
(1869) 06 CAL CK 0062

Calcutta High Court

Case No: Special Appeal No. 3328 of 1868

Roy Hari Krishna Sing

APPELLANT

Vs

Mussamat Lakhu
Kowar

RESPONDENT

Date of Decision: June 1, 1869

Judgement

Glover, J.

This is a suit to set aside a mokurrari patta granted to the husband of the defendant by the then proprietress of the estate, Mussamut Tahimunnissa, on the ground that the lease conveyed only a life-interest to the grantee Taiknarayan. The plaintiff is the purchaser of Mussamut Tahimunnissa's rights in the estate. The Sudder Ameen, Moulvie Wahadudin, held that the patta gave an hereditary right to hold at a fixed rate of rent, and dismissed the plaintiff's suit; but the Additional Judge on appeal considered that there being no proof of intention, the absence of any direct words conveying hereditary right was fatal to the defendant's claim. He relied upon a decision of the Sudder Dewanny Adawlut in the case of Musst. Ameerunnissa Begum v. Maharaja Hitnarayan Singh S.D.A. (1853) 648, and gave plaintiff a decree for possession.

2. The only point for consideration in special appeal is the construction of the defendant's patta. It is contended on her behalf that the Additional Judge has misconstrued it, and that there was evidence of the grantor's intention to give the lease in perpetuity, which the lower appellate Court misunderstood.

3. The last portion of this objection may, I think, be put aside from our consideration, as it is quite clear from the receipt which was read to us, that the rent received by the plaintiff from the son of the original grantee was for a period when the father was alive; so that no inference can be drawn from the circumstance favourable to the special appellant.

4. Then as to the meaning of the patta. The words used are "mokurrari istemrari," and it is urged that these words are sufficiently large to include an hereditary grant at fixed rates the case of Munorunjun Singh v. Raja Lelanund Singh 3 W.R. 84 : 5 W.R. 101, is quoted

in support of the contention with reference to the grounds of the Additional Judge's decision.

5. I do not understand that a Divisional Bench of this Court is in any way bound by a decision of the late Court of Sudder Dawanny Adawlut, or that if we held a different opinion to that expressed in a former judgment of that Court we should be obliged to refer the question to a Full Bench. In the present case moreover the question is the proper construction of a document; in answering which, we are not, I apprehend, bound by any decision whatever of the Sudder Court, or of this Court.

6. It must not be forgotten moreover that the case of *Musst. Ameerunissa Begum v. Maharaja Hitnarayan Singh S.D.A. (1853) 648* decided by the Judges of the Sudder Adawlut, was a very peculiar one, and proceeded to a considerable extent at least on evidence, which tended to qualify the wording of the patta and to show that it was not intended to convey an hereditary title. The learned Judges of the Sudder Court say in their judgment, page 655: "The defendant's plea, when read in the light of this document (a letter from the grantee complaining that the terms of his patta were not sufficiently explicit)" seems to have no good foundation.

7. It appears therefore that the decision went not so much on the fact that the words "mokurrari istemrari" were not per se sufficient to give hereditary title as on other attendant circumstances which showed what the grantor's intentions were at the time the lease was given, and that the grantee was all along cognizant of the weakness of his title.

8. The case of *Rajah Modenarain Singh v. Kantlal 8. D.A. (1859) 573* proceeds on the assumption that the Sudder Court had in previous cases ruled that the absence of words signifying "from generation to generation" took away from a mokurrari grant absolutely any claim to hold in perpetuity. For the reasons stated above, I do not consider that any such broad rule was laid down, and if it had been I should not be prepared to assent to the ruling.

9. Then as to the meaning of the words themselves. It cannot, I imagine, be for a moment contended that the words "mokurrari istemrari" do not, in their lexicographical sense, mean "something that is fixed for ever." No doubt there is a custom which adds to these words "generation after generation," but this is by no means a universal custom, and the extra words are etymologically redundant. Moreover if the patta were merely for the life of the grantee, what could be easier than to say so, and what was the object of using words that could be applied, in their ordinary sense, only to hereditary rights? I should say, that when a grantee holds under a patta worded in this way he has at least made out the very strongest prima facie case, and that the onus of showing that by the custom of the district, pattas conferring hereditary title always contained and were obliged to contain the words "bafarzandan" "nashin bayd nashin" or similar phrases, would be heavily upon the parson seeking to set aside the lease.

10. In this case there is no evidence given as to any particular custom, and we must fall on the words of the patta itself.

11. Some stress was laid by the special appellant's pleader on the words "kaem mokam," "representative," which are found in the patta, but these appear to me to refer solely to the rupees 411 paid as nazar or bonus for the grant of the lease, and do not in any way indicate that after Taiknarayan's death he was to be succeeded quoad the lease by any one, or that the plaintiff received rent from the grantee's son for any period subsequent to his father's death.

12. It appears to me therefore that in the absence of any evidence on the part of the special respondent to show that the grant was one for life only, the words "mokurrari istemrari" are sufficient to make that grant hereditary.

13. I do not think that the decision of the Privy Council in the case of Dhunput Singh v. Goman Singh 9 W.R. 3 applies to this case. I may remark however that their Lordships seem to consider that a "mokurrari istemrari" lease protected for ever a tenant from enhancement; they say, "if it can be shown that the defendants' sub-tenure is a "mokurrari istemrari" there is an end of the matter."

14. I refer to this case merely because it was made use of in the argument before us.

15. I would reverse the decision of the Additional Judge and restore that of the Sudder Ameen, with costs of all Courts on the special respondents.

Kemp, J.

I concur in this judgment.