(1912) 01 BOM CK 0017

Bombay High Court

Case No: None

Nawab Ibrahim Ali Khan		APPELLANT
	Vs	
Nawab Muhammad Ahsan Ullah Nawab Muhammad Ahsan Ullahkhan Vs Nawab Ibrahim Ali Khan		RESPONDENT

Date of Decision: Jan. 30, 1912

Citation: (1912) 14 BOMLR 270

Hon'ble Judges: Robson, J; Macnaghten, J; John Edge, J; Ameer Ali, J

Bench: Full Bench

Judgement

Ameer Ali, J.
The sole question for determination involved in these two appeals relates to the rule of succession applicable to the Kunjpura State lying in what are called the Cis-Sutlej Districts of the Punjab.

2. The Kunjpura riasat lies about 100 miles to the north of Delhi, in the District of Karnal, and was founded in the first half of the 18th century by an Afghan soldier of fortune of the name of Najabat Khan, who, like many other adventurers, native and foreign, had taken advantage of the troublous times when the whole fabric of the Mogul Empire had fallen to pieces to carve out a small principality for himself. In 1748 he obtained a sanad from the Afghan conqueror Ahmed Shah Abdali, also called Durani, then in the height of his power in Northern India, granting him a " hereditary jagir " of the villages, 149 in number, of which he was in possession at the time. The villages were declared to be inam, or revenue-free, and he was to enjoy thenceforth the revenue payable to the Imperial Government, subject to the obligation of maintaining order in his ilaqa or possessions.

3. It is not disputed that the chief ship has from the time of Najabat descended in the male line to a single heir, and that heir has been invariably the eldest son, save in one instance, where the deceased rais left no issue, and was succeeded by his

eldest surviving brother.

4. Nawab Muhammad Ali Khan, the seventh in descent from Najabat Khan, succeeded to the chiefship in the year 1849. He died in 1886, leaving several sons, three of whom only are now surviving, viz., the defendant Ibrahim Ali Khan, the eldest, and the two plaintiffs, respondents in the first appeal.

5. He left also three daughters, but both parties are agreed t that by the custom of the family they receive no share in his inheritance.

6. The defendant was a minor at the time of his father''s death, and during his minority the Court of Wards managed the Estate. In 1900 he attained majority and assumed charge of the properties.

7. The plaintiffs claim that under the Mahomedan law, which they allege governs the succession in their family, they are entitled to shares in the Kunjpura Estate, and they brought the suit against the defendant in the Court of the District Judge of Karnal for partition, possession, and " rendition of accounts."

8. The defendant contested the action on the allegation that the Estate of Kunjpura was an impartible riasat or principality which had been recognised as such by the sovereign power, and which had descended under the custom governing the family by the rule of primogeniture, and that the younger male members had no title beyond a claim to reasonable maintenance.

9. It will be noticed that both parties allege the existence of a custom at variance with the Mahomedan law with regard to succession in their family; the plaintiffs restrict it to the exclusion of females from inheritance, whilst the defendant asserts that it extends to the younger male members.

10. The District Judge found in favour of the custom alleged by the defendant, and dismissed the plaintiffs'' suit. On appeal the learned Judges of the thief Court have affirmed the view of the District Judge in respect of all property that appertained to the riasat prior to 1849, holding that the custom set up by the defendant, which they found established, clearly applied to it. But they were of opinion that as in that year the Government withdrew from the Chiefs of Kunjpura the quasi-sovereign powers they had hitherto exercised," the chief-ship ceased as an independent entity," and consequently lands and property acquired by the Nawab after 1849 were not subject to the same rule of succession as was applicable to " lands which once appertained to the chief as chief."

11. In this view they decreed the plaintiffs'' claim in respect of their shares under the Mahomedan law in the Jatter properties.

12. Both parties have appealed from the decree of the Chief Court. The defendant contends that the learned Judges are in error in drawing a distinction between the properties held before and those acquired after 1849, and that the custom, the

existence of which has been found by both the Courts in India, applies to all property. The plaintiffs on the other hand urge that the custom alleged by the defendant, on whom the onus lay, has not been established; and that in any event the effect of the withdrawal in 1849 from the chiefs of all , civil and criminal powers was to reduce their status to that of private citizens, subject to their ordinary personal law. That in substance represents the contentions of the parties before this Board.

