

(1879) 12 AHC CK 0002

Allahabad High Court

Case No: None

Jagan Nath Panday

APPELLANT

Vs

Prag Singh

RESPONDENT

Date of Decision: Dec. 5, 1879

Citation: (1880) ILR (All) 545

Hon'ble Judges: Robert Stuart, C.J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Judgement

Robert Stuart, C.J.

I am quite clear that the Civil Court could entertain this suit, and on this point I agree with Mr. Justice Pearson that the contention to the contrary is so unreasonable as to be at once rejected. It could not for a moment be argued that the plaintiff's claim comes within the express words either of Section 95, Act XVIII of 1873, or of Section 79, Act XIX of 1873, nor could it be shown to do so within the meaning of these two sections, because under these Acts an application for resumption of a grant of this nature might have been preferred to the Revenue Court by the former owner, Rajah Ramadhin Singh.

2. As to the subject of the suit itself, I am very much of Mr. Justice Spankie's opinion that the Regulations and Acts mentioned in the referring order do not apply to it, or at least are not necessary to its disposal, for on the facts found by the Judge the plaintiff has in special appeal evidently no case whatever. But, assuming that the Regulations and Acts referred to apply, I am clearly of opinion that they must be read so as to render this grant null and void, I must, however, observe that, for the purposes of such a case as this, the difference between the language of the two old Regulations referred to and that to be found in Acts XVIII and XIX of 1873 is in my opinion more apparent than real. Section 10, Regulation XIX of 1793, which is re-enacted by Section 10, Regulation XLI of 1795, enacts and declares that "all grants for holding land exempt from the payment of revenue, whether exceeding or under fifty bighas, that have been made since the beginning of the Fasli year 1196, or that

may be hereafter made, by any other authority than that of the Governor-General in Council, are null and void," and it then goes on to make the following important and general declaration that "no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it": and further on the Regulation provides that, "Every officer of Government appointed to make collections from any estate or taluq held khas is authorized and required to collect the rents from such lands at the rates of the pargana, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or taluq in which it may be situate, without making a previous application to a Court of Judicature, or sending previous or subsequent notice of such dispossession or annexation to any officer of Government." It appears to me that these enactments destroy every possible right and interest which the grantee might have claimed in the subject of the grant, including not only land exempt from the payment of revenue but land out of which rents might be collected, and that therefore Acts XVIII and XIX of 1873 merely re-enact what had previously been the law, by necessary construction, under the Regulations referred to. In my view of the case, therefore, the plaintiff's suit and also the appeal to the Division Bench should be dismissed.

Pearson, J.

3. On the first of the two questions referred to the Full Bench, my opinion is that the grant claimed in this suit is null and void. The grant was not merely a grant of the proprietary right in the land, which was the subject of it, but it was intended to convey the grantee the whole yield or rent of the land undiminished by the payment of the Government revenue thereon assessed, which the grantor took upon himself to pay. There was no intention to injure or defraud the Government, but the effect of the arrangement was to shift the payment of the revenue from the land itself on to the shoulders of the grantor. I concur with the District Judge in the view that the grant was illegal under the laws cited by him and is liable to resumption. The Legislature apparently holds every bit of land to be, as it were, hypothecated for the revenue due from it, and will not allow the burden to be shifted elsewhere.

4. On the second question raised by the referring order, I am not prepared to hold that the suit is not cognizable by the Civil Court. It must be admitted that the loose language of Section 95 of Act XVIII of 1873 affords some ground for the contention that, inasmuch as an application for the resumption of the grant might have been preferred to the Revenue Court by the grantor, therefore this suit by the grantee to be maintained in possession of the grant is excluded from the cognizance of the Civil Courts; but the contention is so unreasonable that one feels bound to reject as unreasonable any construction of the language of the section which would support it.

Spankie, J.

5. The learned Judges who refer this case for the opinion of Full Bench remark that the question for consideration is whether the grant, which appears to be one of proprietary right in certain land included in the area of the revenue-paying estate, without any reservation of rent to the grantor, but which is not claimed to be exempt from payment of revenue to Government, is to be regarded as one of those grants to which Regulations XIX of 1793 and XLI of 1795 and Acts XVIII and XIX of 1873 apply. We are also asked whether the plaintiff's suit is maintainable and properly instituted in the Civil Court.

