

Madhorao Narayanrao Ghatate - - - - - *Appellant*

*v.*

Ramkuwarsha and Others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT NAGPUR

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL DELIVERED THE 13TH OCTOBER, 1942

*Present at the Hearing :*

LORD RUSSELL OF KILLOWEN

LORD MACMILLAN

LORD ROMER

SIR GEORGE RANKIN

SIR MADHAVAN NAIR

[*Delivered by SIR GEORGE RANKIN*]

The first defendant appeals from a decree of the High Court of Nagpur dated the 22nd March, 1938, which reversed a decree dated 30th July, 1934, of the Additional District Judge of Bhandara in the Central Provinces. The suit which was brought in 1931 has reference to the zemindari of Dalli, which is situate in the tahsil of Sakoli in the Bhandara district. By it the plaintiff Ramkuwarsha sought to establish that this zemindari is an impartible estate which belongs solely to himself and of which he is in exclusive possession. The trial Court dismissed the suit but the High Court on appeal decreed it, holding that the zemindari is one that vests in the chosen head of the family for the time being.

The head of the family recorded in the revenue records as zemindar and lambardar from time to time since 1866 may be here set out:

1866	Duragsha.
1866-1911	Dewajee.
1911-1925	Sakharam.
1925-	Ramkuwarsha, <i>plaintiff</i> .

Dewajee was an adopted son; he is described as adopted in Duragsha's lifetime. Sakharam was the eldest son of Dewajee and the plaintiff Ramkuwarsha is the eldest son of Sakharam.

The occasion for the suit and the need for certain consequential relief claimed thereby arose out of the fact that on 16th June, 1910—twenty-one years before—nine persons claiming in accordance with the revenue records to be co-sharers in the zemindari to the extent of eleven annas and three pies had executed a deed mortgaging their interests in favour of the appellant's father. Among these mortgagors were the second and third defendants Tukaram and Gangsha, sons of one Chainsha, a first cousin of Duragsha. In 1916 and 1917 Sakharam as zemindar had bought up the interests of the other seven mortgagors excepting their *sir* lands. He had also in 1917 acquired six pies out of the share of Tukaram and Gangsha at a sale in execution of a decree which had been obtained against them by a stranger to the family. In 1925 the appellant had sued to enforce the mortgage of 1910 and had obtained a final decree for sale on 12th November, 1929. On 17th June, 1931, when the present suit was filed, this decree was in process of execution by the Deputy Commissioner under

the Central Provinces Land Alienation Act (C.P. Act II of 1916). The present plaintiff Ramkuwarsha had been impleaded by the appellant in the mortgage suit and had in that suit endeavoured to dispute the title of the mortgagors; but this procedure was held to be incompetent and he was driven to a suit of his own. The contest now is between the appellant who as the first defendant stands upon his right as mortgagee and the plaintiff who asserts that the sole interest in the mortgaged subjects is in himself, the mortgagors having had no title notwithstanding that they or their predecessors have been recorded in the revenue papers as co-sharers since 1866.

An argument has been advanced for the appellant that section 100 of the Central Provinces Land Revenue Act (C.P. Act II of 1917) bars the plaintiff's claim, but their Lordships do not think that this section has been shown to apply to the facts of this case and they do not further refer to it. The appellant relies also on the presumption of correctness which subsection 3 of section 80 of the same Act attaches to the revenue records. Apart from those provisions it would not appear that in point of law there is anything to prevent the plaintiff from proving if he can that the records are erroneous even upon a fundamental matter. But, to be effective for this purpose, since many of the entries challenged have come upon the record by consent of the zemindar of the day and at the instance of members of the family the most cogent evidence would seem to be required. Their Lordships will review these entries and then enquire as to the sufficiency of the evidence which is put forward to disprove them.

