

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lala Fateh Chand, since deceased (now represented by Lala Jugal Kishore and another), and others v. Rani Kishen Kunwar, from the High Court of Judicature for the North-Western Provinces, Allahabad ; delivered the 12th July 1912.

PRESENT AT THE HEARING :

LORD SHAW.

SIR JOHN EDGE.

Mr. AMEER ALI.

[DELIVERED BY SIR JOHN EDGE.]

This is an Appeal by special leave from a decree of the High Court of Judicature for the North-Western Provinces of India, dated the 7th November 1906, which reversed the decree of the Subordinate Judge of Aligarh, dated the 25th July 1904, which had set aside the decree of the Munsif of Etah, dated the 22nd September 1903, dismissing the suit with costs

The suit which related to the proprietary title to lands in Rampur was brought in the Court of the Munsif of Etah by Lala Fateh Chand, since deceased, and others against Rani Kishen Kunwar and others to obtain the cancellation of an Order of the 4th January 1902 of a Court of Revenue; for a declaration that the Plaintiffs were the proprietors in possession of the lands in the plaint mentioned and as such were entitled to have their names entered in the revenue papers as proprietors; and for consequential reliefs. Some of the lands in question

consisted of lands in the abadi of Mauza Rampur. Upon those lands in the abadi houses had formerly stood. It is not clear from the record whether or not all of those lands in the abadi had been cleared of houses and had been brought into cultivation, but apparently they had been brought into cultivation before suit. It is, however, not necessary to ascertain whether or not all of those lands in the abadi had been brought into cultivation as it is the proprietary title to the land whether covered with houses or not, and not the title to the houses, if any, standing upon those lands which is in question in this suit. The remainder of the lands to which the suit relates were lands under groves. Rani Kishen Kunwar was the zamindar of the whole Mauza Rampur, and she alone defended the suit. By her written statement Rani Kishen Kunwar put in issue the alleged title of the Plaintiffs as proprietors.

Fateh Chand, the deceased Plaintiff, had applied to the Revenue Court to have his name entered as that of the proprietor of the lands in question in the revenue papers relating to Mauza Rampur. On the 4th January 1902 the Assistant-Collector rejected that application with costs, and on the 9th January 1903 the Plaintiffs brought this suit in the Civil Court. The Munsif of Etah having found as a fact that the Defendant Rani Kishen Kunwar was the zamindar of Mauza Rampur, and that the Plaintiffs were tenants and were not proprietors of the lands in the plaint mentioned by his decree of the 22nd September 1903, dismissed the suit.

From that decree of the Munsif the Plaintiffs appealed, and in their grounds of appeal alleged that they were the owners in possession of the plots in suit, and that in Khasra Rampur the zamindar is not the owner of the abadi, but the lower class of people, who are her ryots, are

the owners. The plaint and the grounds of appeal to which their Lordships have referred put it beyond doubt that the title which the Plaintiffs claimed in the Munsif's Court and on appeal from the Munsif's decree was the proprietary title to all the lands mentioned in the plaint, and was not any inferior title. The Subordinate Judge of Aligarh in the appeal found on his construction of the *wajib-ul-arz* and other documentary evidence that the Plaintiffs were the owners of the lands in respect of which the suit was brought, and by his decree declared that the Plaintiffs were the owners in possession of the property, and decreed the Plaintiffs' claim. From that decree of the Subordinate Judge the Defendant Rani Kishen Kunwar appealed to the High Court of Judicature for the North-Western Provinces of India at Allahabad.

At the hearing of the Appeal in the High Court it was urged in argument on behalf of the Plaintiffs that the Appeal being a Second Appeal to which Sections 584 and 585 of the Code of Civil Procedure applied, the High Court was bound to accept as conclusive, and was precluded from questioning, the correctness of the finding of the Subordinate Judge that the Plaintiffs were the proprietors of the lands in respect of which the suit was brought. Sir George Knox and Richards, JJ., who heard the Appeal, overruled the objection, and on their construction of the *wajib-ul-arz* and other documents in the suit in their judgment stated and found :—

“ From the judgment of the lower Appellate Court it
 “ appears that it is founded on inferences of law drawn by
 “ the learned Subordinate Judge from certain documents
 “ and the *wajib-ul-arz* which were given in evidence. The
 “ documents show that the owners of houses in Rampur
 “ had been in the habit of selling and transferring their
 “ houses. The *wajib-ul-arz* sets forth that the occupiers of
 “ houses had this power, but all through the entries the

“ zamindar is recognised, and it is stated that if a new house is to be built the permission of the zamindar must be obtained. The entry in the wajib-ul-arz as to groves is to the effect that isolated trees and clumps of bamboos planted by the tenant can be cut by him, and as to rent-free groves, if the trees should die out and the land be brought into cultivation, rent must be paid, and that if a new grove was to be planted the leave of the zamindar must be obtained. The inference of law that the Subordinate Judge has drawn from this evidence (about which there is no dispute) is that the occupiers of the groves and of the land which had been the sites of the houses were the absolute property of the persons who occupied and used them. In our judgment this inference is a wrong and impossible inference and the decision of the learned Subordinate Judge based thereon is clearly wrong.”

