

Privy Council Appeal No. 140 of 1927.

Raja Udit Narain Singh, since deceased (now represented by Raja
Harnam Singh) - - - - - *Appellant*

v.

Shaikh Mubarak Ali and others - - - - - *Respondents*

FROM

THE COURT OF THE BOARD OF REVENUE FOR THE UNITED
PROVINCES OF AGRA AND OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 17TH DECEMBER, 1928.

Present at the Hearing :

LORD PHILLIMORE.

LORD ATKIN.

LORD SALVESEN.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR JOHN WALLIS.]

In this case the Board of Revenue of the United Provinces granted Raja Udit Narain Singh, since deceased, who will be referred to as the appellant, leave to appeal to His Majesty in Council from their order directing that the first respondent, Shaikh Mubarak Ali, should be re-entered on the register maintained by the Revenue authorities under the United Provinces Land Revenue Act III of 1901, as a thekadar or holder of a permanent but not transferable lease in a village of which the appellant was the proprietor.

The first respondent had purported to transfer his theka or lease to his son and grandson, the second and third respondents, with the object, it was alleged, of defeating the rights of succession of his other heirs under the Mohomedan law. On their application for mutation of names they were erroneously entered as pukhtadari tenants, a term applicable to tenants holding under

a sub-settlement. They then applied that they might be entered as matahatdars, a description applicable to under-proprietors or persons holding a heritable and transferable right in the land as defined in clause 15 of section 4 of the United Provinces Land Revenue Act III of 1901. The revenue authorities corrected the register but entered them as thekadars, the description under which their transferor, the first respondent, had been entered.

They then applied to the Assistant Collector who ordered notice to go to the appellant as the superior proprietor. The appellant appeared and objected that the permanent lease had been forfeited by the transfer and that the transferees were at most mere tenants. The Assistant Collector upheld this contention and directed them to be registered as tenants (which, as will be seen, means tenants of the lands actually cultivated or otherwise occupied by them), that is to say, he upheld the appellant's contention that the theka had been forfeited and that they were not entitled to be entered either as thekadars or as matahatdars.

The first respondent thereupon sued the second and third respondents for a declaration that his gift to them was incomplete and no title had passed, and obtained a decree by consent. He then appealed to the Deputy Commissioner who ordered the second and third respondents to be registered as thekadars. This order, on appeal by the appellant here, was reversed by the Commissioner, who restored the order of the Assistant Collector. The first respondent then appealed to the Board of Revenue, who, after making the second and third respondents, parties here, respondents in that appeal, held that transfer in their favour was invalid and directed that the name of the first respondent should again be entered as thekadar. It was from this order that the appellant obtained leave to appeal to His Majesty in Council.

At the hearing before their Lordships, Mr. Dunne took a preliminary objection that no appeal lay, and Mr. de Gruyther, for the appellant, contended that the order under appeal had been made in the course of an inquiry as to "a dispute respecting the class or tenure of any tenant" within the meaning of Section 42 of the Land Revenue Act, as to which it is provided that the Collector in the trial of the dispute is to observe the procedure prescribed for cases of a similar kind for the trial of suits under the Oudh Rent Act III. of 1886. As by Section 135 of that Act, save as otherwise provided, the provisions of the Code of Civil Procedure are applied to all suits and proceedings under that Act, Mr. de Gruyther contended that the provisions of the Code as to granting leave to appeal to His Majesty's Council were applicable to the present case. For the respondents it was contended that section 42 was not applicable, and, even if it were, it merely directed the Collector in the trial of the dispute to observe the provisions of the Civil Procedure Code, and did not provide that that procedure should be observed as to appeals from his order.

It is unnecessary to deal with the latter contention because, in their Lordships' opinion, the dispute was about an entry in the register maintained under clause (a) and not under clause (e) of Section 32, and because disputes about entries in register maintained under clause (a) are to be decided, not in accordance with the provisions of Section 42, but in accordance with the provisions of Section 40, which does not make any of the provisions of the Civil Procedure Code applicable.