*In Duragsha's time:* In 1863 there began certain proceedings leading up to the first settlement, sometimes called the thirty years settlement, which was completed by Mr. A. J. Lawrence and introduced from 1866-7. Duragsha had been zemindar since about 1847. On 5th September, 1863, the Settlement Superintendent issued a notice calling upon anyone who claimed proprietary right along with Duragsha, then in possession, to file his claim. Duragsha's general agent (mukhtyar-am) Yeshwantrao made a statement on 4th November, 1863. He had no documents but gave the traditional version of the history, or the historical claims, of the zemindari and its previous holders. He spoke of Duragsha having co-sharers, of his cousins Chainsha and Dansha living with him, as well as of other co-sharers who maintained themselves by cultivating lands and were given cash, e.g., at the time of marriage. He referred to Duragsha and his predecessors as having the management (*vahivat*) and being solely entitled to the cash income. A pedigree table dated 4th November, 1863, was filed which stated as to each relative whether he was joint or separate and if separate what lands were held by him in lieu of his share. This is Exhibit P3 and is found by the trial Judge to be more correct than the pedigree exhibited to the plaintiff which has been manipulated to suit the plaintiff's original case that the zemindari always descended to the eldest son. On the 7th November, 1863, two other witnesses spoke of relatives of Duragsha as being "joint" with him, and on 13th November the Superintendent decided that further enquiry was necessary. Yeshwantrao on 21st December, 1863, said that Duragsha, Chainsha and Dansha were all joint. In September, 1865, Duragsha himself gave evidence. Asked about his co-sharers he said "we and they are joint" and he mentioned seven persons including himself as such co-sharers, viz., Mohan, Doma, Chainsha, Dansha, Alam, Bapu and himself the lambardar. The rest of the family he said were separate, and had been so for sixty years, cultivating separate land given to them free for their maintenance. He called three of such members to say so, viz., Lalsha, Karnu and Badu. On 12th January, 1866, the Settlement Superintendent made an order in which he set out the names of the persons in each of two classes: (1) the class of those who were joint with Duragsha in the zemindari lands with the amount of their share; (2) the class of those who were separate and the amount and location of land which they held free.

The first class—the persons who held the *taluqa* of Dalli proper and their shares in annas and pies—were Duragsha and relations of his as follows: Mohan (cousin) 3-3, Chainsha and Dansha (cousins) 3-2, Bapu

(uncle) 1-7, Duragsha himself 1-7, Alam (uncle) 3-2, Lalu and Ratan (cousin's sons) 3-3.

Duragsha is described as zemindar and lambardar but to him is attributed a share of only 1 anna 7 pies, and it is stated that these persons recorded as joint will at the time of partition receive their respective shares. On 16th February, 1866, Duragsha as zemindar executed a *wajib-ul-arz* for the *taluka* of Dalli comprising seventeen villages. This document set out the co-sharers as above saying "we all live at one place and do the *vahivat*. The partition of the shares has not taken place. We shall divide the shares when we separate."

*In Dewajee's time:* Duragsha died in December, 1866, and in the consequent mutation proceedings Dewajee, a son by adoption, was recorded by consent of all the heirs and co-sharers as the new zemindar. As Dewajee was a minor Chainsha was made manager. Chainsha died in 1890, and in the mutation proceedings Dewajee gave evidence saying that Chainsha had a share of 1 anna 7 pies and that it should be recorded in the names of his three sons: this was done. In 1893 it was found that a number of the persons recorded as co-sharers had long been dead and Dewajee gave evidence about it on 28th July before the tahsildar. The co-sharers at that time, and their shares in annas and pies, were, he said, as follows: Sitaram 1-7, Mohan 3-3, Kawdu 1-7, Bodi 1-7, Ramsingh 1-8, Anantram 3-3, and himself Dewajee 1-7. In this way, by order of 25th September, 1893, the record was brought up to date upon the deaths of Dansha, Ratan and Alamsa, but certain of those named by Dewajee were not found to be solely entitled to the shares of the deceased ancestor and other names were added for a proportional interest. Again when Chainsha's son Sitaram died in 1899 his brothers Tukaram and Gangsha (defendants 2 and 3) were recorded as possessed of the share of 1 anna 7 pies which had belonged to all three.

In 1899-1900 the second settlement was made. It is sometimes known as Mr. Napier's settlement as this officer completed it and wrote the Report. The *wajib-ul-arz* proceeded on the same lines, making more than one reference to co-sharers in the zemindari. One clause said that no permanent transfer made without the consent of all co-sharers is valid save to the extent of the transferor's interest: this is said by the High Court to be common form. Another clause stated a custom for the lambardar to make provision for the maintenance of the co-sharers in the zemindari. This is said to have been a special clause—not common form. In 1907 mutation was made in respect of the share of Ratan's son Bagu.