13. The Chief Court has traced the history of the Kunjpura family with much care and discrimination. Their Lordships do not, therefore, propose to discuss the evidence at any length, for they find it established beyond doubt that the Estate of Kunjpura has, ever since the time of Najabat, descended to a single heir, who has been recognised as the chief of an impartible riasat, which is the Arabic or Mussulman synonym of the Hindu word raj; and that attempts by junior members of the family to obtain shares in the riasat properties have invariably failed. The two instances-on which the plaintiffs rely as showing allotment of shares to junior cadets of the family appear to their Lordships to be clearly opposed to their contention. The first is the case of Karam Sher, the second brother of Gulsher Khan, third in descent from , Najabat, who obtained, under circumstances that cannot be ascertained at this distance of time, several villages which were separated from the jagir, and are still held by his descendants. There is nothing, however, to show that the villages Karam Sher received bore any relation to the share he would have been entitled to on partition under the Mahomedan law. Nor does it appear or is even alleged that Gulsher Khan''s brothers other than Karam Sher obtained any share of the family properties. In 1851, whilst the Dastnr-ul-amal or settlement records of these villages were in course of preparation, Nizam Ali Khan, the son of Karam Sher, applied to have his name entered as jagirdar of the villages in question. Misapplication was resisted by Nawab Muhammad Ali Khan, who was then the rais of Kunjpura, on the ground that the villages held by the applicant had been given to him for maintenance, and that they should revert to the chief on his (the applicant''s) death without male issue. The Commissioner of the Cis-Sutlej States, within whose jurisdiction Kunjpura lay, after recording the Nawab''s objection, made the following recommendation to Government:- " I think that all the villages and land possessed by the younger branches of the family should be held and recorded to be component parts of the chief''s integral egtate, that while the present incumbents or any of their descendants are living, the chief be altogether debarred from disturbing or interfering with their possession, and that, on failure of issue in any branch, the lands composing the maintenance (guzarah) of that branch revert to the chief''s integral estate, in place of lapsing to the Government, as they would do, were they served from that estate. The Dastitr-ul-amal would thus be drawn in the name of the Nawab Rais (the chief)."

14. The Commissioner''s view was accepted and affirmed by Government on the 31st October 1851, and the final Order was passed by him on the 17th November

following. It is clear, therefore, that neither the Government nor the Chief ever recognised that the villages received by Karam Sher were in lieu of his share by right of inheritance under the Mahomedan law. On the other hand it was alleged on the first opportunity that offered itself that the villages had been granted to Karam Sher and his male descendants for maintenance, and that they were to revert to the riasat on the extinction of his male line, and this contention was accepted and affirmed by the Government.

15. The other instance is that of Ghulam Muhay-ud-din Khan. Gulsher died in 1864, leaving several sons, of whom the eldest, Rahmat Khan, succeeded to the riasat. Quarrels then broke out between him and his second brother Ghulam Muhay-ud-din about the latter''s claim for maintenance, which at last became so violent that the British authorities, who had in the year 1806 assumed charge of the Cis-Sutlej districts, were compelled to interfere. The dispute between Rahmat Khan and Ghulam Muhay-ud-din was referred to the arbitration of the Resident at Delhi, Mr. Metcalfe (afterwards Sir Theophilus Metcalfe) and Mr. Fraser. As a result of the arbitration Ghulam Muhay-ud-din obtained a number of villages yielding a considerable income. Upon the evidence their Lordships have no hesitation in agreeing with the Chief Court that he received them in lieu of maintenance. In fact some years later, when a younger brother applied for maintenance out of the properties in the possession of Rahmat Khan and Ghulam Muhay-ud-din respectively, the latter objected to his being made liable on the ground that he himself had obtained for maintenance the villages held by him, and he was accordingly exempted from the obligation of contributing towards the younger brother''s maintenance, Ghulam Muhay-ud-din died in 1841, and a claim was put forwaron behalf of his minor son, Muhammad Yar Khan, to the possession of all the villages that had been held by him.

