

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharani Beni Pershad Koeri v. Dudh Nath Roy and Others, from the High Court of Judicature at Fort William in Bengal ; delivered 22nd July 1899.*

---

Present at the Hearing :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

SIR EDWARD FRY.

[*Delivered by Lord Davey.*]

This is an Appeal from a judgment of the High Court of Calcutta reversing the previous decree of the Subordinate Judge of Zillah Shahabad. The suit was instituted on the 7th April 1893 by the late Maharaja of Dumraon for the purpose of asserting his title to Mouzah Dumra. As originally framed the plaint sought only a declaration of the rights of the Maharaja after the death of one Ram Golam Raut who was the first Defendant in the suit. On the death of Ram Golam in August 1893 the plaint was amended and a prayer for possession was added. The Maharaja died pending the suit and his representatives were substituted in his place as Plaintiffs. The Subordinate Judge made a decree in their favour but the High Court reversed that decree and dismissed the suit with costs. The only Appellant in the High Court was Dudh Nath Roy the representative of a purchaser from Ram Golam and he is the only Respondent who appears in this Appeal. The question in

this Appeal turns in the first instance on the construction of a deed dated the 13th November 1836 by which a former Maharaja Jai Perakash granted the village in question with others to his nephew Lal Barmeswar Buksh. In the view which their Lordships take of the case the construction of the other instrument referred to being a pottah dated the 25th February 1849 by Barmeswar in favour of Ram Golam is unimportant. It was contended on behalf of the surviving Plaintiff and present Appellant that the first deed created only an interest for life in Barmeswar. In consequence of an admission said to have been made by Counsel the learned Judges in the High Court did not find it necessary to express any opinion on the construction of the first deed or as they dismissed the suit on other grounds on the defence of limitation and indeed they decided the case entirely on the construction of the pottah. Their Lordships for reasons which will presently appear cannot agree with this mode of dealing with the case.

Their Lordships will not discuss at length the terms of the grant to Barmeswar which was expressly made "in lieu of maintenance." It was therefore *prima facie* resumable on the death of the grantor in accordance with the law laid down in the cases cited by the Subordinate Judge. It contains no words purporting to grant a perpetual interest and as Barmeswar died childless it is unnecessary to say whether his family would have taken the benefit of it if not resumed. On the 27th January 1857 Barmeswar executed an ikrarnama by which he declared that as large arrears of Government revenue payable by him under the terms of the grant had fallen due to the then Maharaja Maheswar and as after his death the property according to the custom would revert to the estate of the Raj and as a money

allowance sufficient for his maintenance had been granted he surrendered all the mehals which had been given to the declarant in lieu of maintenance to Maheswar who was then the Maharaja in possession of the Raj. Barmeswar died shortly afterwards without issue.

The pottah however in favour of Ram Golam is dated the 25th February 1849 and therefore several years before this surrender. It is described as a "permanent pottah in favour of " Ram Golam Raut." It states that, "mouzah " Dumra, pergunnah Danwar, tuppa Bisi, has " been granted under permanent lease at a fixed " annual rental of Co's. Rs. 200, from the " beginning of 1256 F., together with mal- " wajhat, sair wajhat and all habubat by Lal " Saheb, the proprietor thereof," and after divers provisions for due cultivation and management such as are usually inserted in instruments of this character it concludes in the following words:—"For this reason these few words are " put down in writing by way of *pottah dawami* " that they may be of use when required."

Barmeswar could not of course transfer to Ram Golam a larger interest in the mouza than he himself had. Ram Golam's tenure therefore came to an end at latest on Barmeswar's death but he was left in possession by the Maharaja Maheswar paying the same rent of Rs. 200 as fixed by the pottah. The Maharaja Maheswar abdicated in 1868 and died in 1871. He was succeeded by his son the late Maharaja Sir Pershad Singh. On his accession Sir Pershad Singh might have resumed the mouzah or have made a fresh grant either on the terms of the pottah or otherwise or have allowed Ram Golam to remain in possession paying a rent. But as the pottah was void as against him and not voidable only the mere receipt of rent by him though of the same amount as that fixed by the pottah would

not have the effect of confirming the pottah in its entirety. The High Court seem to have understood Counsel to have admitted that receipt of rent by the Maharaja operated as a confirmation of the pottah and the only question therefore which remained was the construction of the pottah. In the opinion of their Lordships this admission if correctly understood was erroneous in point of law and does not preclude the Counsel for the Appellant on this Appeal from claiming his client's legal rights. What happened was that Ram Golam was allowed to remain in possession at his former rent. The Maharaja indeed subsequently contended that the rent should be Rs. 201, but that probably proceeded from a mistake made by his officers and in the opinion of their Lordships nothing turns upon it. If matters rested there their Lordships think there could be no doubt that whatever was the interest which the pottah purported to grant Ram Golam was in fact a *mexe* tenant at will of the Maharaja and could not set up the pottah against him, except for the purpose of showing the amount of his rent. The parties however are in conflict as to the circumstances under which Ram Golam was allowed to remain in possession and as to the legal effect of certain subsequent proceedings upon which the Respondent founds his plea of limitation.