*In Sakharam's time:* In 1911 Sakharam became zemindar: his purchases in 1916 and 1917 of the interests of co-sharers have already been mentioned and his various applications for mutation in respect of them are in evidence. In 1919-20 the third settlement—the "Gordon bandobust"—took place. The *wajib-ul-arz* on this occasion contained a clause stating the arrangement as to distribution of profits among the "co-sharers." It mentions seven co-sharers in addition to Sakharam the lambardar, viz., his brother Ramlal and nephew Puran, the three grandsons of Dansha (Motiram, Tulsiram and Tikaram), and the two sons of Chainsha (Tukaram and Gangsha). After Sakharam's purchases the names of his vendors and their descendants would of course no longer appear. The co-sharers are said to cultivate lands in lieu of the profits; the money profit being Sakharam's though he gives money to the others for necessary purposes like marriage expenses, the price of bullocks, etc., and to his near relations at other times. It may readily be understood that Sakharam should desire to buy up interests recorded as belonging to co-sharers who had by mortgaging their shares or incurring debt made it probable that the zemindari would in part go out of the family, but in his time as zemindar (1911-1925) he never once seems to have challenged the co-sharers' right or its character as recorded.

*In the plaintiff's time:* When in 1925 the plaintiff Ramkuwarsha succeeded his father his statement made on 29th June, 1925, to obtain mutation was:

"My father Sakharam Bapu was the recorded zemindar of mauza Dalli. I do not exactly know the share he held. There are some co-sharers in the zemindari also. Sakharam Bapu died on



22nd March, 1925, leaving behind three sons, Ramkuwar Babu, Chhotelal and Karan. I am the eldest. We are all joint and are in joint possession of Sakharam Babu's share. Pray for mutation separate in the names of each brother according to proportion of share of each."

Now the plaintiff's case is that in the zemindari of Dalli no member of the family except the zemindar had anything more than a right of maintenance. To displace the long series of statements to the contrary which had been officially recorded for purposes of settlement and the effect of transactions entered into by a considerable number of persons extending over many years, he first produces evidence to prove that throughout the time when these statements were being made down to the present time the persons recorded as co-sharers and as joint with the zemindar have not in fact been treated as co-sharers. He contends that this evidence of the family's actual practice disproves the entries—disproves among other statements his own very clear statement of 29th June 1925 just cited. The evidence is the oral evidence of himself and eight witnesses. It is directed to prove that no co-sharer has asked for partition or for an account or share of profits from the zemindar; that the co-sharers have at times received money from him; that they have land of the zemindari in their cultivation by which they support themselves; and that they take bamboos and other jungle produce on favourable terms as to license fees. The plaintiff produces no books of account—not even the books of his own time or the note books in which he says that his payments to other members of the family were recorded. The oral evidence includes statements by some witnesses that in 1911 and 1925 when the zemindar died his successor was installed upon a gadi. Also that at Dasra time ryots (according to some) malguzars (according to others) pay him a visit and present him with a rupee as nazarana.

The learned judge who decided the case in the trial court did not himself see most of the witnesses but upon a careful examination of the evidence concluded that the zemindari was not impartible and that Duragsha and his successors did not hold it adversely to the co-sharers who had mortgaged their shares in 1910. He states that none of the plaintiff's witnesses knew the facts prior to the time of Dewajee who died in 1911; that they have no personal knowledge whether the co-sharers take profits or have any interest; that P.W. 8 is the only professed eye-witness to Sakharam's installation ceremony in 1911 and P.W. 9 in like manner the only witness who claims to have been at the plaintiff's ceremony in 1925. He points out that in the wajib-ul-arz of 1899 the zemindar is stated to be entitled to Rs. 3 for Dasra expenses from the inferior proprietors and thekadars. The High Court who proceed mainly upon other grounds say that it is exceedingly difficult to explain many acts of management after the settlement of 1865 upon the learned judge's view.

Their Lordships reviewing the evidence as to the practice of the family so as to disentangle it from other matters, think that it has no force whatever to disprove the statements in the revenue records. It amounts to little more than is already to be found there and what little it adds to these statements is not reliable. The statements of Duragsha's and Sakharam's time though separated by a long interval consist well enough with what is proved as to the mode of enjoyment of the estate since 1863. As a method of joint enjoyment the zemindar who pays revenue and all expenses after having given land to his co-sharers to cultivate may very well "keep the remaining profit with himself" while they alone take the produce of their lands in lieu of profits. This is the effect of the wajib-ul-arz of 1919-20 and represents the notions of the zemindar and of those near relations who were regarded by him as his co-sharers and as joint with him in contrast with others who had separated years before. What facts and figures have been proved to show that this account of the matter is unacceptable? In the evidence there are no details whatsoever as to the profits of the cultivated lands on the one hand or the forest income on the other hand, or the amount of cash received or expended by the zemindar and the other

members. The plaintiff's statement that "the yearly profit of the zemindari is about seven to eight thousand rupees" is neither clear in meaning nor verified in detail.

