

Powlett, Political Agent and Superintendent of the Kota Rai on the part of the Government of India Vs Girdhari Das

Court: Allahabad High Court

Date of Decision: Feb. 9, 1880

Citation: (1880) ILR (All) 690

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

This appeal must be allowed. Indeed, no serious attempt was made at the hearing before us by the counsel for the

respondent to support the judgment, and I must express my surprise and disappointment, that so experienced an officer as the then Subordinate

Judge of Agra should have been content to have given such reasons as he assigns in his judgment for holding that the suit in this instance had been

properly laid. It is not pretended that the Rajah is a disqualified proprietor under the Court of Wards, or that he has been in any respect divested of

his rights of property over his estate; and as for the suggestion that the position assumed by the Government of India and its Political Agent in this

suit could be justified as an act of State, such a contention cannot for one moment be admitted. The claim for interference on the part of the

Government of India, whether in its own name or in that of its Political Agent, is one based entirely on a correspondence showing the necessity of

the management and administration of the estate being for a time taken out of the hands of the Rajah, and he himself no doubt acted wisely in

applying to the Government for assistance in his troubles. But it is a very different thing to say that such management and administration gave the

Government, not only the power to administer the estate for the benefit of the Rajah, but to deprive him of his right and title in it and his dominion

over it, to such effect, that the Government could by itself, or by any of its officers, deal with it and with parties indebted to it as if it was the

Government's own independent property. For, however large the power of the Government might be in the way of administration and

management, the right to the estate itself and every part of it, the title to the estate and all that constitutes a jus in re in regard to it, remained in and

was inherent in the Rajah himself, and such a suit as the present could only be brought in his own name, by which means, and by which means

alone, could his consent as the true plaintiff be made to appear on the face of the record. In such a case the Government of India neither have

themselves, nor can they delegate to others, any larger powers than those that could be given to any other administrator or manager; and the

principle on which this view of the case rests is that no man who is sui juris can be deprived of his property, for a single moment, or for any

purpose whatever, excepting by his own deliberate consent and act, such an act on his part as would in law have the effect of at once divesting

himself of, and investing his transferee with, his estate. No doubt the services agreed to be given to the Rajah on his own application were most

important and likely to be very beneficial to himself and his property, but the estate has still remained his, and is his, and his alone, and his name

alone can be used in all judicial proceedings connected with its administration. As for Major Powlett, he, as Political Agent and Superintendent of

the estate under the orders of the Government of India, has simply no locus standi whatever, nor could he be allowed to represent the Government

of India, in such a suit, even if that Government had itself a better title than it has.

2. The appeal is allowed and the suit is dismissed with costs in both Courts.

Pearson, J.

3. The property in suit is claimed as belonging to the Kota estate, and the claim is based on the proprietary right of the Rajah of Kota. If he be the

proprietor of the property the subject of the claim, he should have been the plaintiff in the suit; on the other hand, if his right and interest therein has

passed to the Government of India, the Government of India should be the plaintiff. The Political Agent and Superintendent of the Kota Raj does

not profess to have any such proprietary right and interest in the property as to entitle him to sue as plaintiff for its recovery. The suit, as brought,

must be dismissed, and the appeal decreed with costs.