

(1940) 08 AHC CK 0005

In the Allahabad High Court

Case No : First Civil Appeal No. 30 of 1937

Ram Baran Upadhya and Others

APPELLANT

Vs

Shri Madho Pershad Singh

RESPONDENT

Date of Decision : 01-08-1940

Acts Referred:

Oudh Taluqdars Relief Act, 1870 — Section 3

Citation : (1940) 08 AHC CK 0005

Hon'ble Judges : Thomas, C.J.;Bennett, J

Bench : Division Bench

Advocate : Hyder Husein and H.H. Zaidi, for the Appellant; H.D. Chandra, Sri Ram and R.D. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Thomas, C.J. and Bennett, J.—This is a plaintiff's first appeal against the judgment and decree of the learned Additional Civil Judge of Fyzabad dated the 30th November, 1936, dismissing the plaintiffs' suit.

2. The plaintiffs brought the suit for possession of properties mentioned in List A and for a declaration that they were under-proprietors of properties in lists B to D attached to the plaint. It was alleged by them that the properties in lists A to D belonged to Hirde Ram, their predecessor-in-title, as an under-proprietor by virtue of a lease dated Asarh Badi Panchami 1215 Fasli granted by Bhaggu Khan, the former taluqdar of village Pararam, that Sheo Balak inherited the property from Hirde Ram and was in possession at the time of the first settlement, that after his death Mst. Sheorani, his mother, came into possession of the property and she bequeathed it about 11 years ago to the plaintiffs' father Mohan, that since then he and plaintiffs have been in possession as under-proprietors and that in any case they had acquired under-proprietary rights by adverse possession. It was "further alleged that out of the land which was in possession of Hirde Ram 1 bigha and 16 biswas of specified numbers was exchanged and the plaintiffs have been in possession of the exchanged plots.

3. It appears that about 100 years ago Bhaggu Khan's estate passed to the taluqdar of Khapradih estate and the village Pararam in which the dispute property is situated has been in possession of Thakur Ram Swarup Singh, Thakur Anant Bahadur Singh and his widow Thakuranin Sri Ram Kuar successively as taluqdars of Khapradih estate. The defendant Sri Madho Prasad Singh is the adopted son of Thakurain Sri Ram Kuar. The plaintiffs alleged that since the first settlement, Sheo Balak and on his death his successors including the present plaintiffs have all along been in possession of the property in suit as under-proprietors, that they asserted this title against the Taluqdar, that in 1238 Fasli the property was also given to the plaintiffs against the then taluqdar under an award. The alleged cause of action was the ejectment of the plaintiffs under a notice of ejectment through the Revenue Court on the 30th August 1934.

4. The defendant denied the plaintiffs' title and right to the property in suit as under-proprietors. He stated that he was the adopted son of Thakur Anant Bahadur Singh, last male holder of the taluqa that the village in which the disputed property was situated was mutated in his name, that he was entitled to eject the plaintiffs from the land in suit in which they were ordinary tenants. He denied the plaintiffs' possession of the properties mentioned in lists B to D and contended that a suit for mere declaration was not maintainable.

5. The learned Judge framed the following issues:

1. Are the plaintiffs under-proprietors of the properties specified in list A to D attached to the plaint as alleged?

2. If not, have the plaintiffs acquired under-proprietary rights in the property in suit by adverse possession for more than 12 years?

3. Is the suit for mere, declaration maintainable?

4. To what relief's are the plaintiffs entitled and in respect of which property?

6. The plaintiffs based their title on (1) the lease of Birt Shankalap alleged to have been granted by Bhaggu Khan to Hirde Ram before the British Rule, (2) the award dated the 3rd June, 1876, which was given by the arbitrators between Thakur Ram Swarup Singh, the then taluqdar of Khapradih estate, and Sheo Balak, (3) adverse possession, and (4) a will executed by Mst, Sheorani, mother of Sheo Balak, in favour of the plaintiffs' father.

7. The learned Judge decided issues 1 and 2 against the plaintiffs holding that the lease of Birt shankalap set up by the plaintiffs was not genuine, that the award (Ex. 6) dated the 30th June, 1876, was inoperative as it was made at a time when the estate was under the superintendence of the Court of Wards, that the will was inoperative and that the plaintiffs have failed to prove their title by adverse possession. He gave no finding on issues No. 3. He therefore dismissed the plaintiff's suit with costs.

8. The learned Counsel on behalf of the appellants has argued only one point,

before us namely that under the award, Ex. 6, dated the 3rd June, 1876, the plaintiffs are entitled to under-proprietary rights.

9. B. Ram Swarup Singh was the taluqdar of Khapradih estate at the time when this award was made. The award is in the writing of one Kamta Prasad, mobarrir peshi of the taluqdar. As this is an important piece of evidence in favour of the appellants we quote it in extenso.

10. B. Ram Swarup Singh taluqdar Khapradih sent for all of us i.e., B. Tulshi Singh and Chandika Singh of Tharya, Bisheshar Pandey of Khapradih, Mohan Pandey of Mallawan and Sheo Ghulam Pandey of Inkari and said that for the last seven days Sheo Balak Pathak had offered Dharua and says that he would die and that his Birt had been forcibly taken; that (Ram Swarup) should give up the Birt otherwise he (Sheo Balak) would die and that (Ram Sarup) would be held sinful; that we should make enquiry and decide the matter and that Sheo Balak should go away and that Ram Sarup should be saved from sin; that we are the respectable persons of the locality and whatever we decide Ram Sarup would accept it. We have investigated everything and enquired from Mian Abid Husain whether the Birt was granted by his ancestors to Sheo Balak Mian Saheb said that the Birt was granted by his father Bhaggu Khan 3&1 bighas were given to Hirday Ram. Knowing all this we decide that Sheo Balak had nothing to do with the fields in possession of Babu Ram Sarup Singh. He should take seventy five bighas of cultivated land, Bagat, jungle, groves, Parti, and Talia which have been relinquished and are in possession of Sheo Balak by Birt right. He should continue to pay Rs. 25 as Jama of the cultivated land. He should take as Muafi what is written as rent-free and take Dhanki wood from the jungle. He should not go against it. Both B. Ram Sarup Singh and Sheo Balak agreed to this decision. The numbers are given below: Miti Jeth Sudi 12, 1283 Fasli."