The alleged ceremonies of installation are not proved but the statements made by one zemindar after another for mutation of his name at the time of his succession deprive of real significance any ceremony of installation that may have taken place. It could not be a challenge to the rights of the co-sharers in the circumstances of this case, and if it were, the mutation proceedings would show that the result of the challenge had been disastrous.

A further argument against the truth of the recorded entries has been given great weight in the judgment of the High Court. Duragsha's father Buchhu succeeded his elder brother Kala: their father Chatru was one of five brothers. He was zemindar, it would seem, about the beginning of the nineteenth century—that is during the Mahratta rule of the Bhonslas which did not come to an end till 1854 though there had been at an earlier stage a period of supervision by the British Resident. It is said that the extent of the zemindari is about 52 square miles and that a partition was made between Chatru and his brothers whereby the separate lands given to them if added up amounted only to 67½ acres. It is admitted that the value of the zemindari as assessed to revenue was small and nothing whatever is known of the occasion for or the circumstances of the partition, the part if any played in connection therewith by the ruling power, or the chance of a powerful zemindar enforcing an unjust bargain. But it is said that this partition cannot be made to conform to "the Hindu idea of partition between co-parceners." The fact of this partition is relied on as a reason for rejecting the many recorded statements of zemindars since 1863 and affirming impartibility. It is not often that a partition is adduced as evidence of impartibility but the disparity in the division it is said looks more as if the lands given to the co-sharers were in lieu of mere rights to maintenance than in lieu of rights as undivided owners. With great respect to the learned judges their Lordships cannot agree that this is more than speculation—reasonable enough, it may be, though precarious; but wholly insufficient to dislodge the evidence of the recorded statements of the members of the family since 1863. Nor do their Lordships see any greater strength in the comment made upon the *wajib-ul-arz* of Mr. Napier's settlement, 1899-1900, that it records a custom for the *lambardar* to make due provision for the maintenance of the co-sharers of the zemindari. "Is this," it is asked, "consistent with the idea of co-sharers in the Hindu sense? Does it call for a custom?" But dealing with this family the *wajib-ul-arz* might well state the practice expressly as part of the customs of the estate. It would in the ordinary course take special care to state the rights of junior members. Considering the terms of the revenue records which precede and follow this document of 1900 it cannot possibly be regarded as meaning that the so-called co-sharers are only maintenance holders: rather it is a statement of the method of enjoyment in use among persons jointly entitled.

So far their Lordships have been careful to make no assumptions as to the personal law of this Rajgond family. If the zemindari was originally granted or was re-granted in 1751 or 1772 the terms of the grant if proved might doubtless prevail even over admissions. But no evidence of the terms of the grant has been put forward. Again, if there were a system or body of law received and acknowledged by Gonds in general the provisions of such law if proved might have some effect to cast doubt upon the truth of the recorded statements. They could be given effect, if proved, as a matter of justice equity and good conscience under section 5 of the Central Provinces Laws Act (XX of 1875). But it is not pretended that any such provisions have been proved nor do the learned Judges of the High Court profess to know of them. Again, it may be that the right of other members as joint owners with the zemindar, if it exists, is due to a reception or adoption by this Rajgond family of Hindu law, or of certain rules of that law, or perhaps only of certain Hindu usages or notions. It is not for the appellant to prove that Hindu law governs them or to explain why and how they have since 1863 been claiming to hold jointly and getting their claim acknowledged by zemindar after zemindar. The

appellant may show if he can that Hindu law applies if this consideration is required in order to save the recorded statements from discredit. But it is first for the plaintiff to disprove these statements and in this he has altogether failed. The history of this estate and the conduct and statements of the members of the family—of which evidence exists in plenty and of an authoritative character—form direct and sufficient means of ascertaining the right of the members. Whether they are governed partly or wholly by Hindu law or any other system is a wider problem and it may be one of special difficulty. Elements of Hindu practice thought or feeling may well be discernible among Rajgonds—nothing could be less surprising; but the strength of the appellant's position does not lie in reasoning *a priori* upon assumptions of Hindu law. The observations of the High Court upon this subject are doubtless well-informed and are entitled to respect but they do not in their Lordships' judgment give direct assistance in the decision of the present case.

