Privy Council Appeal No. 2 *of* 1933.
Patna Appeal No. 6 *of* 1931.

Kumar Kamakhya Narain Singh - - - - - - *Appellant*

v.

Abhiman Singh and others - - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND JULY, 1934.

Present at the Hearing:

LORD TOMLIN.
LORD RUSSELL OF KILLOWEN.
LORD MACMILLAN.
SIR LANCELOT SANDERSON.
SIR SHADI LAL.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by the plaintiff in the suit, a minor appearing through the Court of Wards, from a decree of the High Court of Judicature at Patna dated the 19th of November, 1930, which reversed a decree of the Additional Subordinate Judge of Hazaribagh dated the 23rd of June, 1928, and dismissed the plaintiff's suit.

The suit was for a declaration that a village called Ghutibar became liable to resumption on the cessation of certain services, viz., the cessation of reciting one chapter of the holy book of Srimadbhagwat before the God Saligram from the month of April, 1920 A.D., and that thereafter the defendants had no right to remain in possession of the said village in view of the rights of the plaintiff; for a decree for khas possession of the said village; for mesne profits and for any other relief to which the plaintiff might be found entitled.

Defendants 1 to 8 filed a written statement denying the discontinuance of the worship, and alleging that they were not in possession of the village and stating that they had no objection to the plaintiff taking possession of the village.

Defendants 9, 12 and 13 filed a joint written statement, in which it was alleged amongst other matters that the grant, to which reference will presently be made, was burdened with the service of reciting Bhagwat, but that the said reciting was not a condition of the grant and that subsequently rents were imposed in lieu of the recitation of Bhagwat.

It was further alleged that the said reciting had not been discontinued.

Defendants 10 and 11 filed a separate written statement which alleged that the reciting of the Gita (presumably meaning the Bhagwat) was not a condition of the said grant, that the descendants of the grantees were still daily reciting the Gita, and that the survey record showed that the tenure was not resumable.

Defendants 9, 12 and 13 contested the suit, the guardian *ad litem* of defendents 10, 11 and 14 watched the trial; the defendant No. 15 did not appear.

The Subordinate Judge made a decree in favour of the plaintiff for recovery of possession of the said village and made a declaration that the plaintiff was entitled to recover mesne profits from the defendants 9 to 15 for the period mentioned in the decree with directions as to the ascertainment of the said mesne profits. He ordered that the plaintiff's costs should be paid by all the defendants.

The defendants 9 to 13 appealed to the High Court, which allowed the appeal and dismissed the suit.

From this decree of the High Court the plaintiff has appealed to His Majesty in Council. None of the defendants appeared at the hearing of the appeal.

The material facts are as follows :—

On the 16th of November, 1852, the Maharaja Sambhu Nath Singh granted a sanad in respect of the village Ghuthiwari (called Ghutibar in the plaint) to Guru Sri Raghavendra. The plaintiff is the successor of the above-mentioned Maharaja and the defendants 1 to 8 are the successors of the above-mentioned Guru Raghavendra. The other defendants were joined on the allegation that they were transferees from the defendants 1 to 8 or their predecessors. The terms of the sanad are as follows :—

" Sri Bhagwat—Sri Saligram.

" Dated the 5th Katik Sudi Sambat, 1909.

" Kaulkarar patta granted by the most powerful and high in dignity Maharaja Sri Sri Sambhu Nath Singh Bahadur (to the effect following) :—

" Whereas one village Ghuthiwari in paragana Rampur, has been granted by me as baiswan (jagir) to Guru Sri Raghavendra for reciting daily one chapter of (Sri Bhagwat) before (Sri Saligram). He and his sons and grandsons shall make recitation (of the same) and enjoy (the proceeds of) the village. The village includes jup, kup (wells), boundary limits, trees and fisheries, etc. Therefore it has been (granted) before me the hazur and Bakhshi Jainandan Das, Bakhshi Gopal Das, Bakhshi Bhawani Ram Mahta (torn) Das and Bakhshi Bhagwan Das.

" (Sd.) Bakhshi Jaikishun Das at the Ichak Kachahri."

On the 3rd June, 1856, Raghavendra executed a kabulyat in favour of the Maharaja Sambhu Nath Singh in respect of the said village. The terms of the kabulyat are as follows :—

" Maharaja Sri Sri Shambhu Nath Singh Bahadur.

" I am Raghavendra Guru, resident of Gurubara, pargana Chai, Ilaka Hazaribagh.

" I have been granted by the hazur (Maharaja Sri Sri Shambhu Nath Singh Bahadur) mauza Ghuthiwari, one village in pargana Rampur, as baiswan in lieu of services, and I have to pay for the same Rs. 12-15-0 in Company's coin in cash I do hereby declare, and give out in writing that I shall without objection pay off the same according to the instalments year after year at the kachahri of (Maharaja Sri Sri Shambhu Nath Singh Bahahdur).

" *Details of Instalments.*

" Asin, Kartik, Aghan, Pus, Magh, Phagun, Chait, Baisakh.