The High Court by its decree allowed the Appeal and restored the decree of the Court of the Munsif. From that decree of the High Court this Appeal to His Majesty has been brought. The principal ground of this Appeal is that the decree of the Subordinate Judge is right and that the Plaintiffs are the owners of the lands in dispute.

On the hearing of this Appeal the learned Counsel on behalf of the Appellants contended that the Judges of the High Court should have accepted the findings of the Subordinate Judge on the question of title as correct and as binding on them in Second Appeal and were not at liberty to find that the Plaintiffs were not the proprietors of the lands in question. He also contended that the Judges of the High Court had misconstrued the wajib-ul-arz and the other documentary evidence and had come to a wrong conclusion. He further contended that the wajib-ul-arz of Mauza Rampur, which was made in the settlement which commenced in 1872 and extracts from which are on the record of this suit, cannot be treated as applying to the abadi of Mauza Rampur, the contention being

that Rampur, owing to the number of its inhabitants, many of whom are not agriculturists, and owing to the fact that the Government has applied the Chukidari Act (Act No. 20 of 1858) to Rampur, must be regarded as a town and not as a purely agricultural village, to which, according to the learned counsel's contention, a *wajib-ul-arz* is alone applicable. The answer to that contention that the *wajib-ul-arz* does not apply to the *abadi* of Mauza Rampur appears to their Lordships to be that the *wajib-ul-arz* to which reference has been made was prepared by the settlement officer for the whole Mauza Rampur including the *abadi*, and that all those who were interested were at the time given the opportunity of objecting to the statements contained in it, and further that the Government by applying the Chukidari Act to Rampur did not alter and could not have altered proprietary rights in Mauza Rampur or in any part of the Mauza. The *wajib-ul-arz* is in their Lordships' opinion cogent evidence of the rights as they existed when it was made of those holding proprietary or other rights of property within the Mauza, and it has not been shown that the *wajib-ul-arz* to which reference has been made in this suit differs in any material respect from the *wajib-ul-arz* which their Lordships have been informed by counsel was made in the more recent settlement.

The Judges of the High Court rightly overruled the objection that they were bound to accept as correct the finding of the Subordinate Judge that the Plaintiffs were the proprietors of the lands to which this suit referred. That finding of the Subordinate Judge was the result of his having misconstrued the *wajib-ul-arz*. The right construction of documents is a question of law which Judges in Second Appeals are not, by Sections 584 and 585 of the Code of Civil

Procedure, precluded from considering by any finding of a lower Appellate Court, based upon such documents. The Subordinate Judge arrived at his finding by inferences drawn upon an incorrect construction of the wajib-ul-arz, and the Judges in Second Appeal consequently were not bound by his finding that the Plaintiffs were the proprietors of the lands.

In the wajib-ul-arz it is stated that Mauza Rampur "is a mahal of Zamindari Khalis (held " by a single person), and Raja Ram Chandar " Singh is the only proprietor without any co- " sharer." Raja Ram Chandar Singh was the husband of the Defendant Rani Kishen Kunwar, the present zamindar. There is no documentary evidence to show that the Plaintiffs or their predecessors in title ever were proprietors of any of the lands to which this suit relates; on the other hand, the jamabandi shows that predecessors in title of the Plaintiffs paid rent as tenants for some of those lands, and in the Khasra for 1297 Fasli the Defendant Rani Kishen Kunwar is entered as the proprietor of some of these lands, and predecessors in title of the Plaintiffs are entered as the tenants. The zamindar was not affected by any transfer of lands to which he was not a party, and in the wajib-ul-arz neither the Plaintiffs nor any predecessors of theirs are shown as tenants who had special rights which were heritable and transferable.

The following paragraphs of Chapter IV. of the wajib-ul-arz relate to groves and houses, and are important:—

" Paragraph 3.—Relating to the rights of tenants in
" respect of groves and scattered trees.

" A tenant has power to cut down the grove or the
" scattered trees planted by him in his neighbourhood.

" If the land is rent-free and the trees have been removed
" therefrom and the land is brought under cultivation, the
" tenant shall have to pay the rent. If in future a grove is
" planted, it can be planted with the permission of the
" zamindar.

“ Paragraph 4.—Relating to the rights of the tenants in
“ respect of the houses in the village and of those
“ which are built.

“ A person residing in a house is owner thereof and he has power to transfer it; but in future a new house shall be built with the consent of the zamindar.

The tenants of the lower class have no power to transfer their houses.

There is evidence on the record that when land in the abadi is brought under cultivation the tenant has to pay rent for it. In their Lordships' opinion the Judges of the High Court rightly construed the wajib-ul-arz and drew the legitimate inference from it, and the other documentary evidence in the suit.

On behalf of the Plaintiffs-Appellants in their Appeal the learned counsel who appeared for them pressed their Lordships to advise that the Plaintiffs-Appellants should be declared to have heritable and transferable rights in the lands in suit and for that purpose admitted that the Plaintiffs-Appellants were tenants of those lands. Apart from other considerations it is sufficient for their Lordships to say that that is not the claim in respect of which this suit was brought.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed and the Decree of the High Court be affirmed. The Appellants must pay the costs of the Appeal.

In the Privy Council.

LALA FATEH CHAND, since deceased (now
represented by Lala Jugal Kishore and
another), AND OTHERS

v.

RANI KISHEN KUNWAR.

DELIVERED BY SIR JOHN EDGE.

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