Ghulam Abbas Khan and Another Vs Amat-Ul-Fatima and Others

None

Court: Allahabad High Court

Date of Decision: March 1, 1921

Citation: (1921) ILR (All) 297

Hon'ble Judges: Shaw, J; John Edge, J; Buckmaster, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Buckmaster, J.
These are two consolidated appeals (Nos. 200 and 201 of 1919), arising out of two suits, brought by different plaintiffs for

the purpose of determining the rights of succession to a property known as the Maniapur Taluqa.

2. Several subordinate questions arise upon these appeals, but they are dependent upon the success of the appellants in their contention that,

according to the true construction of a sanad granted in 1961 to a lady called Sughra Bibi, the rules relating to primogeniture which that sanad

established apply to all persons who come into possession of the estate, whether by gift, devise, purchase or descent.

33. The facts which give rise to this dispute can be shortly stated. Sughra Bibi died on the 11th of November, 1865, having by will given the whole

taluqdari estate to one Akbar Ali Khan, who was the youngest of her four half-brothers. Akbar Ali Khan had no male issue, and partly by a deed

of gift and partly by bequest he disposed of the whole of the property in favour of his wife Ilahi Khanam. She died on the 20th of April, 1899,

leaving six daughters, who are six respondents, and a number of grandsons by such daughters, of whom Agha Muhammad Jafar, the appellant in

appeal 201 of 1919, is the son of the eldest daughter; Babu Ghulam Abbas Khan, the appellant in the other appeal, being the eldest of the

grandsons by a younger daughter. If, according to the true construction of the document the successors on whom the right of primogenture is

imposed do not include those who being outside the line of descent succeeded by the operation of a devise, the appellants fail; this has been the

decision of one of the Judicial Commissioners and of the Subordinate Judge, the other Judicial Commissioner deciding for other reasons that the

appellants were not entitled.

34. The relevant terms of the document are as follows:

Know all man that whereas by the Proclamation of March, 1858, by His Excellency the Right Hon''ble the Viceroy and Governor General of

India, all proprietary rights in the soil of Oudh, with a few special exceptions, were confiscated and passed to the British Government which

became free to dispose of them as it pleased, I, George Udney Yule, Officiating Chief Commissioner of Oudh, under the authority of His

Excellency the Governor General of India in Council, do hereby confer on you the full proprietary right, title and possession of the estate of

Maniarpur Therefore this sanad is given you in order that it may be known to all whom it may concern that the above estate has been conferred

upon you and your heirs for ever, subject to the payment of such annual revenue as may from time to time be imposed, and to the conditions It is

another condition of this grant that in the event of your dying intestate or of any of your successors dying intestate, the estate shall descend to the

nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate, either in whole

or in part, by sale, mortgage, gift, bequest, or adoption to whomsoever you please. It is also a condition of this grant that you will, so far as is in

your power, promote the agricultural prosperity of your estate, and that all holding under you shall be secured in the possession of all the

subordinate rights they formerly enjoyed. As long as the above obligations are observed by you and your heirs in good faith, so long will the British

Government maintain you and your heirs as proprietors of the above-mentioned estate, in confirmation of which I herewith attach my seal and

signature.

35. From this it will be seen that the estate was granted in a form intended to secure the succession of the nearest male heir according to the rule of

primogeniture, but that at the same time free power of disposition was reserved to all who became possessed of the estate. The construction of the

document is rendered difficult by the use of words that have, according to English law, a well-known meaning and implication which in the

circumstances of the grant it would not be right to apply without qualification to the document in question. The circumstances in which the grant

was made are relevant considerations, and they are fully set out in Sykes'' Compendium of Oudh Taluqdari Law, referred to in the judgments of

the Subordinate Judge. From this it is apparent that it was the object of the Government to associate possession of the taluqdari estate in its

entirety in the hands of the taluqdars, with the honour and dignity of the family whose title should be transmitted to the nearest male heir. It was

something remotely akin to an estate in tail male according to English law, but the kinship was not close because a power of alienation, unknown to

an English estate tail, unless the entail IB destroyed, was an essential part of the document. The conditions imposed as to loyalty and obedience to

the British Government were obviously intended to have reference to those who took under the grant, and this is a relevant consideration in

determining what the true meaning of the word ""successors"" may be, for if it bore the meaning which it is obviously capable of supporting, of any

form of succession, it would follow that whoever bought the estate under any circumstances would be subject to the same restrictions. If, however,

the estate were at any time alienated into the hands of people living in a totally different district and under totally different conditions, the reason for

these provisions would at one disappear. Again, ""successors,"" without some limitation, would include all those who succeeded to any part of the

estate, and as the power of disposition clearly and in express language contemplates the power of breaking the estate up by the act of any holder

for the time being, such an event might easily arise and the object of securing an undivided holding in a family whose loyalty was rewarded by

security of possession would be defeated. It would, therefore, be unreasonable to assume that the estate if sold should be subject in the hands of

any purchaser to the conditions which as to descent and loyalty had their origin in circumstances which would no longer apply.

36. Their Lordships, therefore, reject the view that the word ""successors"" can in this eanad be subject to the liberal construction for which the

appellants contend. But if this view be rejected, the document does not permit any other interpretation of the word except that of succession

according to the terms of the sanad itself. The estate is in the first instance given to Sughra Babi and her heirs for ever. The heirs there cannot mean

any person outside the line of defined succession, for to such people no such grant was made nor, so far as the grand la concerned, were they

contemplated in any way as succeeding. That phrase, therefore, must be taken to mean that the estate was an absolute estate conferred upon the

grantee, and it is upon her and her nearest male heir and his nearest male heir and so on in unending succession that the conditions are imposed.

The last words of the sanad make this clear: ""As long as the obligations are observed by you and your heirs in good faith, so long will the British

Government maintain you and your heirs as proprietors of the above-mentioned estate."" That must mean ""maintain"" the heirs who succeed

according to the terms of the grant because no other heirs as heirs can take the estate. ""Successors,"" therefore, is in their Lordships" opinion an

inartistic phrase used for the purpose of expressing thaf, in the event of there being no alienation, those who succeed to the estate by virtue of the

grant will succeed subject to the conditions and with the same provision as to succession as the person to whom the grant was originally made.

37. It is argued that this might enable the whole purpose of the grant to be defeated by any owner for the time being by gift, sale or devise to the

person who on his death would be the nearest male heir. This argument is open to the objection that until the moment of death occurs it is

impossible to say who the nearest male heir will be, so that the selection of the person might be almost impossible. But apart from that, their

Lordships think that due effect can be given Lo the words of the sanad by construing it as meaning that ""successors"" includes the designated parties

who would succeed in the event of intestacy, and that those designated parties cannot escape the obligations of the grant by having acquired the

property through other means than succession.

38. Their Lordships are, therefore, unable to agree with the appellants'' contention on the first point which this appeal raises, and in these

circumstances the other questions do not arise for determination. They will, therefore, humbly advise His Majesty that these appeals should be

dismissed. The 3rd, 4th, 5th and 6th respondents will have one set of costs only. There will be no other order as to costs.