6. The terms of the Regulations are that all grants for holding land exempt from payment of revenue, whether exceeding or under fifty bighas * that have been made since the beginning of the Fasli year 1196, by any other authority than that of the Governor-General in Council, are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it. Section 30, Act XVIII of 1873, and Section 79, Act XIX of 1873, recite that "Whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December 1790, by any authority other than that of the Governor-General in Council, were declared by the Bengal Regulation XIX of 1793, Section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby enacted," etc., etc., etc. Undoubtedly, there is a difference between the Regulations and Acts. In the former the grants are spoken of as "exempt from the payment of revenue," and in the latter as "exempt from the payment of rent."

7. The learned Judges remark that before the enactment of Acts XVIII and XIX of 1873, it was a much vexed question whether the Regulations were not intended to apply only to grants of land exempt from the payment of revenue, as something different from rent, and to grants when the land has been separated from the revenue paying area, and therefore not to such a grant as the one set up in this case. They refer to the decision of the Calcutta High Court in Muhammad Akil v. Asad-un-nisa Bibee 9 W.R. 1, and to a decision of the Sudder Dewany Adawlat, North-Western Provinces, Rajah Dilsukh Rai v. Kurban Ali S.D.A. N.W.P. 1865 p. 333, and to one of this Court in Ahmad-ullah v. Mithoo Lall 1868 H.C.R. N.W.P. 186. In the first cited case it was held that a grant by a zamindar for valuable consideration of a piece of land to be held without payment of rent is valid as against the heir of the grantor or a purchaser from him by private sale of the zamindari, and that u/s 10, Regulation XIX of 1873, such heir or purchaser is not entitled to resume the land. The Calcutta High Court's ruling has all the weight of authority, and the decision of the Chief Justice, Sir Barnes Peacock, appears to me to be unanswerable.

8. It must, however, be admitted that Section 30 of Act XVIII of 1873, and the corresponding section of Act XIX of 1873, have adopted the view taken by the Sudder Dewany Adawlat of these Provinces in their decision cited above, and have declared that the former Regulations referred to rent and not revenue, and therefore, assuming that the Legislature is authorized to interpret Section 10, Regulation XIX of 1873, as it pleases, we probably are bound to give effect to the law as it is laid down in these later Acts. I do not, however, think that we need consider this part of the case at greater length, for I doubt whether the Regulations or the Acts apply to the particular case before us. The appeal was one from an appellate decree, and I observe that the Judge finds as a fact that Jagan Nath Panday was never put in possession of the land: that the rents of the land in dispute were collected along with the rents of the other lands of the village by the Rajah's agent, by whom a part of the money thus collected was occasionally paid to Jagan Nath Panday. It would also seem that the revenue of the land was paid by the Rajah to Government (this indeed is shown by the proceedings before the Deputy Collector), and the rent of the land in dispute was collected as usual by his agent, and therefore all that the plaintiff acquired by the transaction was a portion of the share of the produce of the land which would otherwise have been retained by the Rajah himself. It was as if a portion of the zamindar's own income was reserved as a charitable allowance for Jagan Nath Panday. It was not even assigned by any written instrument. If this was the position, I do not consider that there was any grant within the terms of Regulation XIX of 1793 as extended to Benares by Regulation XLI of 1795, and I, therefore, do not think that those Regulations or the Acts of 1873 would apply to the case. The suit appears to have been one with which a Civil Court had jurisdiction to deal.

Oldfield, J.

8. Section 30, Act XVIII of 1873, and Section 79, Act XIX of 1873, declare grants of land exempt from the payment of rent to be null and void and resumable, with the exception of the rent-free grants especially reserved from the application of Section 79 by the provisions of Sections 80, 81, 82, Act XIX of 1873. The plaintiff, therefore, cannot succeed in his suit.

*Note by the Judge.--In Section 10, Regulation XIX of 1793, whether exceeding or under one hundred bighas; but Regulation XLI of 1795 is more particularly concerned with this case.