(1868) 12 CAL CK 0001

Calcutta High Court

Case No: Application for Review No. 2529 of 1956

Raja Lilanand Sing Bahadur		APPELLANT
	Vs	
The Government and Thakur Manoranjan Sing and Tekait Loknath Sing		RESPONDENT

Date of Decision: Dec. 16, 1868

Judgement

Loch, J.
After hearing Counsel for the petitioner, we are of opinion, that there are no valid grounds for admitting a review. It is quite unnecessary to submit the question as to the status of a ghatwal to the decision of a Pull Bench as we have been asked to do. An objection somewhat hypercritical has been taken to the use of the word "mesne profits" by the Court, but we may observe that the word has been used throughout the proceedings and in judgments previously passed, and even if the word be a "misnomer," the petitioner cannot, from its use by the Court, be considered to have made out aground for review. The application is rejected with costs. The order passed in this case is applicable to the other applications for review from the same judgment.*

*

Mr. Justice Trevor and Mr. Justice Campbell.

Tekait Manoraj Sing and Others..... Defendants.

versus

Raja Lilanand Sing..... Plaintiff.

and cases Nos. 301, 353, and 359 of 1864

The following judgment was delivered in these cases, on the 29th June 1865:

These cases are nearly allied to No. 299, which has been already decided (3 W.R., 84). They are suits by the same zamindar of Kuruckpore, to resume similar ghatwali tenures, and dispossess the ghatwals. There is this difference, that in this case the ghatwals do not produce any such sanads as that of Captain Brown''s filed in the former case, and in which occur the words "mokurrari istamrari" quoted by us in that case.

In one of the present cases, the circumstances are so far different, that plaintiffs had some years ago dispossessed the present defendants on the pretended authority of a decree against some other persons, a step which was reversed in appeal, and he now sues on the double ground that the service was abolished, and Tufani Sing, father of the defendant, dismissed by the petitioner''s father, in consequence of which the service, &c., fell into disuse, and (as in the first case) that he has arranged with Government regarding the service. But as no default on the part of Tufani Sing is alleged, and the act of dismissal and stoppage of the service is that of the plaintiff (or his father) and not of the defendant, the question in either case is exactly the same, viz., whether plaintiff has power, without the fault of the ghatwals, to determine their tenure and eject them from their lands.

Although the defendants in the cases now before us, have no sanad of Captain Brown, they have sanads of Raja Kader Ali (the original zamindar at the time of the permanent settlement) similar to that produced in the former case, and in which the zamindar recites that the talook as have been held as ghatwali jaghirs from former time, and confirms them to be held "according to the custom." A small quit-rent is stated, and the holders confirmed in the remaining proceeds, their duty of guarding against murderers and robbers being at the same time recited.

We have not then here the express words "mokurrari istamrari" used in regard to some of these tenures in previous sanads, but the question still simply is--Are these tenures of the same character as that which has been already found to be "mokurrari istamrari" and as those of Beerbhoom described in the preamble of Regulation XXIX of 1814, or are they of a different character.

We are of opinion, that these tenures are of a character precisely similar to that disposed of in No. 299, and all our remarks in the judgment in that case (3 W.R., 84) with the exception of those based on Captain Brown''s, similarly apply to the present cases. Sanads of Raja Kader Ali abundantly show that the tenures were no new or recent creations, but were handed down from former times, and show, we think, that although the word istamrari is not used, the tenures have in fact been handed down from generation to generation, and that, whatever their inceptions, they have become hereditary; also that the burdens in money and service were not arbitrarily fixed at the will of the zamindar, but were regulated by old custom. These also are considerable talooks comprising many villages, and not mere pieces of service land.

They are, we think, exactly analogous to the tenure already upheld, and that ghatwals must be considered to be such that in the language of Regulation XXIX of 1814; "Every ground exists, to believe that according to the former usages and constitution of the country, this class of persons are entitled to hold their lands, generation after generation, in perpetuity, subject nevertheless to the payment of a fixed and established rent, and to the performance of certain duties." We need not repeat all that has been said in the former judgment. We consider that neither the mere will of the zamindar nor the arrangements with Government to pay Rs. 10,000 per annum for the performance of the service due from all these tenures, is any ground, whatever, for the present suits. We think that the defendants cannot be dismissed or dispossessed, except for some default of theirs, and we decree these appeals with costs.