(1874) 12 PRI CK 0002

Privy Council

Case No: None

Luchmun Singh; Ajit Singh and Ramdeen Singh		APPELLANT
	Vs	
Shumshere Singh		RESPONDENT

Date of Decision: Dec. 11, 1874

Citation: (1874) 2 IndApp 58

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

Judgement

Barnes Peacock, J.

1. In this case Luchmun Singh brought a suit against Shumshere Singh in the Court of the Settlement Officer of Seetapore. His suit was to recover one-fourth of an estate situate in that district. Luchmun Singh was the representative of one of five brothers, who were the sons of Ojeeb Singh. He was the son, actually, of Bhugwunt Singh, but he had been adopted and taken out of Bhugwunt Singh"s family by Rae Singh, who was one of the other five brothers. Bhugwunt Singh subsequently died without leaving any other issue, his other son, the brother of the Plaintiff, having boon killed in the mutiny, and in consequence the shares, which were originally held by five brothers, belonged to four. Luchmun Singh, therefore, as the adopted son of Rae Singh, claimed one-fourth of the estate. It appears that Shumshere Singh was the person who had signed the kubooleut and had contracted for the Government revenue, but the brothers were a joint undivided Hindu family up to a certain period; and the question was whether the Plaintiff had proved that they were joint, both in food and estate during the period of limitation. The period of limitation in Oudh, with regard to cases of this nature, depends upon Act XIII. of 1866 of the Government of India, which enacts that no suit relating to any tenure which, under the provisions of Act No. XVI. of 1865 shall be solely cognisable in the Courts of Revenue in the said province (and this is one of those cases) shall be barred under the rules of limitation in force in such Courts if the cause of suit shall hare arisen on or after the 13th day of February, 1844.

2. The question was whether Luchmun Singh''s cause of action to have a share of this estate did accrue subsequently to the commencement of the year 1844. The case was tried before the * Settlement Officer, who found certain facts. He says, " The Defendants deny possession as proprietor or sharer, and claim to have held the full proprietary right for some years prior to the term of limitation. The question before the Court then is,--1. Has the Plaintiff been in possession of any rights within the term of limitation? and if so, 2. Are they the rights of a proprietor? The onus of proof rests on the Plaintiff. A review of the proceedings in the District Court and of the evidence produced by the Plaintiff now, seem to me to establish that--First. For many years immediately preceding annexation the Plaintiff was on perfectly amicable terms with the Defendant, and received his support in common with the Defendant himself and some other relations from the estate. Disputes arose at the close of 1263 Fuslee, ending in an affray, in which the Defendant''s brother was killed. These disputes arose either because--(1.) Plaintiff then, for the first time, set up a claim to a share, or (2.) Defendant, for the first time, sought to deprive the Plaintiff of a share. The Plaintiff was completely ejected till 1266 Fuslee, when, by order of Court, he was put into possession of what was thought to be his seor land, nominally 100 bheegas, but really 150, the order being to put him in possession of what he had before. The Plaintiff is still in possession of this seer. Up to this point there seems no doubt about the facts. Beyond this there may be doubt. In my opinion the Plaintiff has wholly failed to prove, and there is no reasonable hope that he can establish his allegation, that he participated annually in the profits to the extent of one-fourth, and was therefore a sharer or part proprietor." But it would not be necessary for a member of an undivided family to prove that he participated in the profits to the full extent of his share. It is very common among joint families that the expenses of the family are paid out of the common fund, and that each member draws a certain sum as he requires it, but there is no account taken between the members of the family to see whether each member receives his full share.

3. Then the Settlement Officer goes into the question of seer land, and discusses the question whether the occupation of the seer land would take the case out of limitation, provided he had nothing else. He says, "But the question will sooner or later arise, and not alone in this, but in other similar cases,--does seer land, held as it is held by this Plaintiff, represent an ancestral share in the estate, or is it merely maintenance given to younger branches, at the pleasure of the head of the house? It is quite certain that if circumstances compelled the division of the estate, the Plaintiff would share by ancestral right." He then decided against the Plaintiffs claim, upon which the case was brought before the Settlement Commissioner of Oudh, Mr. Currie, and he says,-"It is shewn that the descendants of Ojeeb Singh lived together till about 1264 Fuslee, and that the Appellant held possession of a village named Ahberpore, which forms a portion of this estate, paying the proceeds into the common fund. It is also shewn that Appellant held some seer, but there is no actual proof of Appellant''s having enjoyed a share of the general profits." Then he goes on to discuss the question whether the holding of seer land is a participation in profits, and he comes to this conclusion : "In the present case, then, the Court being of opinion that the Appellant was, up to 1264 Fuslee, a member of an

undivided Hindu family, living in common and sharing in common, holds that the cause of action in the case arose in 1264 Fuslee, or such other date about that year when Appellant and Respondent quarrelled and Appellant was deprived of the rights which he had up to that time enjoyed. Being of this opinion, the Court does not consider it necessary that Appellant should prove possession of a specific share, the possession of Respondent being presumed to be the possession of the entire family."

