

(1896) 05 CAL CK 0006
In the Calcutta High Court

Muhammad Mumtaz Ali Khan

APPELLANT

Vs

Sheoruttangir and Another

RESPONDENT

Date of Decision : 09-05-1896

Acts Referred:

Citation : (1896) ILR (Cal) 934

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

Bench : Full Bench

Judgement

R. Couch, J.—The suit in this case was brought by the appellant against Manjgir Gushain, since deceased, of whom the respondents are the heirs, in the Court of the District Judge of Fyzabad. The plaintiff stated that the village Katra was the ancestral property of the plaintiff; that on the 31st May 1871 the defendant, who was a lessee of a 12 annas share of the village from the Court of Wards, instituted in the Settlement Court a wrong claim for birt tenure against the plaintiff, who was then a minor about six years old; that the plaintiff's estate was in charge of the Court of Wards, and he was not made a party to the suit; that on the 9th July 1872 Thakur Parshad, agent, on the allegation that he was agent, made a verbal admission of the claim and got a decree of birt tenure passed in favour of the defendant, under which the defendant wrongfully held possession of the village. It was alleged that Thakur Parshad was not competent to make an admission of the claim, that the defendant was not a birt holder, and that the confession was collusive and fraudulent. The defendant in his written statement said that Thakur Parshad was competent to make confession, and he made the confession by direction of the Superintendent of the Court of Wards, that a birt patra (grant of land for subsistence) was filed with the settlement record, and the decree was passed after inspection thereof; that the claim in the Settlement Court was instituted in a valid manner and in accordance with the rules then in force; that there was no fraudulent or collusive proceeding on the part of the defendant, and the claim was admitted with the knowledge and permission of the Superintendent of the Court of Wards. These were the questions to be tried, and the following issues were settled by the District

Judge : (1) Was Thakur Parshad competent to admit the claim? (2) Was he guilty of collusion and fraud? The District Judge found that there was no birtpatra. He had examined the settlement record and there was no trace of a birt patra having been filed. The Judicial Commissioner in his judgment did not say anything upon this question. It does not appear that he considered it, but their Lordships are satisfied, that there was no proof of a birt patra. With regard to the regularity of the proceedings in the Settlement Court the plaint in the copy filed in this suit is entitled Manjgir Gushain v. Raja Mumtaz Ali Khan. The District Judge who examined the settlement file says the plaint" was against Manager, Bilaspur Court, Raja Mumtaz Ali Khan, not against Raja Mumtaz Ali personally. Summons was served by notice on manager of defendant (Salik Ram), see endorsement on back of plaint. Thakur Parshad is stated to be mukhtar of the Court of Wards." Salik Ram was the manager of the estate; no guardian of the person of the minor was appointed. In the view which their Lordships take of the main question in the appeal, it is not necessary to decide whether, as was held by the Judicial Commissioner, the Raja was substantially a party to the suit, and his interests were in no way prejudiced by the fact that he was not impleaded through a guardian.

2. The recorded proceedings in the Settlement Court are as follows : The suit was filed on the 1st June 1871. On the 28th June 1872 the Settlement Officer recorded defendant by Thakur Parshad. I have sent to manager to have this claim admitted and will reply when report comes." Under date the 9th July 1872 the record is "defendant by Thakur Parshad says he has now authority to admit plaintiff's right as formerly set forth. Decree by admission. Plaintiff entitled to lease as birtia on payment of Government jumnia plus 50 per cent, of same and half village expenses." At the time of the trial of this suit Thakur Parshad was dead, but Salik Ram, the manager, was alive. His evidence was not taken. The Judicial Commissioner in his judgment says it was for the plaintiff to call him if he believed that by his evidence fraud and collusion could be established. It would be so if that had been the only issue. But on the issue "Was Thakur Parshad competent to admit the claim"? the affirmative was on the defendant, and it was for him to prove that Thakur Parshad had authority to consent to a decree in that way by calling Salik Ram and also showing that he was authorized by the Court of Wards to give Thakur Parshad authority to make the admission. It was not sufficient that Thakur Parshad was the mukhtar of the Court of Wards and said he had authority to admit the plaintiff's right. And this being the only evidence the District Judge rightly found on that issue that he had no legal authority to do so. It is necessary that one who rests his case on a decree made by consent against an infant should show that the consent was given by somebody having authority to bind the infant. Upon this question the Judicial Commissioner appears to have thought it was sufficient for a decision against the plaintiff that the Court of Wards was defendant, and on its behalf an appearance was put in by a person who represented himself to be, and was accepted by the Settlement Officer as being, the mukhtar or agent of the Court of Wards. On such a slight

ground as this the decree of July 1872 was held to be binding and the minor to be deprived of his property. It is not necessary to determine whether there was fraud and collusion on the part of Thakur Parshad. There was no evidence of it, but, as is usual in India, the plaintiff, or more probably his pleader, was not satisfied with alleging in the plaint that Thakur Parshad was not competent to make the admission and thought to complete the case there should be a charge of fraud. In consequence of this both the lower Courts seem to have considered it was necessary to decide that question Their Lordships are of opinion that the decree of July 1872 was not proved to be binding on the appellant, and that the deceased defendant had not the birt title which he claimed. They will therefore humbly advise Her Majesty to affirm the decree of the District Judge and to reverse the decree of the Judicial Commissioner and order the appeal to him to be dismissed with cost

3. The respondents will pay the costs of this appeal.