There remains however a line of reasoning from the history of this zemindari which was dealt with somewhat summarily in the evidence and in the judgments, doubtless because it was considered so elaborately in the Amgaon case: *Martand Rao v. Malhar Rao* (1927) 55 I.A. 45. It is based upon historical materials to be collected from official reports such as those made by settlement officers like Mr. Lawrence in 1867 and Mr. Napier in 1899, by Sir Richard Jenkins in 1827 when reporting to the Government of India upon the territories of the Raja of Nagpur; and Sir Richard Temple's report in 1863 on the zemindaries and other petty chieftancies of the Central Provinces. The zemindari of Dalli, though it may be much older than Amgaon, is like that of Amgaon one of the Wainganga zemindaries. These reports narrate in general language that the Wainganga zemindaries were granted by the Mahrattas as rewards for service or on the condition of furnishing armed forces for police purposes. They also show that only one person at a time was the zemindar. On this basis it is contended that from the nature of the zemindaries they cannot be partible estates, and that in each case a family custom as well as a territorial custom of impartibility must be held established. The judgment of the learned trial Judge upon this part of the case appears to their Lordships to be clear and well-founded. The difficulty about this argument for the plaintiff is that it proves too much since it must now be admitted that of some 30 zemindaries in this district a number have been partitioned. A very full inquiry into the history of several of the Wainganga zemindaries was made in the Amgaon case and the Board agreed with the District Judge's findings that the grant of a zemindari by the Bhonsla Raj did not always carry with it the condition of impartibility, and that there was no territorial custom by which zemindaries in this district were impartible. They also negatived the notion that a zemindari was a Raj or otherwise was impartible by its inherent nature. In the judgment of the District Judge in that case it is very forcibly pointed out with illustrations that on the death of a zemindar in the time of Mahratta rule the succession was apt to depend on the will of the ruler and not on the personal law of the grantee. In that case also many examples were given to show that the succession did not always go to the eldest son—a proposition which has been shown to be true in the present case notwithstanding the plaintiff's attempt to distort the pedigree table. The High Court—with some encouragement it is true from the trial judge—has concluded contrary to the plaintiff's case that the succession to the Dalli zemindari is not by primogeniture as the plaintiff alleged but by a custom which vests the estate "in the chosen head of the family for the time being"—meaning thereby the member of the family who is chosen by the others. There is in their Lordships' view no proof of this and it seems more probable as a speculation that any choice before 1854 was by the Mahratta ruler.

"Another point clearly discernible is this—that notwithstanding their official authority and their administrative influence, they were still dependent and subject to the Government of the day. In most instances this dependence was inherent in the tenure from the first, and in all it was real under the Mahratta Government." (Sir R. Temple's Report 1863, para. 18.)



It may be noticed, too, that the plaint version of the terms of the original grant while stating—untruly as it would now appear from the pedigree—that succession was limited to the senior member of the senior branch, states also that “succession was dependent on the pleasure of the paramount power.”

It may be that eighty years ago, soon after Mahratta rule had come to an end, more was known by members of this family than is known now as to the principles which had governed succession and the ideas of Rajgonds or of Gonds in general upon the subject. On the other hand it would not be altogether unintelligible if in 1863 some difficulty was experienced in stating any rule of succession as a certain and invariable usage of the family. But the consensus of opinion among them is clear to the effect that the junior members were not maintenance holders merely, but entitled to fractional interests in the ownership. No new light has been thrown upon the matter by the evidence adduced in this case by the plaintiff. He has proved no territorial custom and cannot maintain that impartibility is a necessary incident of the zemindari estate. The only question to be seriously entertained is whether he has proved a family usage providing a special and certain rule according to which the estate devolved upon himself exclusively. Their Lordships think that his belated attempt to displace the weighty evidence of the revenue records has failed and that his suit was rightly dismissed by the trial Court's decree of 30th July 1934.

They will humbly advise His Majesty that this appeal should be allowed the decree of the High Court dated 22nd March 1938 set aside and the decree of the trial Court restored. The plaintiff (respondent no. 1) will pay the appellant's costs throughout.

In the Privy Council

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MADHORA0 NARAYANRAO GHATATE

v.

RAMKUWARSHA AND OTHERS

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DELIVERED BY SIR GEORGE RANKIN