

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Thakurain Sheoraj Kunwar v. Thakur
Harihar Baksh Singh and another, from
the Court of the Judicial Commissioner of
Oudh; delivered the 7th May, 1910.*

Present at the Hearing:

LORD MACNAGHTEN.

LORD COLLINS.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[Delivered by Lord Macnaghten.]

This Appeal is concerned with a claim to pre-emption under the Oudh Laws Act, 1876, in respect of three entire villages and two pattis or portions of two other villages forming part of a taluqa called Saraura.

By section 9 of the Act the right of pre-emption where it exists is given on the occasion of a sale.

“1st, to co-sharers of the subdivision (if any) of the tenure in which the property is comprised in order of their relationship to the vendor * * *;

2ndly, to co-sharers of the whole mahal in the same order;

3rdly, to any member of the village community;
and

4thly, if the property be an under-proprietary tenure, to the proprietor.”

and the section adds this provision :—

“ where two or more persons are equally entitled to such right the person to exercise the same shall be determined by lot.”

There were three brothers, sons of one Basti Singh, whose names were Baldeo Bakhsh, Balwant Singh, and Uman Parshad—Baldeo Bakhsh died leaving one son, Bisheshar Bakhsh—Balwant died leaving two sons, Sitla Bakhsh, who died childless, and Ganga Bakhsh. Ganga Bakhsh had obtained a sanad of taluqa Saraura, but in 1864 on the occasion of the regular settlement a compromise was made between Ganga Bakhsh, Bisheshar Bakhsh and Uman Parshad, by which one-half of the taluqa was assigned to Ganga Bakhsh as superior proprietor and the other half to Bisheshar Bakhsh and Uman Parshad in equal shares in under-proprietary right, they paying the Government revenue plus malikhana at the rate of 10 per cent. to the Taluqdar, and being jointly liable to him in respect of the same as rent. Bisheshar Bakhsh died childless and his share devolved on Uman Parshad. Uman Parshad died and his property devolved upon Gajadhar his grandson, and Ganesh Bakhsh, his son. In 1893 a partition was made between Gajadhar and Ganesh Bakhsh under which the property in question in this suit was assigned to Gajadhar. A Decree was made in accordance with the partition, and mutation of names was effected accordingly, but no separate engagement was made for payment of the Government revenue in respect of the three entire villages or the two pattis assigned to Gajadhar.

On the 13th of September, 1902, Gajadhar sold the property in question to Harrihar Bakhsh who had succeeded his father Ganga Bakhsh as Taluqdar of Saraura.

Thereupon Ganesh Bakhsh filed this suit against Harrihar who is Respondent No. 1 and

Gajadhar, who is dead, and is now represented by his widow, Respondent No. 2. The claim was for pre-emption in respect of the three villages and the two pattis.

The subordinate Judge of Sitapur decided in favour of the plaintiff, Ganesh Bakhsh. From that decision Harrihar appealed to the Court of the Judicial Commissioner. The appeal was heard in the first instance by Mr. Wells, Additional Judicial Commissioner, and Mr. Chamier Officiating Judicial Commissioner. The learned Judges differed in opinion. And so the appeal was referred to Mr. Evans, First Additional Judicial Commissioner. Mr. Evans agreed with Mr. Chamier in thinking that the suit ought to be dismissed as regards the three entire villages, and that as regards the two pattis Ganesh Bakhsh and Harrihar, as the only other members of the village communities to which the pattis respectively appertained, were equally entitled to the right of pre-emption. The order was that the Appeal be allowed and the suit dismissed with costs in both Courts as regards the three entire villages; and the parties were ordered to draw lots as regards the two pattis. This order was dated the 10th of August, 1906. A further order was made on the same day declaring that lots having been drawn the right to buy the two pattis was found to lie with the Appellant Harrihar. The Appeal was therefore allowed as regards the pattis, and the suit was dismissed as regards them also, and the parties were ordered to pay their own costs as regards the pattis, in the Court of Appeal and below.

Their Lordships are of opinion that the Judgment of the Court of the Judicial Commissioner was right. The opinion delivered by Mr. Chamier with which Mr. Evans was in substantial agreement deals with the case very fully. It was

contended, he said, that Ganesh Bakhsh was entitled to pre-empt under the first, or failing that, the second clause of the section. The learned Judge pointed out that even if (as was suggested) each of the villages assigned to Uman Parshad were a subdivision of the tenure in which the property is comprised it could not be said that Ganesh and Gajadhar were the co-sharers in any subdivision. The question whether Ganesh could claim to pre-empt under the second clause was one he thought of greater difficulty. The word 'Mahal' he observes is not defined in the Act, but he goes on to say :—

“The word is a term of the Revenue Law and as the Oudh Laws Act, 1876, and the Oudh Land Revenue Act were passed on the same day and refer to each other it is permissible to refer to the latter Act * * * in order to ascertain the meaning of the word 'Mahal' in the Oudh Laws Act.”

Then he refers to the case of *Munna Lal v. Maulvi Sayed Muhammed Ismail*, L.R. 31, I.A. 212, and proceeds as follows :—

“Chapter V. of the Revenue Act of 1876 shews that the word 'Mahal' means any parcel or parcels of land which have been separately assessed to or are held under a separate engagement for the revenue and for which a separate record of rights has been prepared, and this is the sense in which the word has been used by Revenue and Judicial Officers since the first Regular Settlement of the Province. See Thomason's Directions to Revenue Officers which was the Guide Book of officers engaged in that settlement * * * Each Mauza or village is as a general rule a separate Mahal, but a Mahal may consist of two or more Mauzas or parts of Mauzas, or only a portion of one Mauza. It is clear that the villages assigned to Uman Parshad did not form a separate Mahal in the ordinary sense. The Kabuliats of the Taluqa in which they are included, a copy of which is on the record, shews that each village in the Taluqa was separately assessed to revenue, and that the Taluqdar entered into one engagement for the payment of the revenue on all the villages. The whole Taluqa is, therefore, what is

called in the Act, a Taluqdari Mahal, consisting of a large number of villages, each of which is separately assessed to revenue and may be regarded as an inferior Mahal (see Section 100a) of the Revenue Act of 1876. The plaintiff is certainly not a co-sharer in the Taluqdari Mahal, for the Taluqdar has no co-sharer. Nor, as I have already pointed out, is the plaintiff a co-sharer in any of the inferior Mahals just referred to of which the Taluqa is made up."

Their Lordships think that the meaning which Mr. Chamier has attributed to the term 'Mahal' is the proper meaning of the word in the Oudh Laws Act, 1876, and that although Gajadhar and Ganesh may have been jointly liable to the Taluqdar for the Government revenue plus malikana, as the rent of the villages and pattis assigned to Bisheshar and Uman under the compromise of 1864, Gajadhar and Ganesh were not at the date of the sale to Harrihar co-sharers in any subdivision of the tenure in which the property in question was comprised or in the whole Mahal.

Their Lordships will therefore humbly advise His Majesty that this Appeal ought to be dismissed.

The Appellant will pay the costs of the Appeal.

In the Privy Council.

THAKURAIN SHEORAJ KUNWAR

o.

**THAKUR HARRIHAR BAKHSH SINGH
AND ANOTHER.**

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