

(1927) 05 CAL CK 0026
In the Calcutta High Court

Mohanta Ramnibash Chaubay

APPELLANT

Vs

Jyoti Prosad Singh Deo Bahadur and Another

RESPONDENT

Date of Decision : 19-05-1927

Acts Referred:

Citation : AIR 1927 Cal 921a

Hon'ble Judges : Roy, J;B.B. Ghose, J

Bench : Full Bench

Judgement

Roy, J.—The plaintiff has appealed from the decision of the learned Subordinate Judge dismissing his suit for a declaration that the entry in the record-of-rights in respect of Mouzah Chota Digari that it is a rent-free tenure held under the Pachete Raj, is wrong. The plaintiff brought the suit on behalf of the idol Raghunath Jiu and being a minor was represented by his aunt. The first and principal defendant is the Raja of Pachete. Defendant 2 is the former Mohanta who is said to have resigned his office of Mohanta on account of the infirmities of age and installed the present plaintiff in the guddee. The claim made on behalf of the idol is that Ghota Digari is an independent revenue-free estate. The learned Subordinate Judge held that the plaintiff had failed to make out his claim and he thereupon dismissed the suit. The plaintiff has appealed.

2. The immediate circumstances leading up to the suit are as follows : The Raja of Pachete gave a prospecting lease to one Rasaraj Riswas in the mouzah in question in 1919. The Mohanta (who was the defendant 2) gave a lease to the same person in respect of the surface rights in Chota Digari. The patta was executed in presence of several relatives of the Mohanta and was drawn up under legal advice. It was admitted that the idol had a nishkar grant from the Raja and that the village appertained to the latter's zoinindari. After this patta the Raja gave a mining lease. A Coal company brought a suit against the Mohanta for specific performance of a contract and the Mohanta made the same admission in his written statement, though at the same time asserting that he had resigned and the plaintiff was the proper person to be sued. The record-of-

rights in this area was finally published on 5th September 1921. The present suit was brought three months after. The plaintiff ostensibly resigned from his office after giving the patta mentioned above and installed his infant grandson as a Mohanta. The plaintiff seems to have been an infant in arms when he was made a Mohanta. The circumstances give rise to the inference that this proceeding was gone through for the purpose of getting rid of the Mohanta's statements and of trying a chance in litigation in the name of the minor Mohanta.

3. The learned Subordinate Judge has devoted some time in discussing the question of under-ground rights. No doubt the object of the suit is to establish eventually a claim for such rights but it is a question which does not arise in the suit and we do not propose to discuss it. The sole question is whether the entry in the record-of-rights is correct or not and we have to address ourselves to this question only. The Subordinate Judge again has laid considerable stress on the statement of the former Mohanta in the patta Ex. K-13 and has discussed whether it is binding on the plaintiff or not. The statements are admissions. They are not binding and may be explained away if the plaintiff is able to show his title independently and if he fails, they are important if they are consonant with the state of things which have existed for generations.

4. The plaintiff has no patta or sanad to show the right claimed. The onus probandi lies on him to establish his title to exemption from revenue not by inference but by positive proof, by a grant to hold as revenue-free. If authority was needed we might refer to the case of Maharajadhiraj Rajah Mahtab Chand Bahadur v. The Bengal Government [1850] 4 M.I.A. 466. At least such evidence should be available as would lead to the necessary inference that there was a grant. There is no such evidence. The alleged grant again was not registered under the provisions of Reg. 19 of 1793. The inference is that no occasion arose then or subsequently to make the claim that the mouzah was held as a revenue-free estate. The estate was not registered as such in the books of the Collector under Act 7 of 1876.