4. It appears to their Lordships that the Settlement Commissioner was right in this opinion. If these brothers did live in commensality, and the funds of the estate which they respectively held, independently of the seer land, were brought into the common fund, and they participated in this fund by reason of their living in commensality, it was not necessary that the Plaintiff should prove the possession of a specific share of the joint fund. "For these reasons," the Commissioner says, "the Court reverses the order of the Settlement Officer, and decrees the Appellant a one-fourth share in mouzah Nawagaon, being the share to which he is entitled by ancestral right, and to which he lays claim."

5. An appeal was brought from that decision to the Financial Commissioner, the Defendant upon that appeal being the Appellant. Colonel Barrow, as the Financial Commissioner, states the grounds of appeal, and he says: "If the parties were an undivided family in the Nawabee within limitation, no doubt the Commissioner''s order, reversing that of the Settlement Officer, is correct. It appears that in the Nawabee (1263 Fuslee), within limitation, a separation took place, and Respondent got only 150 beegahs seer; but this does not invalidate his claim, for he was in possession as a member of an undivided Hindu family up to 1263 Fuslee. He is, therefore, now entitled to his share. The proof of specific possession is not requisite. I uphold, therefore, the Commissioner''s finding, decreeing four annas share to special Respondent, subordinate to the zemindar, Shmnshere Singh."

6. Colonel Barrow''s judgment was given on the 24th of September, 1867. It appears that at that time Colonel Barrow was only officiating as Financial Commissioner when he gave judgment affirming the decision of Mr. Currie; after that Mr. Davies appears to have come back and resumed his duties as Financial Commissioner. An application was made to Mr. Davies, who was then the Official Commissioner, to review the judgment which Colonel Barrow had given when he was acting as Financial Commissioner. Mr. Davies refused to grant a review, and on the 27th of November, 1867, rejected the application. Nothing was done after this until the 24th of April, 1868, which was more than ninety days from the time of the original decision of Colonel Barrow, and more than ninety days even from the time when Mr. Davies rejected the application for review. Colonel Barrow at that time was again acting as or had been appointed substantially to the office of Financial Commissioner. At all events he was performing the duties of that office, and on that day an application was made to him for a review of his own judgment; Mr. Davies having rejected a review, an application was made to Colonel Barrow himself to grant a review. Upon that he says: "Review is asked for in this case on the grounds of a certain statement said to have been made by the special Respondent in 1859, to the effect that

they (the sharers) had been turned out of possession, sixteen or seventeen years before, by Shumshere Singh, meaning that the family had then separated. The statement is produced and read, shewing that Shumshere Singh had turned them out before February, 1844, and that they (the special Respondents) merely held their seer, &c. The translation of the deposition referred to is dated January, 1859, and the Plaintiffs (special Respondents) loosely stated they had been sixteen years separated, which places them a year only out of limitation. I do not think that this statement would suffice to eject Luchmun, &c, from a share if they could otherwise prove that they had held the status of shareholders." The statement referred to was, however before the Settlement Officer when he came to the first decision, and it was also before Mr. Currie, as well as the evidence which had been given in the Plaintiff"s favour; the statement which the Plaintiff had made, and which tended to shew that the evidence was not correct, was before both those officers, the Settlement Officer who decided the case in the first instance, and the Settlement Commissioner, Mr. Currie, and -it was also before Colonel Barrow himself when he gave his judgment affirming the decision of Mr. Currie. But the Plaintiffs had given evidence to shew that they were shareholders, and Mr. Currie had acted upon that evidence and found that they were shareholders, and had given them a decree in consequence. Mr. Gurrie says that "up to 1264 Fuslee, Appellant (Luchmun) was a member of an undivided family, living in common and sharing in common, and that they only separated in 1264, when they quarrelled." The Financial Commissioner goes on : "There is no evidence on record to this effect; the trying officer, indeed, says that Luchmun has produced none to shew that he had any status as a proprietor. There are eleven or twelve villages concerned in this decision. The Government demand on the same is Rs. 4150" (that is to shew that the value of the estate was considerable). "Such important interest deserves full inquiry before shares can be decreed, and the quotation from Mr. Curries judgment will form the subject of an issue for further trial. After the lapse of so long a time I regret to give the Courts the trouble of further inquiry, but in this instance it appears only just to special Appellant to do so, for Luchmun, as far as the evidence yet goes, has not proved a good title to a share."

7. The case, then, was sent down for the purpose of trying whether the quotation from Mr. Currie"s judgment that the Plaintiff was a member of an undivided family up to 1264 was correct or not. In reality the case was sent back to the Settlement Officer to try whether the decision of Mr. Currie upon appeal from the Settlement Officer upon a question of fact was correct or not. The case came before Colonel Barrow merely upon special appeal. He sent it back upon the ground that there was no evidence whatever given in support of that issue. There was, however, the evidence of the Plaintiff himself upon oath. It appears to their Lordships that the Financial Commissioner was wrong in granting the review and remanding the case; and further, that he had no power to do so.

