Chaubey Mangan Lal Vs Chaubey Brahm Dutt and Another

Court: Allahabad High Court

Date of Decision: Sept. 5, 1939

Citation: AIR 1940 All 88 : (1940) 10 AWR 1

Hon'ble Judges: Bajpai, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Bajpai, J.
This is an appeal by Chaubey Mangan Lal whose claim for pre-emption has been dismissed by the learned Additional Civil

Judge of Agra. Defendant 2, Chaubey Gulzari Lal, sold certain zamindari property specified at the foot of the plaint to Chaubey Brahm Dutt,

defendant 1, and the plaintiff Chaubey Mangan Lal alleged that he was a cosharer in mauza Chandarpur where the property sold was situate and

that his name was recorded in the khewat. Defendant 1 was said to be a stranger. It is not necessary for the purposes of the present appeal to go

into the other allegations of the plaintiff or to discuss the various pleas taken in the written statement excepting one, namely that the plaintiff was not

a cosharer in mauza Chandarpur as required by the Agra Pre-emption Act and that at the most he could be called a petty proprietor of only

particular plots. For that reason the defendant vendee alleged that the plaintiff was not entitled to maintain the suit. The Court below has upheld this

contention of the defendant and has dismissed the plaintiff"s suit. In appeal before us, it is contended that the view taken by the Court below is

incorrect. Two documents are relevant for the decision of this issue. The first document is the wajib-ul-arz of the village prepared in 1285 Fasli and

printed at p. 17 of our record, and the second one is the khewat for the same year which has not been printed but a typed copy of which has been

supplied to us.

2. Before we discuss the evidentiary value of these two documents, it is necessary to refer to certain provisions of the Agra Preemption Act. There

is no doubt that on the sale of a share of zamindari if any wajib-ul-arz prepared prior to the commencement of the Act records a custom, contract

or declaration recognizing or declaring a right of pre-emption, then a right of pre-emption shall be deemed to exist and u/s 12 of the Act cosharers

in the mahal in which the property is situate and cosharers in the village will have the right to pre-empt. u/s 4, Clause (1) ""cosharer"" means

any person, other than a petty proprietor, entitled as proprietor to any share or part in a mahal or village whether his name is or is not recorded in

the register of proprietors,

and u/s 4, Clause (7) ""petty proprietor"" means

the proprietor of a specific plot of land in a mahal, who as such is not entitled to any interest in the joint lands of the mahal, or to take part in the

administration of its affairs.

3. It is thus clear that every person who is entitled as proprietor to a share or part in a mahal or village will have the right to pre-empt unless he is

only a petty proprietor and as such petty proprietor is not entitled to any interest in the joint lands of the mahal or to take part in the administration

of its affairs, his proprietary right extending only over specific plots of land in the mahal. The question that we have got to decide is whether the

plaintiff is a mere petty proprietor as held by the Court below within the meaning of Clause (7) of Sec. 4 or whether he is a cosharer within the

meaning of Clause (1) of Sec. 4. Now we come to a discussion of the two documents mentioned in an earlier portion of our judgment. The wajib-

ul-arz which is printed at page 17 of our record consists of four chapters. Ch. 1 relates to the nature of the mahal and property and customs. Ch. 2

deals with the rights of share-holders inter se on the basis of custom and agreement. Ch. 3 relates to the rights of under-proprietors and the fourth

deals with the rights of tenants in general. It is clear that the under-proprietors are relegated to Ch. 3 and their rights are mentioned in a chapter of

its own. At this stage we might mention that it is common ground that the plaintiff is the son of Genda Lal and is entered in the khewat against Serial

No. 3 under the heading of resumed muafi-holders. His proprietary interest extends over 14 bighas 8 biswas of land with a Government revenue of

Rs. 15-13-3.

4. From the wajib-ul-arz it appears that there is no joint land in which the plaintiff might be considered to have any interest. The khewat does not

speak of any shamilat land. Our attention was not drawn by learned Counsel for the appellant to any piece of evidence from which we could infer

that the plaintiff was entitled to any interest in the joint lands of the mahal. All that was argued was that he was entitled to take part in the

administration of its affairs. A reference to the wajib-ul-arz shows that in the case of the appointment of a patwari which occurs under Ch. 1 a

patwari is appointed with the consent of co-sharers (hissedaran). When we come to the custom as regards the distribution of profits we see that a

provision is made that the lambardar shall distribute the profits after payment of Government revenue and village expenses to the hissedar in

accordance with the share entered in the khewat. When we come to the custom regarding the appointment of the lambardar, we find that when the

lambardar dies the new lambardar is to be appointed with the consent of the hissedar. The translation of the wajib-ul-arz on our record is not very

accurate. At several places where the original wajib-ul-arz speaks only of hissedar in the singular the translation is cosharers in the plural. Under

