
(1912) 08 BOM CK 0021
In the Bombay High Court
Case No : First Appeal No. 152 of 1910

Umar Amnaji Miaji

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 05-08-1912

Acts Referred:

Citation : (1912) 14 BOMLR 934 : 17 Ind. Cas. 659

Hon'ble Judges : Rao, J;Batchelor, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Batchelor, J.—In the suit out of which-this appeal arises, the plaintiff, who is a bhagdari resident of the bhagdari village of Kantharia in Broach, sued for a declaration that the defendant had no title or interest in a certain piece of land in the village site, on which land the plaintiff had fixed pegs for the tethering of his cattle. He sought also a permanent injunction restraining defendant from interfering with his tethering his cattle on the piece of land in suit which was situated just outside his house. The learned District Judge dismissed the suit, being of opinion, that the bhagdars were not, as the plaintiff contended that they were, owners of the village site ; that the land in suit was part of a public way used by certain inhabitants of the village, and consequently, u/s 37 of the Land Revenue Code, was the property of Government.

2. In appealing from this decree, the plaintiff, through his pleader, has taken as his main ground the proposition that land in the village sites of bhagdari villages is the property of the bhagdars and not of the Government. It seems to us that that proposition is not established. On the contrary we agree with the learned Judge in thinking that in such villages the land forming the roadways through the village site is the property of the Government. The particular strip of land, here in suit, is part of a gully or lane which leads directly from the main public road to the collection of houses situate round about the plaintiff's house. It appears from the map, and it is proved by the village Talati, who upon this point was not cross-

examined, that this strip of land in suit is part of a way or lane open to the villagers, and used by them freely upon all occasions. We are of opinion, therefore, that it is established that the somewhat indefinite parcel of land in dispute is a portion of a public road-way.

3. That being so, upon what ground can the plaintiff claim that he is entitled to the relief which he here seeks ? We were referred to the report made by Mr. Peddar in 1862, on the subject of this narwa and bhagdari tenure. And certain passages in that report were quoted as authority for the view that all the land forming the village site in a bhagdari village was the property of the bhagdars. It appears to us, however, that no part of the report authorizes any such proposition. Indeed, the report itself seems to us to show that the bhagdari tenure is nothing more than a particular system of collecting the revenues for the Government. In paragraph 28 of the report Mr. Peddar says:-" I have shown, I hope, that the narwadars and bhagdars are merely the old proprietary cultivators, and the system only a mode of sharing the Government demands." A similar view of the meaning of the system was expressed by Lieut.-Colonel Monier Williams in his " Memoir on the Zilla of Baroochi," and also in Baden Powell's " Land Systems of British India." The result of these historical references is, we think, to show that the tenure is merely one mode of collecting the revenue demands of the Government. But we find no authority for the view that the legal position of Government is altered in reference to the demands of any particular bhagdar. The bhagdar, it seems to us, is entitled only to those village fields which are assigned to him, and to that portion of the village site which is assigned to him for residence. Those two portions taken together form his bhag, which he is not entitled to alienate otherwise than as a whole. What part of the village site is assigned to particular bhagdars is shown by the Gabhan-patrak, which in this case is Ex. 75, a document prepared in 1866, or within a few years of the passing of the Bhagdari Act. This record shows that the particular piece of land, now in dispute, forms no part either of the plot assigned to the plaintiff's bhag or of the plot assigned to any other resident of the village. The inference derivable from this circumstance is strengthened by reference to the Vahivat-patra, Ex. 64, paragraph 14 of which recites that: " in this village public roads having been made on bhag land, such land has been included in Government land." The meaning of that seems to be clear, namely, that public roadways even when made through lands, which would otherwise be bhag land, are included in Government land.

4. It appears to us, moreover, that so far as the bhagdari tenure is concerned, it cannot give the plaintiff any higher title to his assigned land in the village site than he has to his assigned land in the village fields. And in regard to these latter lands he is indisputably liable to pay rent or assessment to the Government. He cannot, therefore, make any claim to the proprietorship of such lands.

5. In this case, apart from the general considerations to which we have alluded, there is particular evidence strongly in favour of the respondent. The oral

evidence, which comes largely from parties interested on the other side, favours the defendant's case rather than the plaintiff's. And the record contains two distinct admissions, and one implied admission, made by the present plaintiff and wholly irreconcilable with the case which he now puts forward in this suit.

6. Upon the whole, therefore, we agree with the learned District Judge in thinking that the plaintiff has failed to make out the case for which he was contending and that this appeal should be dismissed with costs.