

(1868) 08 CAL CK 0025
In the Calcutta High Court

Raghunandan Thakur

APPELLANT

Vs

Ram Charankapali

RESPONDENT

Date of Decision : 08-08-1868

Acts Referred:

Citation : (1868) 08 CAL CK 0025

Judgement

Macpherson, J.—I think that the Lower Appellate Court is right; for I concur with the Judge in the opinion that a gomastah cannot institute a suit in the name of the landholder by whom he is employed, unless he is authorized so to do by a duly stamped power. Amjid Ali, the person who commenced these suits on behalf of his employer, calls himself a tehsil mohurir but that he was substantially a naib or gomastah is clear from the terms of his sunnud of appointment, which has been read to us, and which gives him the fullest power to act for his employer. The Judge was, therefore, wrong, in my opinion, in so far as he considered that Amjid Ali was not in the position of a gomastah.

2. It is said that a gomastah's sunnud is a special document which needs no stamp, and that it is not to be deemed a power of attorney. I can only say of the sunnud under which Amjid Ali professes to act, that it is neither more nor less than a power of attorney, and being a power of attorney, it requires, before it can be used in Court, to be stamped as provided for in Act X of 1862. In the case of Meajan v. Sheikh Akali Mar. 384 a Division Bench decided that a gomastah can sue on behalf of his employer without a power of attorney. From this decision I dissent; for I find no indication in Act X of 1859 of any intention on the part of the Legislature that a gomastah should have power to sue, unless authorized by his employer in the ordinary manner. Certainly Section 69 of Act X 4 indicates no such intention; for though it makes certain provisions as to what may be done in a suit which has been instituted by a gomastah on behalf of his employer, it does not directly or indirectly touch the question of whether he can or cannot institute the suit if he has not got a power duly stamped, authorizing him so to do. As I am not prepared to follow the decision in Meajan v. Sheikh Akali Mar. 384 I think that the question proposed by Mr. Justice Bayley ought to be referred to a Full

Bench.

Bayley, J.

3. I think the appointment of a gomastah, such as this tehsil mohurir's sunnud shows him to have substantially been, simply one made by such an order as that under which a servant does service for his master, is not to any extent recognized by law. Such an appointment as this has been held not to require a power of attorney to enable the person appointed to sue, *Meajan v. Sheikh Akali** I do not, therefore, consider a stamp required, as for a power of attorney. But as it is an important general question, we both concur in referring it to a Full Bench.

4. Baboo Anukul Chandra Mookerjee (with him Baboo Ananda Chandra Ghosal) for appellant.--Under Section 69 of Act X of 1859, the sunnud granted to a gomastah or naib confers on him the power to sue and be sued on behalf of his zemindar, without being specially empowered by warrant of attorney. Act X of 1862 does not provide that a sunnud should be endorsed on a stamped paper. By virtue of his office as collector of rents, a gomastah is competent to institute suits against the ryots for the realization of the same; and, therefore, no separate stamped authority is needed to vest him with that power which he enjoys under his sunnud : *Mama Nath Roy Chowdry v. Puri Biswas*. 5

The respondent was not represented.

Sir Barnes Peacock, Kt., C.J.

5. The question which is propounded in this case is not the one which really arises out of the facts of the case. I understand from the two learned Judges who referred the question for the consideration of a Full Bench, that the question which they require to be answered is this: "Whether a sunnud which authorizes a gomastah to collect rents and to sue for them requires to be stamped." I am of opinion that such a sunnud does require to be stamped. If it is a general power of attorney which authorizes the gomastah to collect rents generally and to sue for them if necessary, it. requires a 4-rupee Stamp under Article 43, Schedule A of Act X of 1862.

6. Article 8 of Schedule B is "Mooktearnama, Vakalatnama, and other power filed or presented for the conduct of any case in any Court of Justice or before any Revenue Authority." The stamp required for such a document would not be sufficient for a general power to collect rents and to sue for them.

1Sec. 12:--The following persons shall be deemed to be under legal disability within the meaning of the last preceding section--married women in oases to be decided by English law, minors, idiots, arid lunatics.]

Computation of period of limitation in suits where the cause of action is founded on fraud.

When persons to be deemed to be under legal disability under preceding section.

2Letter, or Power of Attorney, not being of the kinds provided for in Schedule B...Rs. 40

[Sec. 11:--If at the time when the right to bring an action first accrues the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased : but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.

Power of Attorney be for the performance of one act only, and the value of the property to be dealt with be expressed in the Letter or Power and do not exceed 500 Rupees, (By Act XXVI, 1867, S. 5, a Clause is added as to powers of Attorneys for voting at meetings of shareholders.)

[Art. 43 ;--Containing a specification of the Deeds, Instruments, and Writings which require to be stamped under this Act, and of the proper Stamps for such Deeds, Instruments, and Writings.

3Persons authorized by general or special powers of attorney may be Agent.

Sanction required.

[Sec. 35:~Nothing hereinbefore contained shall prevent any person from employing any other person, though not a Revenue Agent enrolled under the provisions of this Act, to commence and prosecute all business or any particular business in which the employer may be concerned in any Revenue Office: provided that the person so commencing and prosecuting all or any such business as aforesaid shall hold a general or a special power of attorney, as the case may be, in that behalf, from the person so employing him; provided also that no person shall act as last aforesaid, unless he shall have received the general or the special sanction, as the case may be, in that behalf, of the Board of Revenue or their Officer authorized by the Local Government to grant such sanction.]

4Suits instituted or defended" by Naibs, Gomastahs, etc.

[Sec. 69:--When suits under this Act are instituted or defended by Naibs, Gomastahs, or other persons employed in the collection of rent or management of land in the name and on behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such Naibs, Gomastahs, or other persons; and anything which by this Act is required or permitted to be done by a party in person, may be done by any such person as aforesaid. Processes served on any such person shall be as effectual for all

purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Act relative to the service of processes on a party to the suit, shall be applicable to the service of processes on such persons.]

5 Act X, Rul. by Board of Revenue, 166.