

(1946) 10 PRI CK 0002

In the Privy Council

Case No : Privy Council Appeal No. 51 of 1945

Thakur Chandra, Singh, Istimrardar of Bandanwara (District Ajmer) APPELLANT

Vs

Mod Singh and another RESPONDENT

Date of Decision : 10-10-1946

Acts Referred:

Citation : (1947) AIR(PC) 37

Hon'ble Judges : Madhavan Nair, M.R. Jayakar, Lords Macmillan, Du Parcq, Simonds, JJ.

Advocate : Chester, Ranken Ford, T.B.W. Ramsay, W.W.K. Page, J.M. Pringle, for the Appearing Parties.

Judgement

Lord Macmillan

The appellant Thakur Chandra Singh is the present Istimrardar of the Istimrari estate of Bandanwara in the District of Ajmer, to which he succeeded on the death of his kinsman Thakur Rameshwar Singh, on 1st November 1933. An Istimrardar is defined by S. 20, Ajmer Land and Revenue Regulation 1877 (2 II of 1877) to include a person who has become entitled to an Istimrari estate by succession, and an Istimrari estate is defined to mean an estate in respect of which an Istimrari sanad has been granted before the passing of the Regulation by the Chief Commissioner with the previous sanction of the Governor-General-in-Council.

2 Section 23 of the Regulation makes provision in certain cases for the devolution of Istimrari estates on the death of the Istimrardar. Section 24 provides that:

"Any question as to the right to succeed to an Istimrari estate in a case not provided for by S.23 shall be decided by the Governor-General-in-Council or by such officer as he may appoint in this behalf."

As the case of the appellant's succession to the Istimrari estate of Bandanwara

did not fall within the cases provided for by S. 23, he made application under S. 24 for a decision in his favour to the Chief Commissioner to whom presumably the Governor-General-in-Council had made the necessary delegation. The Chief Commissioner pronounced a decision declaring the appellant to be the successor to the property and estate of the late Thakur Rameshwar Singh and by notification dated 17th March 1936, the appellant was informed that the decision of the Chief Commissioner had been affirmed by the Government of India.

3 At the time of his succession to the estate of Bandanwara the appellant was the holder of the village of Amargarh, a sub-holding of the estate, of which he had been in possession since the death of his father in 1918. The substantive question in the present suit is whether by his succession to the estate of Bandanwara the appellant has forfeited his right to the village of Amargarh, or whether, as he maintains, his right to this sub-holding has merged in the right which he has acquired to the estate of Bandanwara.

4 The origin of the sub-holding of Amargarh, which seems to have been in existence for over a century, is obscure and has not been precisely ascertained. It is suggested that the village may have been originally granted to a younger son for his maintenance, but, however that may be, it appears to have descended by succession as a distinct sub-holding of Bandanwara through many generations to the present appellant. The village is among those enumerated as included in the Istimrari estate of Bandanwara in a revised sanad granted in 1906 to the then Istimrardar of Bandanwara. In a list of taluqdars of the Ajmer District appended to the Ajmer Taluqdari Relief Regulation 1872 (4 IV of 1872) the then holder of Amargarh is entered as a sub-taluqdar of the taluqdar of Bandanwara; and in a Report made by Mr. J.D. Latouche, Settlement Officer for Ajmer and Merwara, in 1875 it is stated that "the revenue of Bandanwara includes that of Amargarh"; in a list annexed to this Report, Amargarh is entered as under Bandanwara.

5 The appellant appears to have continued in possession of the village of Amargarh and to have enjoyed its rents and profits after his succession to the estate of Bandanwara down to April 1936, when a kinsman of his, Mod Singh, put forward a claim to the village and dispossessed the appellant.

6 The present suit was raised by the appellant in 1939 against Mod Singh and his son Bakhtawar Singh claiming that his title to the village should be declared, that the defendants should be ejected and that he should be restored to possession. He also claimed mesne profits.

