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(1878) 07 CAL CK 0022

Calcutta High Court

Case No: None

The Secretary of State

APPELLANT

Vs

Poran Singh

RESPONDENT

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Date of Decision: July 4, 1878

Citation: (1880) ILR (Cal) 740

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

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### Judgement

Jackson, J.

The only substantial point for decision in this case seems to be, whether the plaintiff, as sirdar ghatwal, is liable to be ejected from the ghatwali tenure by the Magistrate, on being dismissed from the post of ghatwal, for the authority of the Magistrate to dismiss is not directly raised in the plaint, while his authority to allow the plaintiff to perform the duties of ghatwal or to prohibit him is directly reserved to the Magistrate by the Judge's decree.

2. In regard to the point before us, it is to be observed that the plaintiff alleges himself to be an irremoveable tenant at a quit-rent, with the option of performing certain services if required to perform them, but apparently not liable to any forfeiture for refusal. His theory seems to be, that the service is an appendage to his tenure, and not that the tenure is conditional on the performance of the service. The plaintiff has no title deeds whatever, or any documentary evidence of any description, to show that he has any title independent of service as ghatwal to held the lands in suit; and the very name "ghatwali" indicates that the tenure is held by virtue of the office of ghatwal.

3. It is admitted, indeed, that, in this instance, the ghatwal has to pay a quit-rent to the zemindar in addition to rendering service as ghatwal, but the lowness of the rent was fixed with reference to their service, and therefore the payment of some rent does not alter the character of the tenure. The oral evidence adduced by the plaintiff proves that the tenure has been in his family for at least three generations,

but it does not prove any right apart from the ghatwali service, and the oral evidence on both sides distinctly shows that no ghatwal succeeds simply by right of inheritance to the office of ghatwal, but invariably the new ghatwal is appointed by the Magistrate. As a general rule, the late incumbent's heir if fit is appointed; but, as found by the lower Court, the Magistrate has the power of veto in respect of any candidate, and there has been no attempt to show that at any time has the ghatwali land been held by one person by right of inheritance, and the office of ghatwal by a different person by appointment or otherwise. In fact there is nothing to show, and no reason to believe, that the enjoyment of the land can be had without what the Judge terms the reddendum. In fact, they are inseparable.

4. And with reference to the theory that the service is merely an appendage to the tenure, we have in this case the best possible evidence, because it is from the plaintiff himself, that possession of the land follows the appointment of the ghatwal, and does not vest in him beforehand. Having been cited as a witness by defendant, he states in his deposition that, after being appointed sirdar ghatwal, he was obliged to petition the Magistrate for assistance in getting possession of the service lands. And as to the tabedars he says, that they used to receive possession of lands after their appointments: and in regard to the; lands held by the tabedars, which seem to be included in this suit, and in the lower Court's decree, he distinctly admits that he derives no profit from them, but that he is simply the channel through which their quit-rent is paid to the zemindar.

5. The petition by which plaintiff applies to be put in possession after his appointment, was filed by the defendant. In this he recited that the lands were public lands. This evidence of itself seems to settle the question as to whether the possession of the lands was a right distinct and separate from the service as ghatwal, and to settle it in the negative.

6. It follows, and it has in fact been so found by the lower Court, that the dismissal of a ghatwal will carry with it the forfeiture of his tenure.

7. There is also abundant evidence on both sides to show that the appointment of ghatwals, which must carry with it the placing them in possession of the ghatwali lands, is, and has long been, in the hands of the Magistrate. Authority for this is found in a letter, of which a copy has been produced, dated 5th July, 1806, from the Secretary to Government to the Magistrate of the Jungle Mehals.

8. The lower Court has found that the Magistrate may, for sufficient cause, dismiss a ghatwal. It is not necessary in this appeal to go into that question, still less is it the duty of the Court to lay down what may be required and what may not be required of the ghatwals. It is enough to note here that the plaintiff, in his own deposition, in enumerating the duties of a ghatwal, mentions most of those in respect of which neglect and insubordination have been imputed to him. He admits many duties of which the lower Court has taken upon itself to relieve him for the future; and it

seems reasonable that duties of a kindred nature to those which are now obsolete should be performed in lieu of them, since the ghatwals still enjoy their old advantages of land tenures, which have become much more valuable than they were when first fixed.

9. On the whole, we entertain no doubt that the plaintiff has no right to be reinstated in the ghatwali land unless the executive authorities will condone his conduct and restore him to his situation, We think that, under all the circumstances, looking to the long continuance of the ghatwaliship in the plaintiff's family, to the increase of duty, and the more disagreeable nature of that duty lately required of the ghatwals, and to the punishment the plaintiff has undergone, it would be consistent with the dignity and character of the Government to reinstate him on the occurrence of an opportunity or to allow some member of his family to be appointed in his place. But this is wholly a matter for the consideration of Government. We must set aside the judgment and decree of the District Judge, and order the suit to be dismissed with costs of both Courts.