
(1916) 11 BOM CK 0005
In the Bombay High Court

Raja Mahammad Abul Husan Khan

APPELLANT

Vs

Ram Pargash

RESPONDENT

Date of Decision : 30-11-1916

Acts Referred:

Citation : (1917) 19 BOMLR 202

Hon'ble Judges : Summer, J; Parker, J; Lawrence Jenkins, J; John Edge, J

Bench : Full Bench

Final Decision : Allowed

Judgement

John Edge, J.—These are two consolidated appeals. The appellant in each of these appeals, Raja Mohammad Abul Husan Khan, is the plaintiff in the suit in which the appeal has arisen. The suits were brought to obtain the decision of the Civil Court as to the status of the defendants in two villages in Oudh. The title of the plaintiff as proprietor within the meaning of that term in Act XXII of 1886 and Act III of 1901 was not in dispute in either suit. In one of these suits Ram Pargash is the defendant and in the appeal relating to that suit he is the respondent here. In the other suit Prag, Bhagwan Dat and Suraj Bali were the defendants. Prag, Bhagwan Dat and the representatives of Suraj Bali, who has died, are the respondents here in the appeal which relates to that suit.

2. In the suit in which Ram Pargash is the defendant the plaintiff asked for a decree for the proprietary possession of Mouza Kauria Pirhia and for a declaration that Ram Pargash had no proprietary right and no under-proprietary right in that village. Ram Pargash claimed that he had an under-proprietary right in the village. The Subordinate Judge of Gonda, who tried the suit, found on the evidence that Ram Pargash had no proprietary or under-proprietary right in the village and was merely a tenant. On that finding the Civil Court had no jurisdiction to give the plaintiff a decree for possession and accordingly dismissed the suit, so far as the claim to eject the tenant was concerned, an ejectment of a tenant to whom Act III of 1901 applies being in Oudh exclusively within the jurisdiction of the Court of Revenue. The Subordinate Judge rightly on his

findings gave the plaintiff a decree on the 26th August, 1912, declaring that Ram Pargash had no proprietary or under-proprietary right in the village. That declaration the : Civil Court was competent to make and it was necessary that it should be made by the Civil Court, as the Court of Revenue, holding that Ram Pargash had an under-proprietary right in the village, had declined jurisdiction in proceedings for the ejectment of Ram Pargash which the plaintiff had brought in the Court of Revenue. The question as to whether Ram Pargash had or had not a proprietary or an under-proprietary right was one for the Civil Court and when raised and persisted it was one which the Court of Revenue could not finally decide.

3. From that decree of the 26th August, 1912, Ram Pargash appealed to the Court of the Judicial Commissioner of Oudh. The Court of the Judicial Commissioner agreed with the Subordinate Judge that Ram Pargash had failed to prove that he had any proprietary or under-proprietary right in the village and as their Lordships understand the judgment of the Court of the Judicial Commissioner, that Court held that Ram Pargash was a tenant, as alleged by the plaintiff, but for some reason which is not apparent, that Court declined to affirm the declaration which the Subordinate Judge had made and by its decree of the 28th April, 1914, dismissed the suit. From that decree one of these appeals has been brought. The plaintiff was entitled to the declaration which had been made by the Subordinate Judge.

4. In the suit in which Prag, Bhagwan Dat and Suraj Bali were the defendants, the plaintiff asked for a declaration that those defendants had no proprietary right of the nature of Zamindari, superior or inferior, in Mouza Mahadeo and for a declaration that a decision of the Board of Revenue of the 26th March, 1897, did not affect his rights. That decision of the Board of Revenue was in effect that Prag, Bhagwan Dat and Suraj Bali were in 1852 owners of Zamindari rights in the village; that there was nothing to show that they had ever lost their Zamindari rights; that there was reasonable ground for presuming that they were not ordinary lessees; and that it was for Saiyid Ashgar Husain (the predecessor-in-title of plaintiff) to prove in the Civil Court that they were ordinary lessees. In their written statement in this suit, Prag, Bhagwan Dat and Suraj Bali alleged that they were perpetual Thekadars of the village; they did not set up any right to possession by virtue of any proprietary or under-proprietary rights; and they pleaded that the suit could not be maintained in a Civil Court. As their Lordships understand the pleadings, the defendants were not by their written pleadings claiming to hold any proprietary or under-proprietary right in the village, or any position in the village other than that of tenants. But they had in 1896 filed objections in the Court of Revenue, in reply to a notice of ejectment issued by the predecessor-in-title of the plaintiff, in which they claimed to be in possession of Mouza Mahadeo as Zamindars and in this suit they tried to prove certain alleged acts of theirs which, if established, would tend to suggest that they held a proprietary right in the village. The Subordinate Judge of Gonda gave the plaintiff a decree on the 20th September, 1912, for the two declarations for

which he had asked in his plaint.

5. From the decree of the 20th September, 1912, Prag, Bhagwan Dat and Suraj Bali appealed to the Court of the Judicial Commissioner of Oudh. The Court of the Judicial Commissioner held that Prag, Bhagwan Dat and Suraj Bali did not claim any proprietary or under-proprietary right in their written statement and overlooking the fact that they had previously claimed to be Zamindars of the village and the fact that in the suit they had put forward evidence which tended to show that they held Zamindari rights in the village dismissed the suit on the 28th April, 1914. From that decree the other of these appeals has been brought.

6. It is clear that in Oudh, in cases to which Act III of 1901 applies, the Court of Revenue has the exclusive jurisdiction to determine what is the status of a tenant of lands and what are the special or other terms upon which such tenant holds and that the Civil Courts have the exclusive jurisdiction to decide whether or not a person in possession of lands holds a proprietary or an under-proprietary right in the lands. The decision of the Board of Revenue of the 26th March, 1897, which was subsequently acted upon in the preparation of the Khawat of Mouza Mahadeo, made it necessary for the plaintiff to bring the suit to establish that Prag, Bhagwan Dat and Suraj Bali had no proprietary or under-proprietary right in the village and the fact that the defendants did not in their written statement in this suit set up that they had any proprietary or under-proprietary right did not disentitle the plaintiff to the declarations which he claimed as against them and which the Subordinate Judge had rightly given to him.

7. Their Lordships will humbly advise His Majesty that these appeals should be allowed with costs, that the appeals to the Court of the Judicial Commissioner of Oudh should be dismissed with costs and that the decrees of the Subordinate Judge of Gonda should be restored.