

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thakoor Hurdeo Bux v. Thakoor Jowahir Singh, from the Court of the Commissioner of Seetapore in Oude, delivered 1st March 1879.

Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

When this case was before their Lordships on a former occasion it was remanded, with a direction to the Commissioner to try or cause to be tried by the Settlement Officer the following issue, viz. :— Whether the Respondent had in any and what manner agreed or become bound to hold the villages comprised in the summary settlement or sanad, or any and what part thereof, or of the rents and profits thereof, in trust for the Appellant and Parbut Singh, or either and which of them.

The Commissioner very properly took upon himself the trial of the issue, and correctly disposed of the several objections which were raised in the course of the investigation.

The nature of the present suit, the circumstances under which it was instituted, the effect of the decision of the Settlement Officer, and of that of the Commissioner from which this appeal was preferred, are fully stated in the reasons expressed by their Lordships in recommending a remand of the case for the trial of the above-mentioned issue. The case is reported 4 Law Reports, Indian Appeals, p. 182.

In those reasons their Lordships stated that they were of opinion that, up to the time of Lord Canning's proclamation, the whole of the villages mentioned in the summary settlement were the joint family property of the Appellant, the Respondent, and Parbut Singh, and that they were either ancestral or purchased with the proceeds of ancestral estate. Their Lordships also referred to the case of Thakrain Sookraj Koowar v. The Government and others, 14 Moore's Indian Appeals, 112, and also to the case of Shunkur Sahai v.

Rajah Kashi Pershad, decided in the Privy Council on the 29th July 1873, and since reported, 4 Law Reports, Indian Appeals, 198, as an authority for the proposition "that a person who has been "registered as a talukdar under Act I of 1869, "and has thereby acquired a talukdari right, "may, nevertheless, have made himself a trustee "for another of the beneficial interest in the lands "comprised within the taluk, and be liable to "account accordingly," and they remarked that the Lower Courts in the present case appeared to have decided the case merely upon the ground that the Defendant was protected by the sanad, without adverting to Sect. 15, Act I. of 1869, or inquiring whether, notwithstanding the summary settlement, the sanad, and the statute, the Plaintiffs or the Appellant had either *before* or after the passing of Act I. of 1869 acquired or become entitled to a beneficial interest in any part of the property. They said that, looking to the allegations in the plaint and written statements, an issue ought to have been raised to try that question; that on the materials before them they did not feel competent to decide it, and that they had no evidence of the circumstances under which the summary settlement was made, nor of those under which the sanad was granted, nor of what was done with respect to it or to the property comprised in it before the registration of the Defendant under Act I. of 1869. The issue was accordingly directed, and there can be no doubt, and indeed it has not been disputed, that the evidence adduced upon the trial fully warranted the conclusion at which the Commissioner arrived, that the actual relation of the Appellant, the Respondent, and Partub Singh remained that of a joint and undivided Hindu family from the date of Lord Canning's proclamation up to the quarrel and removal of the Respondent to Kaswara in 1865. The Commissioner also found, and in their Lordship's opinion correctly found, that the evidence proved that during that period there had been a joint interest in, and common management of, the property. Such an interest could not have existed unless the Defendant had consented that the villages should be held as the joint property of the family.

Their Lordships are of opinion that the facts so found, coupled with the statement of the Defendant in his application for a summary settlement to the

effect that Hurdeo Bux was his partner, and with his deposition of 8th July 1859, in which he stated that the custom prevailing in his family was that if his cousins, meaning the Plaintiff and Parbut Singh, who were his partners, should claim, they could get their shares divided, afford sufficient grounds to justify their Lordships in presuming that, up to the time of the quarrel in 1865, it was the intention of the Defendant that the villages included in the summary settlement and sanad should be held by him in trust for the joint family, and as a joint family estate subject to the law of the Mitákshára.

The suit was commenced long before the passing of Act I. of 1869, viz., on the 28th of August 1865, and it follows from what has just been said that, if judgment had been given before the passing of the Act, it ought to have been held that the Defendant was bound by the trust to be presumed as above mentioned. But in consequence of numerous delays and references, to which allusion has been made in the judgment of remand, the case was not decided by the Court of First Instance until after the passing of the Act. It, therefore, became necessary to determine whether Act I. of 1869 operated so as to change the relative conditions of the parties, and to put an end to the trust upon which the Defendant had previously held the estate.