8. The right to apply for a review of judgment depends upon Act VIII. of 1859, Section 376, which is as follows : "Any person considering himself aggrieved by a decree of a Court of original jurisdiction, from which no appeal shall have been referred to a superior

Court, or by the decree of a district Court," and so on, "and who, from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time such decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him, may apply for a review of judgment by the Court which passed the decree."

9. Now, what was the ground of application to Colonel Barrow for a review of his own judgment? He says that there was no evidence whatever before Mr. Currie in support of the fact that the Plaintiff was a member of a joint family; but there was no allegation when the application for the review of judgment was made that the applicant had discovered any new matter or evidence which was not within his knowledge, or could not be adduced by him at the time the decree was passed.

10. Then was there any other good and sufficient reason? The only other good and sufficient reason appearing in Colonel Barrow''s judgment was that Mr. Currie had found that fact without any evidence to warrant it; but that is not correct.

11. But the application was made more than ninety days from the date of the decree, and it was made more than ninety days even from the time when Mr. Davies had refused to review Colonel Barrow''s decision. Section 377 of Act VIII. of 1859, enacts that the application for a review shall be made within ninety days from the date of the decree, unless the party preferring the same shall be able to shew just and sufficient cause, to the satisfaction of the Court, for not having preferred such application within the limited period.

12. Now if the ground for the application for review was, as stated by Colonel Barrow in his judgment, that Mr. Currie had found a fact without any evidence whatever in support of it, the Defendant ought to have applied for the review of judgment within ninety days from the date of the decree. But in this case the second application for review was not made within that period. In the case of Maharajah Moheshur Singh v. The Bengal Government, cited from 7th Moore''s Indian Appeals Page 309, it was held that a review granted after ninety days without sufficient ground was invalid. That; however, was in a resumption suit, and was not a case under Act VIII. of 1859. It was under an old regulation, and was not an express decision, although probably the same principle would apply to a case under Act VIII. of 1859. There is, however, an express decision in the High Court of Bengal with regard to the application for a review under Act VIII. of 1859. That is reported in 8 Sutherland''s Weekly Reporter Page 184 Gunganarain Roy v. Gonomoonee, The marginal note is "The order of the Lower Appellate Court, admitting a review of judgment after the expiration of ninety days from the date of the decree, without shewing whether there was sufficient cause proved to its satisfaction for the delay, was held to be illegal, and was set aside with the subsequent proceedings thereon."

13. Their Lordships approve of that decision, and consider it applicable to the present case. Colonel Barrow does not state that there was, or that it had been shewn to his

satisfaction that there was, sufficient cause for not having made the application for the review within the ninety days. According to the decision, to which reference has been made, it appears that the review itself and all the subsequent proceedings under it were invalid.

17. The case, however, went down, and was re-tried by the Settlement Officer. It is unnecessary to go into the further proceedings. Their Lordships are of opinion that even if the review had been properly granted, the subsequent proceedings and judgment were entirely wrong. The case is decided upon the ground that Colonel Barrow has not shewn that it was proved to his satisfaction that there was a sufficient excuse for not having made this application for a review within ninety days from the date of the decree, and that the granting of the review, and all subsequent proceedings under it, were erroneous and invalid. The original decision of Colonel Barrow, upholding Mr. Currie''s decision in favour of the Plaintiff, and awarding him a one-fourth share of this estate, must stand.

18. Their Lordships, therefore, will humbly advise Her Majesty that the last decision of the Financial Commissioner, dated the 29th and 30th of June, 1868, be reversed, and that the first decision of the Financial Commissioner, dated the |J of September, 1867, be affirmed.

19. There were two other cases, Ajeet Singh''s Case and Ramdeen Singh''s Case. They appear to have been decided by Mr. Reid in favour of those Plaintiffs, upon the authority of the first decision of Colonel Barrow in Luchmun Singh''s Case. It does not appear when the application was made, but Colonel Barrow says,--"I must admit this case to review, as Captain Thompson, in consequence of the orders in special appeal, Shumshere Singh v. Luchmun Singh, altered his decision in the cases of Shumshere Singh v. Ajeet Singh and Shumshere Singh v. Ramdeen Singh."

20. Then he goes on and determines the matter in the same way as he determined it in Luchmun Singh''s Case. He says, "And my orders of the 29th ultimo upheld Captain Thompson''s in all three cases, which is an error, as my order was intended to dismiss the s claims of Ajeet Singh and Ramdeen Singh, as well as that of Luchmun Singh."

21. Their Lordships will humbly advise Her Majesty that the decision of the Financial Commissioner of the 14th of July, 1868, be reversed, that the decisions of the Officiating Commissioner, dated the 21st of October, 1867, in the cases of Shumshere Singh v. Ajeet Singh, and of Shumshere Singh v. Ramdeen Singh, dismissing the appeals from the decrees of the Settlement Officer, dated respectively the 8th of March, 1865, be affirmed, and that those decrees be upheld, and that the Respondent do pay the costs of those appeals, and all the costs in the lower Courts, subsequent to the order of remand of the 29th of April, 1868. One set of costs only to be allowed in the three appeals to Her Majesty in Council.