These sections are to be found in Chapter III of the Land Revenue Act, "*Maintenance of Maps and Registers*," and come under the sub-heading "*Registers*." Section 31 requires lists to be prepared and maintained of all revenue-paying mahals, or revenue divisions, specifying the revenue assessed and the person by whom it is payable, and also of all revenue-free mahals. Then comes Section 32, which provides that for every mahal or village in a mahal there is to be a record-of-rights, which is to include the following registers :

(a) a register of all the proprietors in the mahal, including the proprietors of specific areas, specifying the nature and extent of the interest of each ;

(b) in Oudh, for all mahals or pattis held in sub-settlement or under a heritable non-transferable lease, the rent payable under which has been fixed by the Settlement Officer or other competent authority, a register of all the under-proprietary co-sharers or co-lessees, specifying the nature and extent of the interest of each of them ;

(c) in Oudh, a register of all other under-proprietors in a mahal, and all other lessees whose rents have been fixed by a Settlement Officer, or other competent authority, specifying the nature and extent of the interest of each of them ;

(d) a register of all persons holding land revenue free, specifying the nature and extent of the interest of each ;

(e) a register of all persons cultivating or otherwise occupying land specifying the particulars required by section 55.

Explanation.—In this section the words "proprietor" and "under-proprietor" include a person in possession of proprietary or under-proprietary rights under a mortgage or lease.

Now a thekadar, who is referred to in Section 3, clause 10, of the Oudh Rent Act, as "a person to whom the collection of rents in a village or portion of a village has been leased by the landlord" is clearly a person in possession of proprietary rights under a lease within the meaning of the explanation, and so to be entered in the register of proprietors under (a); and it is also clear that the dispute between the appellant the proprietor and the respondents was, whether after the transfer by the first respondent to the second and third respondents the theka had not been forfeited so that neither the first respondent, the transferor nor the second and third respondents were entitled to be entered in that register.

It is also clear that merely as thekadars they would not be entered in register (e) as contended for the appellant. Section 55 provides that the register maintained under (e) shall specify as to each tenant the nature and class of his tenure as

determined by the Oudh Rent Act and the rent payable by the tenant, and shall also specify the proprietors or under-proprietors (if any) holding land as sir (or home farm land), or cultivating land, not being sir, otherwise than as tenants, and stating with regard to the latter class of lands the number of completed years during which they have been so cultivated. It is clear, therefore, that proprietors and under-proprietors and those claiming under them by lease or mortgage are not to be entered in this register, except in so far as they themselves actually occupy or cultivate land in the village, and that it cannot otherwise include persons in possession of proprietary rights under a mortgage or lease such as a thekadar.

It has next to be considered how disputes as to entries in register (a) are to be decided. Section 33 requires the Collector to record in the registers all changes that may take place and any transaction that may affect any of the rights and interests recorded. And under Section 34 every person obtaining possession by transfer of any proprietary right in a mahal, or part of a mahal, or the profits thereof, or in any specific area therein, which is required to be recorded in registers (a) to (d) of Section 32 is required to report the transfer, and no Revenue Court is to entertain a suit or application by him until he has done so. If there is a dispute about the transfer Section 35 requires the Tahsildar to refer the case to the Collector, who is to dispose of it after deciding the dispute in accordance with the provisions of Section 40.

Section 40 provides that all disputes as to entries in the annual registers are to be decided on the basis of possession, and if the Collector cannot satisfy himself as to which party is in possession, he is to ascertain by summary inquiry who is the person best entitled to the property and shall put such person in possession, but no order as to possession under this section is to bar anybody from establishing his right to the property in any Civil Court; and it is further provided by Section 44, that no entry or decision under Section 40 is to affect the right of any person to claim and establish in the Civil Court any interest in land which requires to be recorded in the registers (a) to (d) of Section 32.

It is in their Lordships' opinion clear that all the Collector could do besides amending the register after the summary inquiry under Section 40 was to put the successful party into possession, and that his order would not debar the unsuccessful party from asserting his rights by suit in a Civil Court. It is therefore not surprising that there is no provision of law making the summary inquiry under Section 40 subject to the Civil Procedure Code so as to render the order made by the Board of Revenue in such an inquiry appealable to His Majesty in Council.

In this view it is unnecessary to consider the effect of the provisions of Section 42, which applies the provisions of the Civil Procedure Code to the trial of particular disputes as to certain entries to be made in the register maintained under clause (e)—apparently because under Section 44 the decision is to be binding

on Revenue Courts which have exclusive jurisdiction in suits relating to the same matter.

In their Lordships' opinion the appellant has failed to show any right to appeal to His Majesty in Council, and the appeal should be dismissed with costs, save only that the costs of preparing and lodging the respondents' case must be borne by the respondents themselves, as the objection was only taken at the hearing. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

RAJA UDIT NARAIN SINGH, SINCE DECEASED
(NOW REPRESENTED BY RAJA HARNAM
SINGH)

v.

SHAIKH MUBARAK ALI AND OTHERS.

DELIVERED BY SIR JOHN WALLIS.

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