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Privy Council Appeal No. 57 *of* 1928.
Oudh Appeal No. 11 *of* 1927.

Raja Bahadur Raja Bishnath Saran Singh - - - - *Appellant*

v.

Rawat Sheo Bahadur Singh - - - - - - *Respondent*

FROM

THE CHIEF COURT OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH MARCH, 1930.

Present at the Hearing :

LORD ATKIN.
SIR LANCELOT SANDERSON.
SIR BINOD MITTER.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by Raja Bahadur Bishnath Saran Singh, who was the plaintiff in the suit, against a decree of the Chief Court of Oudh dated the 13th December, 1926, which reversed a decree of the Subordinate Judge of Rai Bareli dated the 31st August, 1925.

In the suit (No. 33 of 1925) the plaintiff prayed for a declaration that "the defendant has no proprietary or under-proprietary right in village Sijni, *pargana* Mohanganj." The above-mentioned village lies within the *Taluqa* of Tiloi, in the district of Rai Bareli, and the plaintiff is the owner of the *Taluqa*.

In his right of Taluqdar the plaintiff is the superior proprietor of the village.

The defendant, Rawat Sheo Bahadur Singh, is in actual possession of the village, and at the time of the suit he was paying to the plaintiff a yearly rent of Rs. 2,019.

The plaintiff served a notice of ejectment upon the defendant ; the date of the notice is not clear : but it must have been shortly

after the plaintiff came of age, which was in March, 1920. Thereupon the defendant brought a suit against the plaintiff under section 108 (8) of the Oudh Rent Act XXII of 1886, for contesting the notice of ejectment.

The notice of ejectment was based on the allegation that the defendant was merely a *thekedar* of the village and as such was liable to ejectment by means of a notice.

The defendant's suit was based mainly on the allegation that he held under-proprietary rights in the village, which had been granted to his ancestor by the ancestor of the plaintiff four generations ago.

The Assistant Collector, who heard the suit, decided on the 22nd March, 1923, that the matter was *res judicata* as far as the proceedings in the Revenue Court were concerned, and he held that the defendant could not be treated as an ordinary *thekedar* and liable to ejectment by notice "until the Civil Courts come to a contrary finding."

The notice of ejectment, therefore, was set aside.

The plaintiff thereupon instituted the present suit in the Court of the Subordinate Judge of Rai Bareli on the 28th March, 1923.

The plaint alleged :—

> "2. That the defendant has been working as a *thekedar* on behalf of the estate for purpose of realising rent, etc., on payment of rent, and he has to pay Rs. 2,019 on account of rent at present."

And the prayer was for a declaration as already stated.

The main allegations in the written statement were as follows :—

> "Para. 17. This allegation of the plaintiff is quite wrong that the defendant has been working on behalf of the estate for the purposes of collecting rent, etc.; as a mere *thekedar* on payment of annual rent. The truth of the fact is that in *Shahi* times Bhawan Singh, ancestor of the defendant, had taken part in a battle along with Raja Shankar Singh, ancestor of the plaintiff, and he was killed in the same battle. After the death of Bhawan Singh, Ram Baksh Singh, the brother of the deceased, married the daughter of the deceased with Babu Thakur Pershad, son of Raja Shankar Bakhsh Singh. At that time Rawat Sarabjit Singh, son of Bhawan Singh, was a minor and for this reason Raja Shankar Bakhsh Singh, having regard to the relationship and services of Bhawan Singh, gifted the village in dispute under a deed of gift (which was burnt in a fire) to Rawat Sarabjit Singh generation after generation.
>
> "Para. 18. That the defendant and his ancestors exercised their proprietary rights, *i.e.*, gave land to *reyayas* for plantation of groves, allowed *muafis* and planted groves themselves which exist up to the present days, peopled *puras* and constructed dams.
>
> "Para. 19. That the defendant has been in possession of the proprietary powers for the last three generations under a deed of gift executed by Raja Shankar Bakhsh Singh and the plaintiff belongs to the fourth degree in the line of Raja Shankar Bakhsh Singh. The defendant has got proprietary rights in the village in dispute.
>
> "Para. 20. That the defendant and his ancestors have remained in proprietary possession for about 125 years from the date of gift on payment

of fixed *jama* to the knowledge of the plaintiff and his ancestors and for this reason also the defendant has got under-proprietary rights in the village in dispute on account of adverse possession."

Amongst others the two following issues were stated.

"1. Whether the plaintiff's ancestor if any made the defendant as his *thekedar* for purposes of collection of rent of village Sijni, in suit as alleged ?

"2. Or whether the plaintiff's ancestor Shanker Singh gifted the village in suit to the defendant's ancestor about 125 years ago, conferring under-proprietary rights ?

The learned Subordinate Judge held that "Rawat Sarabjit Singh" (who was the ancestor of the defendant) "and his descendants can only be called lessees for the purposes of collecting rent and doing such other acts consistent with their status as mere lessees from the time prior to the old settlement."

