

(1880) 03 AHC CK 0013

Allahabad High Court

Case No: None

Ganpatji and Another

APPELLANT

Vs

Saadat Ali and Others

RESPONDENT

Date of Decision: March 31, 1880

Citation: (1880) ILR (All) 787

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Judgement

Oldfield, J

1. The case of the plaintiffs is that taluka Birpur with all the villages appertaining to it and all existent and contingent rights connected with it had been hypothecated to Nawab Jafar Ali Mirza, for money lent to Husaini Khanam and Bakya Bibi, the proprietors, and the Nawab instituted a suit and obtained a decree against them, and in execution caused the taluka with all rights and interests to be sold, and himself purchased it on 20th November 1872. After the purchase, the auction-purchaser agreed to sell the property to Jiwan Lal now represented by Ganpatji, who admitted the plaintiff Hari Das to an interest in the transfer, and after a suit instituted against the auction-purchaser they obtained a decree compelling the auction-purchaser to execute a sale-deed in their favour in accordance with the agreement. The plaintiffs have been obstructed by the heir of the judgment-debtors, the former owners of taluka Birpur, and by lessees put in by him, in obtaining possession of some alluvial land comprising 110 bighas, 12 biswas, 13 dhurs, which accreted to some of the villages comprising the taluka in 1860 and 1861, and was formed into a mahal and assessed with a revenue of Rs. 88 in 1863 and settled with the proprietors of taluka Birpur, and which the plaintiffs allege was sold at the auction-sale on 20th November 1872, and passed by that sale to their vendor and to which they are in consequence entitled.

2. The defendants, one of whom is the heir of the former owners of the taluka, and the other two are lessees on his part, aver that this alluvial land was not

hypothecated to Nawab Jafar Ali Mirza, nor included in the property sold at auction; that the property hypothecated and sold was the original mahal of taluka Birpur, excluding this land which was formed into a separate mahal recorded under the name of Gang-barar; and they further aver that the plaintiffs' vendor, the auction-purchaser, never considered himself the purchaser of this land nor agreed to sell this land, and it was improperly included in the sale-deed, which the plaintiff's obtained by a decree of Court; and they further plead that the suit is not maintainable with reference to Section 241, Act XIX of 1873, and is barred by limitation.

3. The Subordinate Judge rightly held that there was no bar to the institution of this suit on the ground taken; and he proceeded to find that the land in dispute was not included in the hypothecation made by the owners of Birpur to plaintiffs' vendor, nor in the auction sale, nor in the subsequent contract of sale by the plaintiffs' vendor to plaintiffs; and he bases this finding mainly on the following grounds: That the alluvial land formed a separate mahal bearing a separate number in the tauzi from that of Birpur, with separate revenue assessed, viz., Rs. 6,800-4-7 on mahal Birpur, and Rs. 88 on mahal Gang-barar, and had no connection with taluka Birpur; that all that was entered in the mortgage-deed as subject of mortgage was taluka Birpur proper, assessed with revenue of Rs. 6,800, and that the sale notification and application for sale made no separate reference to this mahal, and that it was not expressly included in the plaint (dated 19th March 1874) in the suit instituted by plaintiffs against the auction-purchaser, nor in the decree of 21st July 1874, nor in the sale-contract by plaintiffs' vendor; and the Subordinate Judge argues that, being a separate mahal and not expressly included in the above documents, it cannot be held to have formed part of the property mortgaged and sold.

4. We are unable to take the same view as the Subordinate Judge. Taluka Birpur is shown to comprise a number of villages forming a mahal, and in 1860 the land in dispute was thrown up and accreted in front of five of these villages, Birpur, Burmara, Ami, Soharpur and Narainpur, and in 1863 it was formed into a mahal and assessed with the proprietors of the taluka Birpur, and entered as "Arazi gang-barar, mauzas Birpur, Barmara, Ami, Soharpur and Narainpur appertaining to taluka Birpur." Thus, although formed into a separate mahal for fiscal purposes, the land would appear to have been attached to the mauzas to which it was an accretion, and at all events it is clear the new mahal after its formation appertained to taluka Birpur. The Subordinate Judge is therefore wrong in considering it had no connection with the taluka; on the contrary it appertained to it as a dependent mahal. By the terms of the mortgage-deed the owners of the taluka "agree mutually to mortgage the said taluka Birpur, and accordingly after mortgaging and hypothecating the whole of the mauzas, original and appended, yielding a jama of Rs. 6,800-4-7, along with all original and appended rights, water and forest produce, high and low lands, cultivated and uncultivated lands, inhabited, waste, and saline tracts, stone and wooden presses, kacha and pucca wells, reservoirs, and tanks,

small tanks, and ponds, sir, baghs, scattered trees, trees bearing fruits and barren trees, chauni houses and dwelling houses, etc., and all and every portion of our proprietary, possessory, and demandable rights without excepting any right or interest obtained or obtainable."

5. Now it seems to us, considering the fact that the alluvial mahal appertained to the taluka, that the above terms are comprehensive enough to include it in the property mortgaged; and if the sum entered as the jama was that of the taluka exclusive of the jama of the alluvial mahal, there was no intention by that entry to exclude the latter from the mortgage, the entry of the jama being merely descriptive. But the material point is not what was mortgaged but what was sold at auction. Unfortunately no sale-certificate is forthcoming, and it is alleged, and not disputed, that although the sale was confirmed no sale-certificate was obtained by the auction purchaser, probably owing to the dispute between him and the plaintiffs. But we have in evidence the application for sale and the sale-notification, and in the former the decree-holder applies for the sale of "mahal taluka Birpur, together with original and attached mahal and all zamindari rights belonging thereto," and the sale-notification directs the sale of the "mahal Birpur, together with original and attached mahal and all the zamindari rights appertaining thereto." The attached mahal alluded to can be no other than this alluvial land, and we are at a loss to understand the Subordinate Judge's remark that the sale-notification and application for sale made no separate reference to this mahal.

6. We can come to no other conclusion than that this alluvial tract, formed into a separate mahal, remained attached to the taluka, and was included in the property sold at auction.

7. Nor do we agree with the Subordinate Judge that it was excluded from the sale to the plaintiffs, the enforcement of which they obtained under a decree of Court, The Subordinate Judge rests his finding on this point on the fact which he asserts that this land was not included in the sale-contract to plaintiffs, nor in their plaint in their suit to enforce that contract, nor in the decree which, they obtained. But the whole force of the Subordinate Judge's opinion rests on an argument formed upon the amount of the jama which is entered in those documents as the jama of taluka Birpur, and which is said not to include the jama of the alluvial mahal. But the entry of jama is merely descriptive, while the essential part of the document is the entry in respect of the subject of sale, and this is the "entire taluka Birpur," a term sufficiently comprehensive to include the alluvial mahal appertaining to the taluka, and we may observe that the draft sale-deed, dated 21st January 1874, expressly includes alluvial lands, and what is more to the purpose the sale-deed executed by order of the Court which gave the plaintiffs their decree expressly includes the disputed lands as conveyed to them by the auction-purchaser.

8. We reverse the decree of the lower Court and decree the claim with all costs.