Their Lordships are of opinion that it did not.

By the 3rd section it was enacted that every talukdar with whom a summary settlement of the Government revenue was made between the 1st day of April 1858 and the 10th day of October 1859, or to whom, before the passing of the said Act, and subsequently to the 1st of April 1858, a talukdari sanad had been granted, should be deemed to have thereby acquired a permanent heritable and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kábulyat executed by such talukdar when such settlement was made, subject to all the conditions affecting the talukdar contained in the orders passed by the Governor General of India on the 10th and 19th days of October 1859, and republished in the First Schedule annexed to the said Act, and subject also to the conditions contained in the sanad under which the estate was held.

The Commissioner very properly classified the villages in suit, and ruled that the issue directed was intended to apply to the whole of them.

The details are (*see* New Record, p. 3) :—

1st. Villages comprised in the summary settlement	-	-	-	78
2nd. Villages granted in reward for services during the mutiny	-	-	-	20
3rd. Villages acquired from the profits of the estate after summary settlement and before the institution of the suit	-	-	-	15

113

It should be remarked that the 20 villages granted for loyal services have since been demarcated into 12. (*See* New Record, p. 5.)

The Defendant, as well as the villages Nos. 1 and 2 in the detail, fall within the category of Section 3 of the Act.

That section, it should be observed, does not state that the talukdar shall be deemed to *have*, but that he shall be deemed *to have acquired* by the summary settlement and sanad a permanent heritable and transferable right in the estate. The right so acquired was subject to the provisions of Sections 11 and 15 of the Act, by the latter of which it was enacted that if any talukdar should *therefore have transferred* or should thereafter transfer the whole or any portion of his estate to a person not being a talukdar or grantee, and if such person would not have succeeded *according to the provisions of the Act* to the estate if the transferor had died without having made the transfer and intestate, the transfer of and succession to the property so transferred should be regulated by the rules which would have governed the transfer of such property if the transferee had bought the same from a person not being a talukdar.

If, therefore, the Defendant had, before the passing of Act I. of 1869, and at any time after the date of the summary settlement and sanad, and after he had thereby acquired the right which, according to the provisions of the 3rd section, he must be deemed to have acquired thereby, expressly declared that he held and would hold the estate in trust for the joint family as joint family estate governed by the rules of the *Mitákshára*, there can be no doubt that the estate would have been subject to the trust so declared, and that it would not have been converted by Act No. I. of 1869 into an estate held by the Defendant for his own sole use and benefit discharged from the trust.

There can be no difference in this respect between an express trust and a trust implied or presumed from a fair and reasonable interpretation of the acts and declarations of the Defendant.

Sections 13 and 16 of the Act provide for certain formalities as regards gifts or transfers to be made by talukdars of estates acquired or held in the manner mentioned by Section 3 of the Act; but no question can arise in the present case as to the effect of those sections, for it has been held that the formalities thereby required are not requisite to give validity to gifts or transfers executed by a talukdar before the passing of the Act. (*Hurpurshad v. Sheo Dyol*, 3 Law Reports, Ind. Appeals, 278.)

Their Lordships have come to the conclusion that, under the circumstances of the case, there are no grounds for making any distinction as regards the rights of the parties between the 78 villages included in the summary settlement and the 20 villages, now consolidated into 12, which were granted by the sanad for services during the mutiny, or those which were acquired from the profits of the estate. As regards those which were granted for services during the mutiny, the Plaintiffs Hurdeo Bux and Parbut Singh were doubtless as loyal as the Defendant Jowahir Singh, and rendered equally good services to the British Government. It is, however, stated by the Commissioner, and there seems to be no reason to doubt the correctness of his opinion, that he was fully convinced that the Government at the time they conferred the reward estate believed that they were conferring it on Jowahir Singh, the Respondent, alone. He says (p. 61, New Record),—

“I do not think they had any remembrance of the admission in the A Statement of the summary settlement, a document that would not be before them at the time, and the Respondent's name appeared alone as proprietor. But if he gave loyal support to Government, it was with the means of a taluka, in which the Appellant and Parbut Singh had an actual, practical, existing common right at the time, and they had carried off the family and its effects to a place of safety, and returned in time to retake their fort, and at least quicken and molest the retreat of the rebel chief Feroz Shah, who was one of the sons of the King of Delhi, as deposed to by

witnesses 8, 10, 11, and 12 for Appellant, and witness 2 for Parbut Singh. I do not think that if the whole facts had then been before the Government, it would not have given the reward to the brotherhood all the same. In this matter I think the respondent was acting at the time as the representative of the family; and I do not see it anywhere shown that the common interest and the common management did not include these villages subsequent to their acquisition, and up to the rupture in 1865."