The learned Judge therefore decided issue 1 in favour of the plaintiff, and issue 2 against the defendant.

There were other issues, to which reference at present is not necessary.

In the result the learned Judge made a declaratory decree in the plaintiff's favour as follows:—"That the defendant is neither a proprietor nor an under-proprietor in the village Sijni."

The defendant appealed, and on appeal the learned Judges of the Chief Court held that the defendant had under-proprietary rights in the said village: consequently they allowed the appeal and dismissed the suit. From this decision the plaintiff has appealed to His Majesty in Council.

As already mentioned the plaintiff's case was that the defendant was a mere *thekedar* of the estate for the purpose of realising rent, and it appears that in the court of the learned Subordinate Judge the plaintiff's pleader stated that he could not fix the precise period of the *theka* alleged in the plaint, but he submitted that the *theka* was given by one of the plaintiff's ancestors to the defendant's ancestor between the first regular settlement and the last settlement. The first regular settlement was in 1862, and the second regular settlement was in 1892.

The learned Subordinate Judge did not accept the plaintiff's case as to the date of the *theka*: he said:—

"It appears that there was some sort of *theka* or lease not of the date between the regular and recent settlement as alleged by the plaintiff, but of an older date, very probably of the time of Raja Shanker Singh prior to the regular settlement. It is impossible to know exactly what the terms of the *theka* were, and we do not know if it was oral or committed to writing."

The learned Judges of the Chief Court disagreed with the above-mentioned finding and held that the plaintiff's case, viz., that the defendant was a mere *thekedar*, or collector of rents, had been disproved.

The learned counsel for the appellant drew their Lordships' attention with great care to the evidence, both documentary and verbal, given both on behalf of the plaintiff and on behalf of the defendant.

On consideration of the whole of the evidence their Lordships are of opinion that the decision of the Chief Court in the above-mentioned respect was correct and they are satisfied that it was not proved that the defendant was a mere *thekedar* with no higher rights than those usually held by one in such a position.

Their Lordships, however, are of opinion that the plaintiff did produce evidence which was sufficient to throw the onus upon the defendant of proving that he had the under-proprietary rights in the village which he claimed.

As already stated the defendant's case was based upon a deed of gift, which was alleged to have been made by Raja Shankar Bakhsh Singh, the ancestor of the plaintiff, to Rawat Sarabjit Singh, the ancestor of the defendant, about 125 years before the date of the written statement—and which was supposed to have been burnt.

With respect to the alleged deed of gift Wazir Hasan J. was of opinion that the defendant's case that there was a written grant was not well established, and the learned Chief Judge came to the conclusion that a grant was made, and that it was probably contained in a deed but that was not proved.

Their Lordships are in agreement with the opinion of the learned Judges of the Chief Court that the evidence as to the existence of the alleged deed of grant and the alleged burning thereof was not of such a nature as would justify the Court in relying upon it, and they are of opinion that in the consideration of this appeal it must be taken that the alleged deed of grant and the terms thereof were not proved.

The position therefore, so far, is that the plaintiff and the defendant did not prove the particular cases on which they respectively relied in the pleadings. The plaintiff failed to establish that the defendant was a mere *thekedar*, and the defendant failed to prove the deed of gift on which he relied.

The learned Judges of the Chief Court, however, came to the conclusion that in fact there was a grant by Raja Shankar Singh in favour of Sarabjit Singh of an heritable and transferable estate in the said village, by reason of which the defendant had under-proprietary rights.

Their Lordships are of opinion that the consideration of this matter was open to the Chief Court on the pleadings and issues, as stated, and the question therefore arises whether on the evidence the decision of the Chief Court can be supported.

The learned Chief Judge stated that he was satisfied, on the evidence of Rani Harbans Kuar alone that the Raja Shankar Singh did grant the village Sijni to Sarabjit Singh at some time during the first quarter of the nineteenth century.

Rani Harbans Kuar was the widow of Jagpal Singh, and the mother of Surpal Singh, both of whom were predecessors in title of the plaintiff.

The Rani's evidence was given in January, 1899, in proceedings in the Revenue Court, which were instituted in order to

contest a notice of ejectment, which had been given in 1898 by the then Raja, Surpal Singh; the result of those proceedings was that the Deputy Collector cancelled the notice.

The statement then made by the Rani was put in evidence in this suit.

Among other things, she said that she had seen the deed of gift, and that it was read over to her by one Diwan Rani Din, and she went so far as to give some evidence as to its contents. In view of the fact that the learned Judges of the Chief Court were of opinion that the defendant's case as to the alleged grant in writing was not established, an opinion with which their Lordships agree, it must be obvious that it would not be right to base the decision of this case solely upon the evidence of the Rani, who had pledged herself to such a material part of the defendant's case, which has been found to be not established.

This, however, does not conclude the case, because the Rani's evidence was by no means the only evidence on the record and in their Lordships' opinion certain facts were proved, which went to corroborate that part of the Rani's evidence on which the Chief Court relied.

