

(1956) 12 BOM CK 0015

In the Bombay High Court

Case No : First Appeal No's. 152 of 1950 and 18 of 1951

Syed Afzalur Rahman

APPELLANT

Vs

Syed Naziruddin

RESPONDENT

Date of Decision : 21-12-1956

Acts Referred:

Citation : (1957) 59 BOMLR 360

Hon'ble Judges : Tambe, J;Mudholkar, J

Bench : Division Bench

Judgement

Mudholkar, J.—This is an appeal by defendant No. 1 against a decree declaring that the plaintiff has an 8 anna share, in the Tapowan Jagir, that he has a like share in fields S. Nos. 26, 27 and 33 situate at Tapowan, that he is entitled to accounts from defendant No. 1 of the income of the Jagir village and the three fields for the years 1944-45, 1945-46, and 1946-47 and that he is entitled to partition and separate possession of his share in those fields.

2. The plaintiff and defendant No. 1 are brothers, defendants Nos. 3 and 4 are their sisters, and defendant No. 2 was their mother who died during the pendency of the appeal. It is common ground that the inam of the village Tapowan was granted to Ainuddin (junior) who was related to the parties to the suit as shown in the following genealogical tree:

Ainuddin (Senior)

Syed Raza Asadulla Mohd. Hamza

Anso Miyan Faizulla Ainuddin (Junior) daughters Mumtaz Begum

Asadulla Syed Ahmadulla = Putli Begum (deft. 2)

Syed Afzalur Syed Naziruddin Sultani Nurani (deft. 1) (plff.) Begum Begum (deft. No. 3) (deft. 4) In the Inam certificate granted to Ainuddin (Junior) it was stated in column 20:

To be continued rent free in perpetuity to claimant and his share-holders.

It is common ground that the co-sharers in existence at the time of the grant of the certificate were Faizulla and Anso Miyan. Eventually, the latter's branch came to be excluded as, apparently, Anso Miya left only his daughter's descendants. The plaintiff, his brother and his sisters are the descendants of Faizulla. After the death of Ainuddin (Junior) his daughter Mumtaz Begum succeeded to the Inam, but after her death it went to Asadulla, the brother of the plaintiff's father, and after his death without an heir, it went to the plaintiff's father, and after his death, according to the plaintiff, it went to him and defendant No. 1. It is not disputed that under the Inam certificate read with the Inam Rules a daughter does not become a fresh stock of descent for the purpose of the devolution of an Inam. The plaintiff and defendant No. 1 go further and say that daughters do not take any interest in the Inam property.

3. The plaintiff's case is that under the terms of the Inam certificate read along with the Inam Rules he is entitled to an 8 anna share in the village and also the three fields mentioned above in which Ahmadulla had acquired tenants rights.

4. Defendant No. 1 denied the plaintiff's claim in toto and pleaded alternatively that even if the plaintiff had any right with respect to the Inam village, he was not entitled to any defined share therein much less to a share to the extent of eight annas. He also disputed the plaintiff's right to ask for accounts as also for the partition of the three fields. Defendant No. 2 admitted the plaintiff's right but contended that she was entitled to $\frac{1}{2}$ share only and that this share should be allotted to her. The defendants Nos. 3 and 4 admitted that the plaintiff was a lineal descendant of the last "jagirdar" and as such was a sharer in the village. According to them, however, the shares of the parties to the suit were as follows:

Plaintiff $\frac{7}{24}$ th Defendant 1 $\frac{7}{24}$ th Defendant 2 $\frac{7}{48}$ th Defendant 3 $\frac{7}{48}$ th Defendant 4 $\frac{7}{48}$ th 5. Defendant No. 4 pleaded in addition that she was out of possession of her share in the fields and that she reserved her right to claim partition and separate possession of her share. Defendant No. 3, however, did not make any such reservation.

6. The Court below while decreeing the plaintiff's claim to the extent set out at the opening of the judgment has entirely overlooked the pleas raised by defendants Nos. 2 to 4.

7. Defendant No. 1 being aggrieved by the decision of the Court below has sought for the dismissal of the plaintiff's suit (First Appeal No. 152 of 1950). The defendants Nos. 3 and 4 considering themselves aggrieved by the decree in so far as it declared that the plaintiff's share is to the extent of $\frac{1}{8}$ have preferred First Appeal No. 18 of 1951. In their appeal they want a modification of the decree by "declaring the shares of the plaintiff and defendant No. 1 to be $\frac{7}{24}$ th each and that of the appellants to be $\frac{7}{48}$ th each and directing partition accordingly." It will be convenient to deal with both the appeals in this judgment.

8. It was contended on behalf of defendant No. 1 that the Inam is impartible, that it was governed by the law of primogeniture and that neither the plaintiff nor defendants Nos. 2 to 4 could have any interest therein, much less could they claim any defined share therein. In our opinion, this contention is devoid of substance.

9. As was pointed out by their Lordships of the Privy Council in *Mir Subhan Ali v. Imami Begum* (1925) 21 N.L.R. 117. the devolution and incidents of an Inam estate in Berar are regulated by the Inam Rules of 1859, but only in matters not expressly mentioned in the sanad or certificate or other document evidencing the special terms of the grant in the particular case. Neither the Inam Rules nor the certificate make the Inam impartible nor do they say that the law of primogeniture would apply thereto. No doubt, it was held in *Kutubuddin v. Gulam Rabbani* (1925) 21 N.L.R. 185, that an estate in Berar granted under Rule V of the Inam Rules of 1859, cannot be divided up among the persons beneficially interested in it, nor are those persons entitled to any defined shares in the income. But this decision cannot be regarded as good law in view of the decision of Privy Council just quoted and also in view of two subsequent decisions of their Lordships in *Sahebrao Narayanrao Deshmukh Vs. Jaiwantrao Yadaora Deshmukh*, , and *Raje Shrinivasrao v. Raje Vinayakrao* [1949] Nag. 1