It appears from the evidence, as well as from the finding of the Commissioner, that the Plaintiffs, Hurdeo Bux and Parbut Singh, were just as loyal as the Defendant Jowahir Singh, and rendered loyal services to Government equally as valuable as those which were rendered by him; that after the rebels had defeated the Defendant and he had retreated to Lucknow, Hurdeo Bux and Parbut Singh came to Bassadeh, drove the rebels away, and retook the fort; and that they also, with their followers, attacked the rebel Feroz Shah, one of the sons of the King of Delhi, after he had crossed the Sarain, took from him a gun, and hastened and molested his retreat.

These loyal acts, if not in the remembrance of the Government or of its officers, must have been known by the Defendant, and it must also have been known to him that the loyal services which he rendered to the Government were rendered by means of the then joint family property, and that in accepting the reward from Government he acted as the representative of the family. It may therefore reasonably be presumed that the knowledge of these facts induced him to treat the reward villages granted by the sanad in the same manner as the ancestral villages which were the subject of the summary settlement, and accordingly it appears that from the time of the sanad to the time of the quarrel in 1865, the reward villages, like all the others, were treated as part of the joint family estate, and were subject to the common management. This part of the case is similar in many respects to the case of *Hurpershad v. Sheo Dyol*, to which reference has already been made. (*See 4 Law Reports, Indian Appeals, 270.*)

Upon the whole, then, their Lordships are of opinion that it is to be presumed from the acts and

transactions of the Defendant that there was a declaration of trust by him in favour of the joint family, and that up to the time of the quarrel in 1865 all the villages in suit were held by the Defendant in trust for the family, as a joint family estate, governed by the rules of the Mitákshára; and they rejoice to find that a loyal subject of the Crown, who rendered good service to the Government in the time of the rebellion, has not been deprived of all his property by the act of confiscation, and through the want of knowledge or the absence of remembrance on the part of the officers of Government of the moral claim which he had upon the Government for the restoration of his property.

The plaint does not allege that the Plaintiffs have been dispossessed of their rights, but merely that the Defendant intends to dispossess them, and to put a stop to the profits enjoyed by them, and they simply pray that, after inquiry, proper orders may be passed that they be not deprived of their right.

Their Lordships must deal with the case as it stood at the time of the commencement of the suit.

At that time there does not appear to have been any complete separation or division of the family, and the Plaintiffs do not pray for a partition of the estate. Hurdeo Bux was not entitled to any definite portion of the estate, but merely to the rights of a member of a joint Hindu family. Their Lordships cannot, therefore, do more than humbly advise Her Majesty, which they will do, to allow the appeal and to reverse the judgments and decrees of both the Lower Courts, and to declare that the Defendant holds the villages in suit in trust for the joint family, and as a joint family estate, governed by the rules of the Mitákshára, and to order and decree that the Defendant do cause and allow the said villages, and the proceeds thereof, to be managed, used, dealt with, and applied accordingly; and that he do pay the costs of the Plaintiff Hurdeo Bux in both the Lower Courts out of the estate.

Further, their Lordships do order that the costs of the Plaintiff, Hurdeo Bux, in this appeal be paid by the Respondent out of the estate.

A question has been raised on the argument of this appeal, whether, by reason of an arrangement alleged to have been entered into by Hurdeo Bux

and Parbut Singh, pending the suit, the latter is entitled to the benefit of this appeal or the former to recover Parbut Singh's share as well as his own.

It was also suggested that Parbut Singh had, after the arrangement with Hurdeo Bux, entered into an arrangement with the Defendant.

Their Lordships have nothing to do with any agreement or arrangement which may have been made by any of the parties subsequently to the commencement of the suit, and they will humbly advise Her Majesty that the decree to be made in this appeal be declared to be made without prejudice to any question that may arise in respect of any agreement or arrangement, if any, which may have been made or entered into by or between any of the parties to the suit subsequent to the commencement thereof.