

*Privy Council Appeal No. 74 of 1916.*

*Allahabad Appeal No. 14 of 1914.*

**Musammat Sakina Bai and others** - - - *Appellants,*

*v.*

**Kaniz Fatima Begam** - - - - *Respondents,*

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WEST  
PROVINCES, ALLAHABAD.**

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 12TH NOVEMBER, 1917.

---

*Present at the Hearing :*

LORD PARKER OF WADDINGTON.

LORD WRENBURY.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

[*Delivered by* LORD PARKER OF WADDINGTON.]

---

In this case the respondent, a widow, having obtained a decree for dower against the appellants, attached a number of villages inherited by the judgment debtors from her deceased husband. Objection was taken to the attachment on the ground that the villages constituted a political pension within Section 60 (g) of the Code of Civil Procedure. The Subordinate Judge upheld this objection, but his decision was reversed on appeal by the High Court of Allahabad. The appellants are now appealing to His Majesty in Council from the decision of the High Court.

Their Lordships are of opinion that the point at issue depends entirely upon the true construction of the sanad under which the appellants derive their title. This sanad, a translation of which will be found on pp. 88 to 92 of the record, is dated the 13th August, 1819, and it appears from the recitals (1) that one Karim Khan, the appellant's ancestor, was then entitled to receive from the Government 16,000 R., whether by way of pension for his life or as a lump sum payment is not very material ; (2) that the Government had recently purchased a pargana, comprising the villages in question in the suit, from the Rajah of Barhiapur ; and (3) that the premises granted were intended to be in lieu of 10,000 R. out of the 16,000 R.

which Karim Khan was entitled to receive. The operative part of the sanad witnesses that the Government had granted the "taluka" of the said pargana, together with all lands cultivated or uncultivated, to Karim Khan for his life as "revenue-free jagir by way of maintenance," and that "after the death of Karim Khan the said ilaka will continue to stand in the names of his children and ahfad as a permanent zamindari assessed to a light amount of jama."

The appellants contend that the subject matter of the grant witnessed by this sanad is not the pargana which the Government had purchased, but the revenue which prior to the purchase had been payable in respect of such pargana. Karim Khan is, according to them, entitled to receive such revenue for his life without paying any jama in respect thereof. After his death his descendants are to receive it, paying a light jama, which will be subsequently assessed. In this way they contend that what is granted to Karim Khan for life, and afterwards to his descendants, is merely the right to a money payment in the nature of a pension. The respondent, on the other hand, contends that the subject matter of the grant is the pargana itself, with the lands, whether cultivated or waste, to be held by Karim Khan for life, revenue-free, and by his descendants after his death subject only to a light jama; in other words, that the subject matter of the grant is land, and not a money payment in the nature of pension.

Their Lordships are of opinion that the contention of the respondent is correct. It may be true that the use of the words "taluka," "ilaka," "jagir," and "zamindari" are not entirely inconsistent with the appellants' construction of the sanad, but these words point, in their Lordships' opinion, to the grant being a grant of land rather than of revenue charged on land. It will be observed that what the Khan is to enjoy for his life is the usufruct of the ilaka, as well as the zamindari rights. According to the appellants' contention, he is to have only zamindari rights in the sense of a right to collect the revenue, whereas the word usufruct appears to point to an actual occupation and user of the soil, subject, of course, to the rights of third parties. The word "jagir" primarily points to occupancy, though it may be occupancy of an office, such as that of collector of revenue. Where, however, a jagir held for life only is, as in this sanad, used in contradistinction to an ilaka held as a permanent zamindari, it is an almost necessary inference that the occupancy referred to is an occupancy of land.

Their Lordships find it impossible to distinguish this sanad from the sanad in question in the case of *Anna Bibi v. Najmuni Nissa* I.L.R. 31 All. 382, and they agree with the decision in that case. They also agree with the Court below that the correspondence on which the unreported case relied on by the Subordinate Judge appears to have turned is quite irrelevant upon a question of construction.

The only other point to which reference need be made is the contention that the sanad was in the case of the descendants of Karim Khan, as well as of Karim Khan himself, a maintenance grant, and that in consequence the premises granted, even if consisting of land, were inalienable, and therefore not subject to attachment. The answer to this contention is a simple one. In the case of Karim Khan the grant is expressed to be for his maintenance. In the case of his descendants it is not. The right inference, therefore, is that it was not a maintenance grant in the latter case, though it was in the former.

Their Lordships will humbly advise His Majesty that the appeal fails, and should be dismissed with costs.

---

In the Privy Council.

---

---

MUSAMMAT SAKINA BAI AND  
OTHERS.

vs.

KANIZ FATIMA BEGAM.

---

---

DELIVERED BY  
LORD PARKER OF WADDINGTON.

PRINTED AT THE FOREIGN OFFICE BY G. H. HARRISON,  
1917.