7 Mod Singh died after the institution of the suit and before it came on for hearing, and is represented by his son Bakhtawar Singh and his grandson Umed Singh. It is important to note the answer made by Bakhtawar Singh in his written statement to the appellant's claim. He asserted that "the plaintiff on being declared Istimrardar of Bandanwara had to vacate Amargarh," but gives no further explanation. His defence is based on a document Ex. D-6 dated 8th April

1936, addressed by the Secretary of the Chief Commissioner of Ajmer-Merwara to the Commissioner of Ajmer Merwara in the following terms :

"Reference Para. 4 of your letter No. 5610/I.345 dated 27th March 1936 :

2. The Honourable the Chief Commissioner is pleased to recognise the succession of Thakur Mod Singh to the estate of Amargarh under Bandanwara"

The District Judge records a statement made by counsel for the defence in the course of the proceedings as follows:

"Although the village Amargarh is included in the Istimarari area of Bandanwar a defendant is the owner of the corpus and income of the village and pays only Hasil to the Istimrardar of Bandanwara. He is the owner as non-Tazimi non-Sanadi Thakur of Amargarh."

The defendant Bakhtawar Singh sought leave to amend his written statement "by making a specific reference to the custom prevailing among the Rathore Rajputs of this Province whereby the estate of a non-Sanadi Istimrardar like the defendant is not resumable by the parent (Patwi) estate on the succession of the non-Sanadi Istimrardar to the Gadi of the Patwi estate as in such a contingency his next heir becomes the non-Sanadi Istimrardar." The District Judge disallowed the amendment. In any event it would not have been of any avail to the defendant for the custom which it alleges would if established have carried Amargarh on the appellant's succession to Bandanwara to the next heir of the appellant and Mod Singh does not appear to have claimed to be his next heir.

8 The District Judge heard evidence and after a full investigation of the whole circumstances of the case granted a decree in favour of the appellant. On appeal, the Judicial Commissioner recalled the judgment of the District Judge and dismissed the suit on the ground that under S. 119 of the Regulation of 1877, the recognition by the Chief Commissioner of the succession of Thakur Mod Singh to Amargarh, as embodied in the document of 8th April 1936 above quoted, was final and conclusive and the Court had no jurisdiction to entertain the suit.

9 Section 119 of the Regulation of 1877 reads as follows:

"Except as hereinbefore expressly provided-

(a) everything done, ordered or decided by the Governor General in Council, Chief Commissioner or a Revenue Officer under this Regulation shall be deemed to have been legally and rightly done, ordered or decided;

(b) no civil Court shall entertain any suit or application instituted or presented with a view to obtaining any order or decision which the Governor General in Council, the Chief Commissioner or a Revenue Officer is under this Regulation empowered to make or pronounce."

Their Lordships propose to confine themselves solely to the question whether the

Judicial Commissioner was right in holding that the jurisdiction of the civil Court to entertain the appellant's suit was excluded by S. 119 of the Regulation of 1877.

10 Under S. 23 of the Regulation the manner of devolution of an Istimrari estate is prescribed in the case of the death of the Istimrardar where there is male issue by birth or adoption. Then S. 24, the material part of which has already been quoted, empowers the Governor-General or an officer appointed by him to decide any question as to the right to succeed to an Istimrari estate in a case not provided for by S. 23. Amargarh is not an Istimrari estate within the meaning of the Regulation which by S. 20 defines such an estate to be one in respect of which an Istimrari sanad has been granted. No sanad has been granted in the case of Amargarh and the defendant Bakhtawar Singh expressly describes himself as "non-Sanadi Thakur of Amargarh." It is thus plain that the Chief Commissioner had no power under S. 24 of the Regulation to make or pronounce the order or decision of 8th April 1936, recognising the succession of Thakur Mod Singh to the estate of Amargarh.

11 The defendant Bakhtawar Singh, conscious no doubt of this difficulty, applied in the course of the proceedings to the Chief Commissioner requesting that he be informed under what statutory law the order or decision of 8th April 1936, had been made. He received a reply dated July 1940, stating that the Chief Commissioner was "pleased to declare that the succession of Thakur Mod Singh to the estate of Amargarh was recognised by him under S.25 of the Ajmer Land and Revenue Regulation 1877 (2 II of 1877)." Unfortunately the letter no. 5610/I.345 dated 27th March 1936, referred to in the document of 8th April 1936, was not produced. It might have thrown some light on the matter.