Ch. 2, para. 4 we have the usages relating to the management of culturable fallow lands and of rights appertaining thereto and the provision is that

the ""management in respect of culturable fallow land is made through lambardar in consultation with the cosharer"" and the same is to be found

when we deal with the responsibilities of cosharers regarding villages expenses. Here too, it is provided that the village expenses are incurred in the

following way through the lambardar that credit is allowed by the hissedar in proportion to his share entered in the khewat. It is not necessary to

pursue this point any further. The matter is made clear beyond any doubt when we come to para. 13 of Ch. 2 where a reference is made to the

custom regarding the right of pre-emption. The provision there is that ""if any cosharer wants to dispose of his property, he should transfer it first to

the next co-sharer (hissedar sani).'''' The accurate translation would probably be the second cosharer.

5. We have dealt at some length with the wajib-ul-arz because the proprietors were really two in 1285 fasli, namely Ram Das, son of Nand

Kishore, and Mt. Kokla, wife of Mul Chand, a predeceased son of Nand Kishore. The entire wajib-ul-arz is so worded that there is a mention of

lambardar and cosharer. This shows that there were only two cosharers in the villages and the rights of only these two cosharers were being

discussed in the wajib-ul-arz and the appointment of the patwari and the lambardar also rested on that basis. It is thus evident that the above two

proprietors alone had a right in the administration of village affairs. The plaintiff''s predecessor is a resumed muafi-holder and when we come to Ch.

3 which deals with the rights of under-proprietors-the expression in the vernacular is kabizan mathat-it is said that there is no muafi land but there

are two resumed muafi holdings one of them being that of the predecessor of the present plaintiff, and there is one provision here which runs

counter to the provision in the case of proprietors. As we mentioned before a right of pre-emption is given to the hissedar sani if one cosharer

wants to dispose of his property, but in the case of resumed muafi the proprietors have got all sorts of powers of transfer. They seem to be on a

different level from a ""cosharer.

6. We have made it clear from what we have said above that the plaintiff or his predecessor had no interest in the joint lands of the mahal and we

have been endeavouring to show that the plaintiff or his predecessor were not entitled to take part in the administration of its affairs. The plaintiff

could not have any hand in the appointment of the patwari or the appointment of the lambardar, nor could he have been asked to pay the village

expenses. It is however argued strenuously that the liability to pay Government revenue was joint and that fact, according to the appellant, is

enough to take the plaintiff out of the category of such petty proprietors who are not entitled to pre-empt. It is said that in itself is taking part in the

administration of the affairs of the mahal. Our attention in this connexion is drawn to the khewat of 1285 Fasli where the Government revenue of

the resumed muafi land and of the ordinary zamindari is lumped up at the bottom and the contention is that is an important circumstance in order to

decide the crucial point whether the plaintiff has a right to take part in the administration of the affairs of the mahal.

7. Our attention has been drawn to Sheo Balak Ram Vs. Mathura Prasad and Another, and Prahlad Prasad and Another Vs. Mt. Chameli Kuar

and Others . In these two cases the plaintiff was held entitled to pre-empt, but a reference to the facts of the two cases will show that the liability to

pay Government revenue jointly was not the deciding factor and the history of the title of the plaintiffs was traced and it became abundantly clear

that the predecessors of the plaintiffs in the two cases were cosharers in the strict sense of the term. It is no doubt true that in certain places the

learned Chief Justice Sir Shah Mohammad Sulaiman said that it might be necessary to find out whether a person takes part in the administration of

the affairs of the mahal if the liability to pay Government revenue is joint. On behalf of the respondents, our attention was drawn to a decision of

their Lordships of the Privy Council in AIR 1935 169 (Privy Council) , and to a decision of a Bench of this Court in (PC). Munna Lal v. Bahadur

Lal (1939) ALJ 337. There is nothing of importance in the Privy Council case which might have a bearing so far as the point under discussion is

concerned, but the dictum of two learned Judges of this Court in (PC). Munna Lal v. Bahadur Lal (1939) ALJ 337 is undoubtedly to the effect

that the joint responsibility of revenue is not at all a relevant factor in deciding the status of a cosharer. It is not necessary for us to commit

ourselves to this latter view because we have shown above that the entire scheme of the wajib-ul-arz points unhesitatingly to the conclusion that the

resumed muafi-holder was not to be on the same footing as a cosharer and that his status was in no case better than that of a petty proprietor

without the right of having any interest in the joint lands of the mahal or in the administration of its affairs. The khewat also shows that the 20 biswas

were all entered against Ram Das and Mt. Kokla and they alone had management of the unculturable land. The two khewats of resumed muafi-

holders related only to specific plots of land with specific Government revenue entered against them. We have given the case our anxious

consideration and we have come to the conclusion that the view taken by the Court below is correct. We accordingly dismiss this appeal with

costs.