11. The signatories of the award are dead and the plaintiffs examined P. W. 2, Madho Singh, and P.W. 3, Jata Shankar, to prove the signatures of their deceased fathers on the award. The learned Judge has not relied on the evidence of these witnesses. He has also not presumed its genuineness though the document is more than thirty years old. He held as follows :

...on 12th May 1876 Sheo Balak had instituted a suit in forma pauperis against the Court of Wards in charge of Khapradih estate for possession of this very property and his suit was dismissed on 6th October 1876 as he failed to prove himself to be a pauper. So obviously during this time the Khapradih estate was under Court of Wards and its Taluqdar Thakur Ram Sarup Singh was then a minor. The award relied on by the plaintiffs seems to have been made during the pendency of this suit out of Court with the consent of the taluqdar who was then a minor and under a disability as his estate was under the superintendence of the Court of Wards. So the award thus made was wholly inoperative and void and could confer no rights on Sheo Balak.

12. There is no evidence on record to show why and when the estate was taken

under the superintendence of the Court of Wards. Nor is there any evidence to show that the taluqdar was then a minor. We do not know how the learned Judge has come to the conclusion that Thakur Ram Swarup Singh was a minor,...

13. Ex. 2 is the plaint dated the 12th May, 1879, filed by Sheo Balak Pathak against the Court of Wards Khapradih. The words in Urdu are "korat taluqa Khapradih". In this plaint Sheo Balak stated that village Pararam was the Birt and self-acquired property of his ancestors for more than 200 years.

14. Ex. 3 is the list of property.

15. Ex. 7 is the list of numbers.

16. Ex. 8 is the judgment dated the 5th October, 1876. The plaintiff had asked for permission to use as a pauper and this judgment shows that the Court held that he was not a pauper and his application was disallowed.

17. It is thus clear that the award was made when these proceedings were pending. The learned Judge has therefore given the finding that as the proceedings were pending and the estate was under the Court of Wards, "the taluqdar was incompetent to enter into any contract with Sheo Balak.

18. Under chapter II, section 3 of Act XXIV of 1870, (the Oudh Taluqdar's Relief Act), which was in force at the time when the award was made, when an application was made on behalf of a taluqdar, who was a minor or of unsound mind or whose estate was charged with debts or liabilities, by his guardian to the Chief Commissioner, the Chief Commissioner with the previous consent of the Governor General of India in Council could appoint an Officer called the Manager and vest in him the management of the immoveable property.

19. u/s 4 clause (3) (a) of the said Act the Taluqdar and his heir were incompetent to mortgage, charge, lease or alienate their immoveable property or any part thereof.

20. We have said that there is no evidence in the case showing why the estate was put under the charge of a Manager, but there can be no doubt that it must have been done on account of some disability of the taluqdar. We therefore hold that Thakur Ram Swarup Singh taluqdar was not competent to make a reference to the arbitrator and therefore the award even if genuine is invalid.

21. There are a large number of documents on record which go to show that the appellants are ordinary tenants, (vide, Exs. 11 to 23 khasras, khetaunis etc.) The mere assertion of an under-proprietary right for some period cannot make the plaintiffs under-proprietors.

22. The learned Counsel on behalf of the appellants argued that the Oudh Taludars Relief Act was a special Act and it should have been proved that an application was made to the Chief Commissioner on behalf of the taluqdar to put the estate under the superintendence of a Manager, that the Act could not be considered to be a substitute for the Court of Wards Act. At this length of time it

is difficult, if not impossible, to prove that any application was made to the Chief Commissioner, but the fact remains that the estate admittedly was under the superintendence of the Court of Wards or a Manager, and as we have said, it must have been taken on account of certain disabilities of the taluqdar.

23. It was further urged that the Act does not debar a taluqdar from making a reference and therefore the award should be treated on the same footing as a decision of a Court of law. We do not agree with this contention. It is absurd to think that a ward whose estate has been put in charge of a Manager could with impunity enter into contracts. As long as his disability continued he could not do anything detrimental to his interest.

24. The learned Counsel on behalf of the respondent drew our "attention to Section 173 of Act XVII of 1876, (the Oudh Land Revenue Act) which lays down that persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon or interest in such property or any part thereof.

25. This Act came into force on the 10th October, 1876, while the award is dated Miti Jeth Sudi 12, 1283 Fasli, which corresponds to 3rd June, 1876. So it can hardly have any application.

26. We therefore hold that the appellants have failed to prove that they are under-proprietors. The suit was rightly dismissed by the lower Court.

27. No other point was argued.

28. We therefore dismiss the appeal with costs.

29. We may mention that the learned Counsel requested us by means of an application to accept four new documents in this Court to prove that Thakur Ram Swarup Singh was not a minor at the time when the award was made. If the decision of the appeal had depended on the majority or minority of Thakur Ram Swarup Singh we might have admitted those documents. As we have remarked there is no evidence to show how the estate was taken under the superintendence of a Manager, nor has the learned Counsel for the appellants been able to throw any light. These documents were to be filed really to meet the finding of the learned Additional Civil. Judge that Thakur Ram Swarup Singh was a minor at the time when the award was made. In our opinion these documents are irrelevant, and we reject them. Let them be turned to the Counsel.