12 Section 25 of the Regulation reads as follows :

"All claims for maintenance or to hold land in lieu of maintenance against an Istimrardar by any member of his family shall be preferred through the Commissioner to the Chief Commissioner whose decision thereon shall be conclusive."

Apart from any question as to the propriety or admissibility in evidence of the ex post facto declaration by the Chief Commissioner, it is to be observed that the document of 8th April 1936, on the face of it does not purport to be an order or decision of the Chief Commissioner pronounced on a claim for maintenance or to hold land in lieu of maintenance. On the contrary it purports to be a recognition of the "succession" of Thakur Mod Singh to the estate of Amargarh. Section 25 is not concerned with questions of succession but with claims for maintenance. It is S. 24 that deals with questions of succession and as already pointed out no power is thereby conferred to decide questions of succession to other than Istimrari estates and Amargarh is not such an estate within the meaning of the Regulation. Moreover the questions of succession which may be determined under S. 24 are questions arising on a death. The appellant who held the village

of Amargarh is alive and no question of "succession" to him arose on his succession to Bandanwara.

13 The defence in the present suit contains no suggestion of any right or claim to Amargarh as land in lieu of maintenance. On the contrary the claim of the defendants is to the ownership of Amargarh as a separate holding under Bandanwara and it is upon the document of 8th April 1936, recognising the "succession" of Mod Singh to Amargarh that this claim is based.

14. It is only what is done, ordered or decided by the Chief Commissioner under the Regulation that under S. 119 (a) is to be deemed to have been legally and rightly done, ordered or decided. If the document of 8th April 1936, is a decision as to succession it was not a competent decision and was therefore not a decision made "under the Regulation." If it is sought to represent it as a decision under S. 25 then again it was not made "under the Regulation" for S. 25 authorises only decisions as to claims for maintenance or to hold land in lieu of maintenance and the document does not contain any such decision but only an unwarranted decision as to "succession."

15. Section 119 (b) on which the learned Judicial Commissioner relies as excluding the jurisdiction of the civil Courts to entertain the present suit precludes the Civil Courts only from entertaining any suit for obtaining an order or decision which "under this Regulation" the Chief Commissioner inter alia is empowered to make or pronounce. But the Regulation did not empower the Chief Commissioner to make any order as to the succession to Amargarh and he has made no order finding Mod Singh entitled to maintenance or to land in lieu of maintenance. It should be noted that the Memorandum dated 13th July 1939, in which the Commissioner of Ajmer professes to recognise the succession of the defendant Bakhtawar Singh, son of the late Thakur Mod Singh, to the estate of Amargarh under Bandanwara is open to the same criticisms. It is not authorised by S. 24 and as regards S. 25 it is open to the further objection that it is the Chief Commissioner and not the Commissioner to whom is given the power to decide questions of maintenance.

16. The controversy between the parties as disclosed in their pleading relates to the title to and ownership of the village of Amargarh, not to any question of succession or of maintenance. In their Lordships' view the suit is not one instituted or presented with a view to obtaining any order or decision which the Governor General in Council, the Chief Commissioner or a Revenue Officer is under the Regulation empowered to make or pronounce and the civil Courts are therefore not precluded from entertaining it.

17 Their Lordships will therefore humbly advise His Majesty that the appeal be allowed, that the decree of the Judicial Commissioner dated 26th February 1941, dismissing the suit be recalled and that the case be remitted to the Judicial Commissioner to be heard and decided on the merits. The appellant called the attention of their Lordships to the fact that through some inadvertence his claim

to mesne profits since the institution of the suit had been overlooked by the District Judge. This will be a matter for the consideration of the Judicial Commissioner.

18 The respondents will pay the appellant's costs of the present appeal. As regards the costs of the respondent's appeal from the District Judge to the Judicial Commissioner the present appellant will have his costs of the hearing before the Judicial Commissioner which resulted in the decree of 26th February 1941, now recalled. The Judicial Commissioner will deal with the other costs of the appeal to him when the case is further heard and disposed of by him.