

(1898) 12 PRI CK 0004

In the Privy Council

Muhammad Mehndi Ali Khan

APPELLANT

Vs

Muhammad Yasin Khan and others

RESPONDENT

Date of Decision : 10-12-1898

Acts Referred:

Citation : (1899) 26 ILRPC 523 : (1898) 26 IndApp 45

Hon'ble Judges : Ashbourne, Hobhouse, Macnaghten, Morris, R. Couch, JJ.

Judgement

Hobhouse, J. 1. The plaintiff in this suit is the talukhdar of Hasampur. The first three defendants were at the institution of the suit transferees of the mehal Sewar, part of the talukh, for the remainder of a term of 10 years. The other 44 defendants were entitled to sub-proprietary rights within the same mehal, subject to the transfer. The plaintiff is entitled to rent in respect of the entire mehal amounting to about Rs. 2,670 per annum. His suit is brought for arrears of rent which accrued while the term was running. The transferees have no defence to the suit. The other 44 defendants assert that they are not liable, and so it has been held first by the Deputy Commissioner and afterwards by the Court of the Judicial Commissioner. No one has appeared to oppose the talukhdar's appeal to Her Majesty in Council. 2. The transfer was effected in the year 1881 by the Deputy Commissioner acting under powers given by the Oudh Rent Act of 1868, Section 125, and the Oudh Land Revenue Act of 1876, Section 121. It seems that for some years the under-proprietors had failed to pay rent, that the Deputy Commissioner had entered into management under the Rent Act without any beneficial result, and after a while had recourse to the powers given by the Revenue Act to transfer the shares of the defaulters to the three defendants, who were also defaulting shareholders, but were backed up by a mahajun, who found the requisite funds. From the date of the transfer the other co-sharers were no longer in legal possession, except that a certain quantity of nyjote or sir land was reserved to some of them at rents stated in the Deputy Commissioner's order. 3. Each of the parties has contended that the point in issue has been previously decided in his favour and cannot be re-opened. In 1884 the plaintiff brought a similar suit in which the defendants other than the

transferees denied their liability, and the then Deputy Commissioner Mr. Harrington gave the plaintiff a decree against the three transferees only. In 1885 the plaintiff again brought a similar suit, which being for a smaller amount was brought in the Court of an inferior range of jurisdiction, that of the Extra Assistant Commissioner, which would not be competent to entertain the present suit. The learned Judge decided in favour of the talukhdar on the ground which will be mentioned presently. 4. The Deputy Commissioner in this suit held that he ought to decide it on its own merits, and he held that, however the decree might work out in execution against the transferees, which it was premature to decide, the plaintiff could not have a decree against anybody else. The Judicial Commissioners took the view that the judgment of 1884, being made by a Court competent to decide the present case, is binding now, whereas that of 1885, being made by a Court not so competent, is not. Therefore they do not decide the suit on its merits. Without at all intimating that the Judicial Commissioners have erred, their Lordships doubt whether the judgment of 1884, which is the only evidence before them of that suit, sufficiently discloses what was really contested and decided there, so that they can confidently hold the present issue to be *res judicata*. In that judgment it appears that the plaintiff admitted the plea of the defendants consequently upon the admission of the three transferees that they were liable. It may possibly have been that the plaintiff was satisfied with the security of the transferees for the smaller amount then in dispute, and did not choose to contest the disputed point. It is safer to pass by this point without expressing any opinion upon it. 5. As to the merits Mr. Arathoon has not succeeded in impressing their Lordships with any substantial doubts. It is a startling thing to be told that under-proprietors, whose beneficial interest has been transferred by an official act to persons who thereby become possessors of the whole mehal, still remain liable to pay rent to the talukhdar. To produce that result the appellant relies on Section 123 of the Land Revenue Act, which provides that the procedure of transfer shall not affect the joint liability of the co-sharers of the mehal. That provision was the basis of the judgment 1885, in which the learned Judge observed with much truth that "apparently the principle would seem to be entailing hardship on the excluded proprietors, for these are not in possession of their shares; on the other hand the transferees are in possession and they alone should be held liable for the talukhdar's demand." Fortunately the language of the Act is not calculated to work such a glaring injustice. Such liability as the co-sharers incur, whether to the Government or to the talukhdar, is to remain joint as before; but there is no provision for charging them with any liability at all when they have been deprived of the property in respect of which liability arises. In fact they have ceased for the time to be co-sharers, and during that time they have no liability, joint or other, directly to the talukhdar. 6. Then Mr. Arathoon relies on the fact that sir land is reserved for a number, by no means all, of the defendants. The answer is that no claim in respect of that land has been raised in this suit. Probably no such claim exists, but it is sufficient to say now that, if there is any, it must rest on quite different grounds to the claim for rent issuing out of the whole talukh, and must raise

quite different issues which have never been tried. 7. A minor point in the appeal relates to the talukhdar's claim for interest upon arrears of rent due from the three transferees. It is stated by the Deputy Commissioner that interest on arrears of revenue is not chargeable against talukhdars, and he holds that arrears of rent due from sub-proprietors should be subject to the same incident. The Rent Act of 1886, Section 141, provides for interest on rents due from tenants, but Mr. Arathoon does not contend that these sub-proprietors are tenants, and he cannot adduce any other law by which such arrears are made to carry interest. 8. The appeal fails on all grounds. Their Lordships will humbly advise Her Majesty to dismiss it.