
(1880) 03 AHC CK 0005

Allahabad High Court

Case No: None

Puran Mal and Others

APPELLANT

Vs

Padma

RESPONDENT

Date of Decision: March 11, 1880

Citation: (1880) ILR (All) 732

Hon'ble Judges: Straight, J; Spankie, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Spankie, J.

I have considered the appellants' plea and have come to the conclusion that the finding of the Courts below, that the suit is not cognizable in the Civil Courts, is incorrect. The grants referred to in Section 30, Act XVIII of 1873, and in Section 79, Act XIX of 1873, are those set forth in the preamble of Regulation XIX of 1793, and in the first section thereof. That section recites that, by the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every bigha of land (demandable in money or kind, according to local custom), unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, while he continues to discharge the latter. As a necessary consequence of this law, if a zamindar made a grant of any part of his lands to be held exempt from payment of revenue, it was considered void, from being an alienation of the dues of Government without its sanction. There the grants referred to are those made by the zamindar. Badshahi or royal grants are excepted in the preamble. The grant referred to is a permanent alienation of revenue, or, as Acts XVIII and XIX, in Sections 30 and 79 respectively, term it, rent. The first section of Regulation XIX of 1793 further indicates the nature of the grants as having been made under the pretext that the produce of the lands was to be applied to religious

or charitable purposes. Of these grants some were applied to the purposes for which they were professed to have been made, but, in general, they were given for the personal advantage of the grantee, or with a view to the clandestine appropriation of the produce to the use of the grantor, or sold to supply his private exigencies. All such grants since the first December 1790, and in future, were declared null and void by Section 10 of the Regulation.

2. What the plaintiff desires in this case is full possession of a plot of land which he says has hitherto been held without payment of rent by defendant, the village "balahar" or watchman. He was allowed to occupy the land for his support, and in point of fact whatever he derived from the land constituted his wages. But there was no permanent grant of the land to him or his predecessors. He would continue to occupy it as long as he continued to give his services as watchman. Obviously such an assignment is not a grant within the meaning of Regulation XIX of 1793, and the present claim is not one to resume such a grant or to assess the rent on the land. The Settlement Officer therefore very properly refused to entertain the claim. Nor could an application to dispossess the defendant be made to the Collector under letter (c), Section 95, and Section 30, Act XVIII of 1873, for the same reason. It is not a claim to recover a rent-free grant as being one of those declared by the Regulation to be null and void, nor is it a claim to assess the rent on the land.

3. The plaintiff wishes the defendant to give up the land or pay rent. The defendant repudiates the plaintiff's superior title, and claims that he has acquired a proprietary right in the plot which has been in the possession of himself and his family for two hundred years. Clearly there is a dispute between the parties which it is the special duty of the Civil Courts to determine. The plaintiff now regards the defendant, who is no longer watchman, as a trespasser; the latter asserts his full proprietary right in the plot. The Courts below are bound to determine the party to whom the right belongs and to decide the case on all its merits.

4. I would therefore decree the appeal, reverse the decision of the lower Appellate Court, and remand the case for trial on the merits by that Court, should it find materials on the record to enable it to do so; but if it should appear that the first Court has excluded evidence of fact essential to the determination of the rights of the parties, the lower Appellate Court is at liberty to reverse the decree of the first Court. Costs to abide the result of a new trial.

Straight, J.

5. I concur fully in the above judgment of my honourable colleague.