The evidence goes to show that the defendant's ancestors were in possession of the village for very many years, and that for at least three generations of the Rawats, the plaintiff's ancestors had accepted rent from the Rawats without any interference with the Rawats' possession of the village, and as far as their Lordships are aware, the rent was at the same rate until, by an agreement of compromise made in August, 1901 (to which reference will be made presently), the rent was raised from Rs. 1,451 to Rs. 2,019.

The long-continued possession and the payment of rent at the same rate during such possession are not by themselves sufficient to decide the case: for such facts, taken by themselves, are consistent not only with the defendant's case, but also with plaintiff's case.

There were, however, in their Lordships' opinion, other matters proved in the evidence, which are consistent with the defendant's case, and which are not consistent with the plaintiff's case, as for instance: the facts referred to in the report of the Settlement Officer, Mr. D. C. Baillie, made in 1892, viz.: that the terms of the lease are very favourable, and rights superior to those of an ordinary lessee are claimed, but have never been decreed . . . Sarabjit, the original lessee, made a band across the Naiya, which gives a lot of water. Of the wells, three belong to the Rawats, all made by Sarabjit Singh. . . The Rawats have had full powers of owners, and have given permission to plant baghs, etc., but it is said they refer to Tiloi for permission. The management and sir is in Tiloi's name, but the Rawats have actually had all the benefit."

It is true that the Rawats did not claim to be recorded as under-proprietors at either of the above-mentioned settlements, as Mr. Baillie pointed out in his letter to the Commissioner of

Lucknow, dated the 12th August, 1893. This is a fact which, at first sight would seem to be inconsistent with the defendant's case ; but it appears that the Rawats were not entered on the record at all, either as under-proprietors, or as *thekedars*. or tenants.

There is no doubt that the defendant and his predecessors were in possession at the time of the two settlements, and they should have been entered on the record in one or other of the above-mentioned capacities.

There must have been some good reason why no record of any kind of the Rawats possession was made.

It is significant that Mr. Baillie, in 1893, acting as manager of the Court of Wards, which then had charge of the estate of the plaintiff's predecessor, though he considered it would be difficult for the Rawats to prove any permanent right, recommended that it was not necessary for the Court of Wards to take any action to recover possession which had been held by the tenants' family for 80 years.

The Board agreed that existing arrangements should not be disturbed, and that the Deputy Commissioner should settle terms as to the new *jama* amicably with the incumbent.

The rent, as already mentioned, was raised from Rs. 1,451 to Rs. 2,019 ; this was brought about in August, 1901, by a compromise of a suit instituted by the manager of the Tiloi estate against the defendant, for a declaration that the defendant had no proprietary right in the village Sijni. The agreement that the rent should be increased was in consequence of the amount of the Government revenue having been raised in the last settlement. By the terms of the compromise, the question of the title between the parties was left open and undecided, and it was provided that the compromise should in no way affect the title of the parties.

The result, therefore, is that the raising of the rent payable by the defendant does not affect the question now under consideration.

In their Lordships' opinion, there is no doubt that there was a grant of some kind to Sarabjit Singh when he was a boy of about 5 years old, and it is not suggested that a grant of the kind now relied upon by the defendant could not have been made orally at the time alleged. The facts that the first grantee was a child at the time when the grant was made, that the interest of the grantee was treated as being hereditary, that the predecessors of the defendant expended money in making improvements on the land, that they exercised full powers of owners in material respects, are some of the matters which their Lordships think go to corroborate that part of the evidence of the Rani Harbans Kuar which was accepted by the learned judges of the Chief Court.

It is not necessary to deal with the evidence in greater detail because their Lordships are satisfied that there was evidence to justify the conclusion at which the Chief Court arrived, and they are not prepared to disagree with the decision of the said Court.

It is necessary to refer to the fact that by a proclamation in March, 1858, of the Viceroy and Governor-General of India, the proprietary rights in the soil of Oudh, with a few special exceptions, were confiscated and passed to the British Government. The confiscation would include not only the proprietary but also the under-proprietary rights.

The Government, however, by a *sanad* dated the 25th October, 1859, granted to Raja Jagpal Singh, one of the plaintiff's ancestors, the full proprietary right, title and possession of the estate of Tiloi.

It was a condition of the grant that all holding under the Raja should be secured by him in the possession of all the subordinate rights which they formerly enjoyed.

Their Lordships feel no doubt that this condition was observed, and that the defendant's ancestors were allowed to and continued to enjoy the same proprietary rights under the Raja after the above-mentioned grant by the Government as they did before the confiscation.

In view of the fact that their Lordships agree with the decision of the Chief Court that the defendant has under-proprietary rights in the village subject to the payment of rent to the plaintiff, it is not necessary for them to consider the further question of limitation, on which reliance was placed by the learned counsel for the defendant.

Their Lordships therefore are of opinion that the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

RAJA BAHADUR RAJA BISHNATH SARAN SINGH

v.

RAWAT SHEO BAHADUR SINGH.

DELIVERED BY SIR LANCELOT SANDERSON.

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