(1877) 07 PRI CK 0004

Privy Council

Case No: None

Baboo Lekhraj Roy and Others		APPELLANT
	Vs	
Kunhya Singh and others		RESPONDENT

Date of Decision: July 6, 1877

Citation: (1877) 4 IndApp 223

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

Montague E. Smith, J.

1. This suit was brought "by the present Appellants to obtain possession of an eight annas share of mouzah Toee, and the plaint also prays for the annulment of the mokurruri tenure which the Respondents elaimed to have in the mouzah under a pottah granted by one Choonee Lall. The Appellants are the purchasers under a decree obtained against some persons who had become possessed of part of the interest of Choonee Lall in the eight annas share of the mouzah. The Respondents are the heirs of Nirput Singh, who was the grantee under the pottah. The single question in this appeal is whether, upon the true construction of this pottah, and upon the evidence in the case, the grant was one to endure for the life of Nirput Singh only, or whether it was to endure so long as the interest of Choonee Lall existed. That involves also an inquiry into what the interest of Choonee Lall was.

2. The lease or pottah in question is dated in April, 1808, and the material parts of it are in these terms: "The engagements and agreements of the pottah on the kubulyut of Nirput Singh, lessee of mouzah Toee, pergunnah Malda, zillah Behar, are as follows: " Whereas I have let the entire rents of the mouzah aforesaid,"--describing what he had let,--" at an annual uniform jumma of Sicca Rs. 606, without any condition as to calamities, from the beginning of 1215 Fusli to the period of the continuance of my mokurrui"i." That is the term fixed in the pottah. It is a term "from the beginning of 1215 Fusli to the period of the continuance of my

mokurruri." Then it is required that the lessee should cultivate, " and pay into my treasury the sum of Sicca Rs. 606'', the rent of the mouzah aforesaid, for the period aforementioned, according to the instalments year after year." Then there is this provision, " If hereafter the authorities desire to make a settlement of the property at that time, he shall pay the jumma thereof separately according to the Government settlement." It concludes, "Hence these few words are written and given as a pottah to continue during the term of the mokurruri, that it may be of use when required. The annual jumma malguzari, including the malikana, Rs. 6O6."

3. To ascertain what is the term granted by this pottah, we must see, in the first place, what is the interest which the grantor Choonee Loll had. He calls it a mokurruri interest; but whether it be a true mokurruri interest or not, it was evidently the intention of the parties that the grant should endure during the term of his interest. If it can be ascertained definitely what that term is, the rulu of construction that a grant of an indefinite nature enures only for the life of the grantee would not apply. If a grant be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs unless there are some words shewing an intention to grant an hereditary interest. That rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained.

4. Now it appears that as early as 1788 the Government granted what has been called a mokurruri lease to Mahomed Buksh, and that lease after various intermediate assignments was ultimately purchased by Choonee Loll, the grantor of" the pottah in question. Choonee Loll is said to have purchased it in 1807 or 1808. It is also said that ho had purchased the proprietary interest in two annas of the mouzah. From the document which has been produced from the Collector''s office, other persons appear to have been proprietors of the remaining annas, but nothing is heard of them in this suit. However that may be, it does not really affect the present question, because the interest pointed at in the pottah in question is a mokurruri interest. The kubulyut of the lease of 1788, signed by Mahomed Buksh, is as follows: " Whereas I have obtained a lease of mouzah Toee, zillah Kosra, pergunnah Mcdda, the area whereof, by estimation, is 709 bighas 10 cottahs, from 1196 (one thousand one hundred and ninety-six) Fusli, at a jumma of Sicca Rs. 400 "--with certain exceptions--" I do acknowledge and give in writing that I shall continue to pay the rent of the mouzah aforesaid at the said jumma, year after year, according to the kubulyut and the kistbundi. If any one establish his zemindary (proprietary) right in respect of the said mouzah in his own name before the authorities, I shall continue to pay, year after year, to him or his heirs, the '' malikana'' (proprietary allowance) thereof at the rate of Rs. 10 per cent, on the jumma aforesaid, in addition to the Government revenue." The lessee is to pay a jumma of Rs. 400, and a malikana of 10 per cent, on the jumma. Of course, if Mr. Leiih is right, that Choonee hall became the owner of the proprietary interest, the malikana would go into his own pocket. Then at the end there is this clause, which

has given occasion to considerable discussion: " If the present officers of the British Government, or any authority who may come hereafter, do not accept my mokurruri lease to be hereditary, I acknowledge that this kubulyut is only for one year, thereafter it shall be cancelled." That undoubtedly acknowledged a power in the Government to put an end to this lease, which is called a mokurruri lease, at the end of one year. But it appears that the Government have not done so. It may be that it was contemplated that the Government would settle in the ordinary way with the proprietors for the revenue, and in that case would put an end to this mokurruri. But it appears that no settlement has been made, and that this lease has been allowed to go on without being put an end to; and although it is not perhaps properly a mokurruri, inasmuch as practically the Government could enhance the rent, it must be regarded, as long as it goes on, as an hereditary lease, a mourussi pottah. This being the interest of Choonee Lall (he having become the purchaser of this pottah), he grants this lease to Ntrput Singh to endure during the continuance of it.

5. That interest, which continues, and has not been determined by the British Government, being an hereditary interest, there seems to be no reason why, upon the construction of the pottah in question, it should be held to be limited to the life of Nirput Singh. As already observed, the duration of the term is capable of being definitely ascertained by reference to the interest which the grantor . himself has in the property.

6. Their Lordships think that this case may be decided upon the construction of the document, and that it is not necessary to have recourse to the exposition of it to be derived from the conduct of the parties. It is satisfactory, however, to find that the view which has been taken by their Lordships of the construction of this document is that which the parties themselves evidently entertained, because for twelve years after Nirput Singh''s death his heirs were allowed to remain in possession of the property precisely in the same way in which he had held it, paying the same rent.

7. Their Lordships agree with the judgment of the High Court given upon review, and they will humbly advise Her Majesty to affirm that judgment, and to dismiss this appeal with costs.