Four witnesses whose credit was not directly impeached, deposed to oral applications by Ram Golam to the officers first of the Maharaja Maheswar and subsequently of the late Maharaja that he might be allowed to hold the *ticca* granted to him by Barmeswar for his lifetime and that the successive Maharajas consented to do so but no writing was passed. In the year 1879 Ram Golam commenced a suit against a tenant of the mouzah for arrears of rent and in his claim he alleged that he held Dumra in

perpetual istemrari mokurruri. Thereupon the Maharaja presented a petition of objection in which he stated that the Plaintiff had no mokurruri istemrari pottah but on the contrary the mouzah was held by him under a grant to him subject to the condition of service terminable at the pleasure of the proprietor for his maintenance without any title and the fixed rent was taken as a matter of grace and as customary he (Ram Golam) was described by the word malguzar and the petitioner prayed to be made a Defendant. The Maharaja was ordered to be made a Defendant as prayed but there is no evidence of any further proceedings in that suit. On the 29th May 1885 the Maharaja commenced a suit against Ram Golam for recovery of arrears of rent. In his plaint he alleged that Mouza Dumra had been for a very long time continuously held in lease by the Defendant for service on an annual rental besides road and public work cesses. In the course of the suit the Plaintiff's pleader stated that the ticca was by verbal contract held from Barmeswar by the Defendant and subsequently after consulting his client that it appeared that a terminable lease was granted (not stating by whom) to the Defendant on the condition that this lease would continue as long as the Defendant remained in the service when he ceased to be servant the lease would cease to exist and there was no special time. The Defendant (Ram Golam) in his written statement denied that he ever took any ticca from the then Plaintiff and alleged that Barmeswar under a registered perpetual mokurruri istemrari pottah made a permanent settlement with the Defendant in respect of the said mouzah on an annual rental of Rs. 200 and that he was in possession by virtue of the same perpetual pottah. The Subordinate Judge held (quite correctly) that it was not necessary to decide in that case whether the Defendant was

the mokurridar or ticcadar of the mouzah and that question was left open. But he decided that the Defendant held at the rent of Rs. 200 fixed by the pottah and passed a decree for the Plaintiff on that basis. In his plaint in the present suit the Maharaja alleged that on the death of Barmeswar all his maintenance properties reverted to the Raj and that as Ram Golam was a very faithful servant of Barmeswar the jai nushin did not think fit to resume the property and he allowed the mokurruri to remain in the possession of Ram Golam during his lifetime.

The Subordinate Judge has held that the evidence of the four witnesses mentioned above is unreliable, *i.e.* (as their Lordships understand him) taken by itself. For he found that from the evidence the circumstances and conduct of the parties Ram Golam was allowed to enjoy the village as a mokurruri tenant for his life and not as a tenant at will. Their Lordships agree in this finding. Both in his petition to be allowed to intervene in the suit of 1879 and in his own suit in 1885 the Maharaja alleged that Ram Golam was holding under some form of verbal grant or lease and license though his pleader in 1880 stated the tenure to be held at his pleasure and 1885 that there was no special term. On the other hand it is obvious from the proceedings in the previous suits that the Maharaja was dissatisfied with Ram Golam as a tenant and it is inexplicable why he should not have sued for recovery of possession of the mouzah as he might have done on any construction of the pottah of 1849 instead of suing only for arrears of rent unless it was known that Ram Golam had been allowed to hold the mouzah for his life. If this be so no suit could have been brought for recovery of possession until Ram Golam's death.

Their Lordships will now consider the plea of limitation. It is put by the Respondents'

Counsel in two ways. First, it is said that the Maharaja Maheswar and afterwards Sir Pershad Singh might on the Appellant's own showing have sued for a declaration of his right to possession on Ram Golam's death under Section 39 of the Specific Relief Act at any time after Barmeswar's death and that this suit as originally framed was in fact one of that character, and further that such a suit was barred by Art. 91 of the Schedule to the Limitation Act. It is sufficient answer to this argument to say that though such an action might have been brought the Maharaja was not bound to bring it and there was no necessity for him to do so. According to their Lordships' view the pottah (whatever its construction) had become a spent instrument and had no longer any vitality as a grant of the property. As has been already pointed out this suit was tried not on the original plaint but on the amended plaint which asks for possession. Secondly it was argued that the plaint in the action of 1879 was notice to the Maharaja that Ram Golam asserted a perpetual istemrari mokurruri title to the mouzah and from the time when the Maharaja admitted notice of that assertion of right by filing his petition of objection Ram Golam's possession became adverse and time began to run against any suit for recovery of possession. Their Lordships are not prepared to acquiesce in this reasoning as applicable to the circumstances of this case. All that the plaint of 1879 gave the Maharaja notice of was that Ram Golam claimed to be holding on an istemrari mokurruri tenure and not under any title derived from the Maharaja himself. But as pointed out by the Subordinate Judge an istemrari mokurruri tenure is not necessarily a perpetual hereditary tenure and the plaint of 1879 was not therefore a notice to the Maharaja that he claimed to hold as a tenure of that character. Their Lordships however

think that the argument fails on a broader ground. They have already expressed their opinion that Ram Golam was at that time entitled to hold the Mouza for his life and that no suit for possession could then have been brought against him. And they do not think that a mere notice by a person holding for his life that he claimed to be holding on a perpetual or hereditary tenure would make his possession adverse within the meaning of the Limitation Act so as to bar a suit for possession on the expiration of the life tenancy. Even if therefore the plaint of 1879 did convey the notice which the Respondent attributes to it their Lordships do not think it would support the defence of limitation. Their Lordships taking this view are not called upon to decide what interest the pottah according to its true construction purported to confer. The learned Judges in the High Court differing from the Subordinate Judge have held that it purported to give the grantee a perpetual hereditary interest and they base their decision on the use of the word dawami. Whether the use of this word necessarily imports a perpetual hereditary interest or whether notwithstanding the use of the word dawami it may be held that upon the considerations of the object and provisions of the pottah as well as the surrounding circumstances the intention to grant a perpetual lease does not sufficiently appear is a question of some difficulty and remains unaffected if it ever arises again by any decision of the Board.

Their Lordships will therefore humbly advise Her Majesty that the Decree of the High Court be reversed and instead thereof the appeal to that Court should be dismissed with costs. The Respondent Dudh Nath Roy will pay the costs of this Appeal.

---