (and I do not think there is) there is also an estoppel against the estoppel and the matter is set at large. In my opinion, this argument fails.

10. It was then contended that the claim is barred by limitation. The Courts below have held that the case is governed by Article 132 of the Limitation Act. Learned Counsel referred to certain decisions, viz. Chhaganlal v. Bapubhai 5 B. 68 : 3 Ind. Dec. 47 Raoji v. Bala 8 Ind. Dec. 91 and Bhimabai, Padappa Desai v. Swamirao Shrinhuas Parwati 60 Ind. Cas. 892 : 23 Bom. L.R. 100 in support of his argument that as the plaintiff could no longer claim a declaration of her right to receive malikana, her right to recover the malikana itself was barred. Now although she has in the present suit in her amended plaint claimed a declaration, this is merely ancillary to her claim for malikana and the plain terms of Article. 132 entitle her to enforce payment for 12 years from the date when the money sued for became due; and, in this view, she is within time, as was held in Ilurmuji Begum v. Hirday Narain 6 C.L.R. 133 : 2 Ind. Dec. 1195. The learned Counsel also cited Gopi Nath Chobey v. Bhugwat Pershad 10 C. 697 : 5 Ind. Dec. 468 to show that if the suit was for the purpose of establishing a periodically recurring right, Article 131 would apply and the period must be reckoned from the time when the plaintiff was first refused the enjoyment of the right; and argued that the suit, of 1901 was notice to her of an adverse title. The finding of fact of the Court below, however, is that there was no instance of the malikana having been claimed and refused in the past, and I fail to see how the Suit No. 158 of 1901 which was brought against the defendant by Gopal Singh for a declaration that he held a jamai right under the present plaintiff (who was a pro forma defendant) can affect the plaintiff with notice that the defendant would refuse to give her malikana under the rafa nama.

11. It was next contended that the malikana referred to in the explanation to Article 132 is malikana as contemplated by the Bengal Regulations and that the malikana in this suit does not fall within the explanation. Reference was made to an observation in Mulliek Abdul Guffoor v. Muleka 10 C. 1112 : 5 Ind. Dec. 713 where Garth, C.J., said that a malikana right is the right to receive from the Government a sum of money, etc. But his Lordship was there dealing with the malikana which was in question in that case. That happened to be a malikana under the Bengal Regulations; but I can see no reason for restricting the

application of the word as used in the explanation to Article 132 in this way. The allowance claimed in the present case is malikana and it falls within the language of the Article.

12. Then it was argued that even if the 12½ per cent, of the agricultural rent is malikana, the 5 annas in the rupee of bastu rent is not malikana and is not so described in the instrument. But in my opinion, both claims stand on the same footing. The land is not settled with the Taraf Sardar, but direct with the village Sardar or, in this case, with the defendant Company which stands in the shoes of the village Sardar by reason of their having taken possession of his interest in execution of the decree of 1884 after the rafanama had been entered into. The taraf Sardar is given his share of the bastu rent in lieu of the profits arising from the homestead land and it stands on precisely the same footing as the 12½ percent, of the agricultural rent.

13. The last point taken was that the learned District Judge has erred in not deducting from the rental 6 annas in the rupee deducted by the Subordinate Judge as a deduction made by the defendant Company in favour of its lessee Sham Dhal who got the land reclaimed. Tenants on reclaiming land are given 6 annas out of 16 annas of the land free from rent; and this is the deduction to which the Subordinate Judge refers. But to deduct another 6 annas from the rent of the remaining 10 annas is to make the deduction twice over; and the learned District Judge was right in disallowing this double deduction.

14. The appeal must be dismissed with costs.

Kulwant Sahay, J.

15. I agree. I only wish to say a few words as regards the interpretation of the rafanama of 1884. The circumstances under which the rafanama was executed have to be borne in mind. In the ghatwali survey of Barabhum held in: 1881-83 certain areas were shown as included within the ghatwali which the zemindar claimed to be mal lands. A suit was instituted by the ijaradar of the zemindar for declaration that Bhalubasa, the village in dispute in the present case, was amal and not a, ghatwali village. The rafanama was executed during the pendency of this suit. It dealt with not only the village Bhalubasa, but with the entire dispute between the parties in relation to all lands claimed by the zemindar as a mal and by the ghahual as ghatwali. It was agreed to by the parties concerned that the ghatwali title of the ghatwal will be limited to the area shown as such in the isimnavisi of 1883 and the rest of the area in the possession of the ghatwal was declared to be the mal land of the zemindar. On reading the rafanama as a whole, it seems to me that the intention of the parties was that although the title of the zemindar to the excess area was declared, yet the possession of the ghatwal was retained and limitations to the rights of the parties were prescribed. Clause (10) dealt with jungles and Clause (12) with cultivated land. These are the two important clauses, upon the true construction whereof this appeal depends.

16. It seems to me that in Clause (10) a distinction was drawn between the jungle or waste land and jungle on the land. The clause opens with the words that "no absolute rights over jungle or waste land shall be annexed to the possession of ghatwali land." This seems to imply that some limited rights were conferred upon the ghatwal over such lands. Provision is then made as regards the management of the jungle on the excess area and the profits arising therefrom were to be divided between the zemindar and the ghatwal in certain proportions. Clause (12) then prescribed the rights of the parties over the lands of the excess area which, were not waste or covered with jungle but were then in the possession of the ghatwal. This clause to my mind referred not only to the area which was then actually under cultivation as contended for by learned Counsel for appellants, but referred to all lands which were then cultivated or might be brought under cultivation thereafter. This construction finds support from the opening words of Clause (10).. The ghatwal was not to have an absolute right, but a limited" right as set out in Clause (12) and some of the subsequent clauses. The words " now held by the ghatwals" in Clause (12) to my mind are not restricted to the area which was then under actual cultivation, but they refer to the lands then held in possession by the ghatwals. This clause dealt with all lands in the excess area which were cultivable or might become cultivable. Clause (10) dealt with jungle and waste lands and Clause (12) with arable lands and these two clauses covered the entire area in excess of the real ghatwali Jand theft in possession of the ghatwal, The real intention of the parties seems to be that the entire excess area, declared to be mal, was to continue in possession of the ghatwals on payment of rent to the zamindar and t their status was recognised as tenure holders, their rights over jungle and waste lands and cultivable lands being separately defined, the object being that whereas before the rafanama, the zemindar used to get nothing for the excess area, by the rafanama he got a proportion of the income by way of rent and certain rights over the jungles. The construction placed on the rafanama by the Courts below seems to be correct.