5. The learned pleader has referred to Ex. 4 the kabuliyat given by the Rajah at the time of the Decennial Settlement to the Government and to the gorwara papers which apparently the Rajah filed in pursuance of his promise made in the kabuliyat to file a list of his mouzahs showing the distribution of the revenue and so forth. A point is sought to be made that Chota Digari is not mentioned and that, therefore, it was not taken into account in assessing the revenue. This kabuliyat came under discussion in the case of Secretary of State v. Jyoti Prashad Singh Deo AIR 1926 P.C. 41 which terminated in the Privy Council. There certain Sarsikan papers were filed and the controversy arose whether the three Digwari villages concerned in that suit and not mentioned in the Sarsikan papers were assessed with revenue or not. The learned pleader refers to the controversy but is obviously in error in thinking that their Lordships of the Privy Council made any pronouncement on the subject. Their Lordships merely refer to the different findings of the District Judge (who happened to be myself) and of the High

Court. The argument is irrelevant here, for the Digwari villages admittedly existed before the Decennial Settlement.

6. The plaintiff has not shown by any papers that his mouzah Digwari existed before the Decennial Settlement was made. On the contrary a point is made on behalf of the Raja by the production of papers of 1771 (Ex. 8). The Raja had been asked to file a list of baje-jamin or lakheraj lands within the zemindari ; these are the papers. Bara Digwari is mentioned but not Chota Digwari which is a contiguous village. Then, in 1865 there was a report of Achay Lal Munasarin of excess mouzahs of Pargana Shergarh and item 143 appears to be our present mouzah described as a khak or portion of some other mouzah. The argument is not unreasonable that the village came into existence subsequently. It is noticeable that the list of documents filed by the plaintiff does not go beyond 1208 (B.E.). There was a suit No. 75 of 1863 and the Mohanta filed his documents which are set out in the judgment of the sadar amin, Mr. DeCosta, and the earliest document mentioned therein is dated 1208 (B.E.).

7. It is on the judgment of the sadar amin in this suit that the learned pleader founds his case. The Rajah sued for possession but the suit was dismissed. The observation of the sadar amin that the Government may have a right to resume but not the Rajah, is of no greater weight than an argument leading up to his conclusion. It appears that the second issue in the suit was:

whether the land exceeds 100 bighas and was acquired before 1790?

and the finding was that the Mohanta or the idol had lakheraj debutter "title-from before 1790. It does not appear-that this was an issue which was necessary for the disposal of the suit. Even if the finding is regarded as conclusive between the parties it does not carry the plaintiff any further. We cannot assume that it was a revenue-free grant and unless such assumption was made, the-implication arising out of the area being over 100 bighas and giving the Government the right to assess revenue and keep-it by virtue of Section 7, Reg. 19 of 1793 must fail. There was some confusion in the earlier days between rent and revenue- a matter which was elaborately dealt with by Sir Barnes Peacock in the Full Bench case of Mohamed Akil v. Asadunnessa Bibi [1867] B.L.R. 774. It is possible to think, however, that where the grant was clearly only rent-free, there was no necessity to make this confusion. The question whether the village was revenue-free or not did not arise in the suit and the observations of the sadar amin are only obiter dicta. In may be said that the claim, that the village is a revenue-free estate-was not definitely made till in this suit.

8. There are no materials before us to show that the grant was made before-1790. We have the statement of the father of defendant 2, who was the-Mohanta at the time of the that survey, viz. in 1862 and he stated then, that the grant had been made by Nilmani Deo the then Rajah of Pachete. This was the year before the suit No. 75 of Ifc63. The decision in that suit could not alter the character of the tenure and the tenure-remained subservient to the Rajh"s

zemindari and it was on that basis that the Rajah realized road-cess from the Mohanta from 1879. It is urged that the village was deemed a part of the estate of the Rajah only for the purposes of the Road Cess Act. There is no evidence to show that it was regarded otherwise on any other occasion. We have the statement of the father of defendant 2, made in 1861 and we have the statements of defendant 2, made recently. The judgment of the sadar amin is of no importance except to show that Rajah's claim to possession (described in the proceedings as "assumption") was dismissed. We have the fact that the Mohantas have been paying road-cess to the Rajah on the footing that the village is within his zemindari for half a century. It cannot be said, therefore, that the plaintiff's claim that the village is a revenue-free estate independent of the zemindari Pachete has any substance. We agree for these reasons with the findings of the learned Subordinate Judge and dismiss the appeal with costs.

B.B. Ghose, J.

9. I agree.