10. In the last mentioned case their Lordships observed (p. 10) :

...It appears, however, to their Lordships that the decision in *Kutubuddin v. Gulam Rabbani* disregards the principle which was established two months later in *Mir Subhan Ali v. Imami Begum*. In that case it was decided by this Board that the devolution and incidents of an Inam estate in Berar are regulated by the Inam Rules of 1859, but only in matters not expressly mentioned in the sanad or certificate or other document evidencing the special terms of the grant in the particular case. In the particular case, which their Lordships have to consider, this means that they must determine what is the effect of a grant in the one case to the grantee and his lineal heirs, in the other to the grantee and his successors. Here they are guided by the old authority of *Bodhrao Hunmont v. Nursing Rao* (1865) 6 M.I.A. 426. In that case the sanad was to the grantee that "he and his sons and sons" sons should enjoy the same in male line all succeeding generations in inam", and it was held that there was no reason why the Inam villages in question should not be governed by general principles of Hindu law respecting partition of the father's estates among his heirs. So also, in *Mir Subhan Ali's* case, where the grant was "in perpetuity to the present holder and his male descendants" it was decided that, notwithstanding the language of the Inam Rules, female descendants were excluded, but their Lordships do not find any suggestion that among male descendants of equal degree the elder was to be preferred to the exclusion of the younger. Nor, again, does this view appear to be consistent with the recent decision of this Board in *Sahebrao v. Jaiwantrao* which recognised that an Inam village might be held after the death of the grantee by his "lineal descendants and co-sharers". There is, in fact, no

justification for the view which found favour with the Court in *Kutubuddin v. Gulam Rabbani* that Inam villages are necessarily held upon a tenure involving impartibility and primogeniture. That is a form of tenure which might be prescribed by the grant and, if the grant contemplated that certain personal services would continue to be performed or a certain office to be enjoyed by the holder of the Inam land, it might be easy so to construe it, if its terms were ambiguous.

We may add that in the instant case the language of the certificate does not show that female descendants are barred from succession as was the case in *Mir Subhan Ali v. Imami Begum* (supra). We, therefore, agree with the Court below that the plaintiff is a sharer in the Inam.

11. The Inam certificate shows that the grant was made for "maintenance" and was "to be continued rent free in perpetuity to claimant and his shareholders". It thus falls within Class 3, Rule II of the Berar Inam Rules. To such an Inam, Rule V would apply. Under Rule V(2) succession to such an Inam is limited to direct lineal heirs and undivided brothers. There is nothing in the Inam certificate itself which would indicate that the devolution of the Inam would be governed by any special rules. In the circumstances, therefore, we have to look to the Inam Rules alone for determining the manner of devolution of the Inam in question. By the operation of these Rules, after the death of the previous certificate holder Ahmadulla, not only defendant No. 1 who is shown as the certificate holder but also the plaintiff and defendants Nos. 3 and 4, being direct lineal heirs of Ahmadulla, were entitled to succeed to the Inam. As to who was the lineal heir would, of course, be determined by reference to the personal law of the parties. Similarly, the extent of interest which such a lineal heir would take, as also the right to claim partition, will also be determined by reference to the personal law of the parties. But the personal law does not apply any further than that. Under the Hanafi Law of Succession, a widow would be an heir to her husband but she must be excluded as succession is limited by the rule quoted above to lineal heirs and undivided brothers. We may refer in support of this proposition to the decision in *Mst. Renuhabai w/o Wasudeo* (1938) N.L.J. 258.

12. We disagree with the learned Judge that the interest of the plaintiff is to the extent of eight annas. The plaintiff succeeded to the Inam along with his brother and sisters and, therefore, each of them will get a share in the Inam in accordance with the Hanafi Law of Succession. The mother being excluded, the plaintiff and defendant No. 1 will get 1/3rd each, while each of the daughters will get 1/6th. The plaintiff has not asked for partition of his share in the Inam village itself but only for a declaration of the extent of his share and for accounts. In the circumstances, therefore, defendants Nos. 3 and 4 can get no immediate benefit in so far as the Inam village itself is concerned, except to the extent that the plaintiff's share is declared to be only 1/3rd and not 1/2.

13. As regards the three fields the position is different. Though the fields are situate in an Inam village, they are not appurtenant to the Inam. It was not

suggested that after their acquisition they were treated as part of the Inam land and, indeed, it is difficult to see how they could be so treated. Even assuming that they were acquired solely from the income of the Inam fields, the conditions which attach to the Inam would not attach to these fields. Thus for instance while in certain circumstances this Inam itself, is, under the Inam Rules, liable to escheat to the grantor, no such contingency exists or could possibly exist with respect to these fields. The plaintiff as one of the sons of the last holder is entitled to a share in these fields according to the Hanafi Law of Succession and so also defendants Nos. 1 to 4. The shares of these persons in these fields would be as set out in the written statement of defendants Nos. 3 and 4. Since, however, defendant No. 2 died during the pendency of the appeal, her interest would devolve on the sons and the daughters; the sons taking double of what the daughters would take. Thus, her 7/48th share will be divided up among these persons and will augment their shares in these proportions.

14. Since the plaintiff has sought partition of the fields, defendants Nos. 3 and 4, would also be entitled to the benefit of that prayer. Indeed, even defendant No. 4 who had said that she wanted to reserve her right to partition for being worked out in a future litigation would be entitled to get her share separated even now.

15. In this view, we dismiss the appeal of defendant No. 1 with costs, while we allow the appeal of defendants Nos. 3 and 4 with costs. Costs in the Court below will be borne as ordered by that Court.