" I shall pay off the money according to the above instalments. In case of default (in payment) of the instalments, I shall pay the money with interest thereon. If the rent falls into arrear or I be removed from service, then I shall give up possession of the land (village). I have therefore of my own accord executed this kabulyat at the kachahri of—so that it may be of use when required. Dated the 1st Jeth Sudi Sambat, 1913.

" (Sd.) Chaudhari Jagu Ram at the Ichak kachahri.

" Executed this kabulyat which is correct.

" (Sd.) Raghavendra Guru."

In the survey khewat, which was stated to have been made in A.D. 1912, the village is entered as not resumable : the yearly rent is entered as Rs. 12-15-0 and the following appears in the remarks column :—

" By virtue of unregistered (sada) sanad dated 5th Kartik Sudi, 1909, Sambat granted by Raja Sambhunath Singh as to Ragho Ind. Guru."

By reason of this entry in the survey record the presumption arises that the particulars therein recorded were right and that the jagir granted by the sanad to Raghavendra was not resumable. But such presumption may be rebutted, and the first question is whether the plaintiff, on whom the onus rests, has succeeded in rebutting the above-mentioned presumption.

Before considering this question there is another document, to which reference should be made. It appears that on the 11th March, 1889, Govindra Indar Guru and Lakhav Indar Guru, sons of Raghavendra Guru executed a mukarrari lease in respect of the said village in favour of Gannu Singh and another, who were the ancestors of the defendants Nos. 9 to 15, at a fixed annual rental of Rs. 145. Reference therein was made to the fact that Rs. 12-12-0 was payable by the lessors to the Ramgarh estate. This sum was obviously a mistake for Rs. 12-15-0.

It was alleged that some of the lessee defendants purchased the reversion in A.D. 1912.

There was an issue at the trial as to whether the above-mentioned service had been discontinued and when.

Upon this issue the Subordinate Judge accepted the evidence given on behalf of the plaintiff and held that the service, on which the jagir in suit was held, had been discontinued since May, 1919, and that finding of fact must be assumed as correct for the purpose of this appeal.

Both the Courts in India accepted the above-mentioned sanad and kabulyat as genuine documents and as admissible in evidence, and the question whether the plaintiff has succeeded in rebutting the presumption created by the entry in the survey khewat, and proving that the jagir granted by the sanad was resumable really depends upon the true construction of these two documents, for there was no verbal evidence of any materiality on this question.

For the present purpose the two documents must be read together. Although the sanad was granted in 1852, and the kabulyat was executed in 1856, it is clear that both of them relate to the conditions on which the village was held by Raghavendra.

In the sanad there is no reference to any rent, and the grant was made to the grantee for the purpose of ensuring that the grantee, his sons and grandsons should make the recitation therein prescribed daily. The question is whether this was a grant burdened with the above-mentioned service or whether the grant was conditional upon the service being performed.

It is recited in the kabulyat that the jagir in the village had been granted by the Maharaja in lieu of services and that the grantee had to pay the rent therein mentioned according to the instalments.

The terms of the kabulyat point to the inference that the rental had been imposed after the grant of the sanad had been made. It was therein provided that if the rent fell into arrear or the grantee be removed from service he would give up possession of the village. This provision shows conclusively that in some material particulars the entry in the survey khewat is not correct, for although the entry refers to the sum of Rs. 12-15-0 as the yearly rent, there is no reference to the provision that the grantee was bound to give up possession of the village in the event of the rent falling into arrear.

It follows therefore that the statement in the entry in the survey khewat that the village was not resumable was incorrect.

Further, although the entry in the survey khewat mentions the sanad of the 16th of November, 1852, there is no reference to the services to be rendered by the grantee and there is no reference to the terms of the kabulyat at all.

Their Lordships therefore are of opinion that the presumption arising from the entry in the survey khewat that the jagir in the village was not resumable has been rebutted.

It remains to be considered what is the true construction of the two above-mentioned documents. The expression in the kabulyat "or I be removed from service" must refer to the service specified in the sanad, namely, the reciting of the chapter

from Bhagwat daily. The terms of the kabulyat show that the parties thereto intended that, although a rent was to be paid, the performance of the above-mentioned service was to be continued as a condition of the grant. But it was also provided that the grantee might be "removed from service." This is an ambiguous phrase but it must at all events mean that the parties contemplated that the performance of the service might cease either at the instance of the grantor or otherwise, in which case possession of the village was to be given up to the grantor.

Their Lordships are of opinion that the true construction of the two above-mentioned documents is that the performance of the said service was a condition of the grant, and that inasmuch as the said service was discontinued in May, 1919, the plaintiff became entitled upon such discontinuance to obtain possession of the said village.

The defendants, who contested the suit and based their claim upon the mukarrari lease of the 11th March, 1889, and their alleged subsequent purchase of the reversion, can be in no better position than their lessors, and the plaintiff is entitled to a decree against them.

For these reasons the appeal must be allowed, the decree of the High Court set aside, and the decree of the Subordinate Judge restored. The defendants Nos. 9, 10, 11, 12 and 13, who were the appellants in the High Court, must pay the plaintiff's costs in the High Court and of this appeal.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

KUMAR KAMAKHYA NARAIN SINGH

v.

ABHIMAN SINGH AND OTHERS.

DELIVERED BY SIR LANCELOT SANDERSON.

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