16. But a part only was assigned to Muhammad Yar Khan for his maintenance, whilst the rest reverted to the chiefship.

17. As already observed, these two cases, far from supporting the plaintiffs'' allegation, appear to their Lordships to be quite . opposed to it. No other evidence has been referred to suggest that there has ever been a division of the Estate in accordance with the rules of the Mahomedan law since the time of Najabat Khan. It was, however, contended, on behalf of the plaintiffs that although the jagir may be impartible and descendible by the rule of primogeniture, the zemindari rights in the villages comprised in the jagir cannot be so treated in the absence of clear evidence of custom applicable to them. In support of this contention reliance was placed on the dictum of Mr. Lawrence (afterwards Lord Lawrence) pronounced in 1852 in a case which had come before him as a member of the Board of Administration. Janbaz Khan and Shahbaz Khan, two younger sons of Rahmat Khan, had preferred a claim for shares in the zemindari rights in one of the villages appertaining to the Kunjpura Estate. Their application was dismissed by the Commissioner. On appeal to

the Board Mr. Lawrence expressed himself as of opinion:-

That zemindari rights did not belong to the State, that, like other moveable or Immovable property, it should be given by light of inheritance according to Muhammadan law, and that all the descendants of Nawab Rahmat Khan, who had acquired this semindari, had rights in it.

18. The other members appear to have concurred in this view. But the final decision was made dependent on the determination of the question whether Janbaz and Shahbaz had ever been in possession of the shares which they claimed should be recorded in their names. They were found, however, never to have been in possession, and their claim was finally dismissed.

19. The opinion of Mr. Lawrence, however deserving of respect, affords, therefore, little assistance in deciding the question whether the zemindari rights are subject to a different rule of succession from the jagir. The opinion was, in the result, ineffective, and seems never to have been accepted or acted upon in the course of the constant claims the junior members of the family have put forward to a share in the Estate. The decisions in the later cases lay down in explicit terms that the zemindari rights belong to the riasat. Similarly, it is recorded in the Wajib-ul-arz that u the entire biswadari, zemindari, and jagirdari rights are possessed by the Nawab." Any other conclusion would not only be inconsistent with the policy which the Government has maintained for nearly a century towards these riasats, but in the end would prove positively destructive to the chiefships.

20. It remains, however, to consider whether the view taken by the Chief Court with regard to the rule of succession to acquisitions made by the chiefs after 1849 is well founded. After holding that the custom set up by the defendant Nawab is made out as regards all property which can be shown to have formed part of the State before 1849, the learned Judges proceed to say :-

As regards lands subsequently acquired we think the case is different. The custom owed its rise and raison deter to the existence of the State and the exigencies of chiefship. A family custom, respected by the authorities and fully established as accompanying the chiefship, must be held to obtain as regards the estates of the chief ship as such. But when the chiefship ceased as an independent entity, it was not only privileges but duties and liabilities also which were abrogated, and we do not think that lands and property acquired by the Nawab after 1849, with income, which he was admittedly competent to deal with as he pleased, can be held to be subject to the same rule of succession now as the land which once appertained to the chief as chief.

21. Their Lordships regret to be unable to follow the reasoning on which the view expressed by the learned Judges proceeds, or assent to the conclusion at which they have arrived. There is nothing to show that the Government in withdrawing the civil and criminal powers the chiefs had hitherto exercised, intended to make any

alteration in their status or to vary the rule which had governed the succession to the Kunjpura Estate. The withdrawal of those powers was no doubt due to the needs of administration, but that circumstance cannot affect the custom under which the entire Estate descended by the rule of primogeniture to a single male heir.

22. On the whole their Lordships are of opinion that the appeal of the defendant Ibrahim should be decreed and the plaintiffs'' suit dismissed. They will accordingly humbly advise. His Majesty to discharge the decree of the Chief Court, and to restore that of the District Judge, dismissing the plaintiffs.

23. The plaintiffs will pay the costs of these appeals.