

(1907) 06 BOM CK 0010

Bombay High Court

Case No: Nos. 81, 87, 92, 96, 97 and 101 of 1903

Raja Muhammad Mumtaz Ali
Khan

APPELLANT

Vs

Murad Bakhsh and Others

RESPONDENT

Date of Decision: June 20, 1907

Citation: (1907) 9 BOMLR 851

Hon'ble Judges: Macnaghten, J; Atkinson, J; Arthur Wilson, J; Andrew Scoble, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Andrew Scoble, J.

In the six cases out of which these consolidated appeals have arisen, the plaintiff was Raja Muhammad Mumtaz Ali Khan, the Talukdar of Atraula and the defendants were persons who, either by themselves or their predecessors in title, claimed under proprietary rights in villages in his taluka. These rights are what are known in Oudh as birt, or birt Zemindari rights ; and the question for decision is whether persons holding under this tenure have a heritable and transferable right, as against the talukdar, in the villages in respect of which the birt has been created.

2. In Mr. Syke's valuable Compendium of the Law specially relating to the Talukdars of Oudh (p. 173) it is stated that "there are several descriptions of Birt known in Oudh, but . . . the true Birt is that known as the Bai Birt, created by the Talukdar or proprietor for money paid." In the Gonda Settlement Report-and the cases now under appeal come from that district-the Bai Birt is spoken of as Birt Zemindari.

3. In the Circular known as the Record of Rights Circular, No. 2 of 1861, the Chief Commissioner of Oudh deals very fully with the subject of Birt tenures and lays down the policy of the Government in regard to them.

"Birts," he says," were given for whole mauzas, or patches of land in mauzas.... These tenures, when granted by the talnkdar for money received, will be maintained

as representing the proprietary rights of the Birtias who by purchase have acquired the position of inter mediate holders and as constituting the portion of the profits left them by the Tal ukdar.... Birts of entire mauzas are very common in Gonda and Gorruckpore. They originated in purchases from needy talukdars and sometimes in clearing leases of jungle land. In the otrowla (Atraula) and Bubnee pergunnahs of the Gonda district, the birtias had been in many instances admitted to direct engagement with the Native Government for years previous to annexation, and, of course, were settled with then and should have been at the late Summary Settlement, on the principle that we are not bound to restore to the talukdars what they had lost before our rule commenced

4. And the policy of the Government is thus declared:

The Chief Commissioner is clearly of opinion that the lirtiaa who were found in direct engagement with the State at annexation, or who have uninterruptedly held whole villages on the terms of their pottahs under the Talukdars. must be main tained in the full enjoyment of their rights, insubordination to the Talukdars.

5. It appears to their lordships that, if the respondents in these cases have shown themselves to come within the benefit of the policy announced in this Circular, they acquired, upon the annexation of Sudh by the British Government, absolute under proprietary rights as against the Talukdar, in the villages in suit. The learned Judicial Commissioner, Mr. Blennerhassett, in a series of very able and careful judgments, has decided in their favour and their lordships entirely accept his conclusions and the reasons on which they are based. They will humbly advise His Majesty that these appeals ought to be dismissed and the decrees of the Court of the Judicial Commissioner confirmed. The appellant must pay to the respondents who appeared one set of their costs of the appeals.

Andrew Scoble, J.

The decision in these appeals follows that in the six cases already disposed of. It may be noted that, in these two cases, the relation of the Birtias to the Talukdar was fixed by orders were not made by consent, but after examination of witnesses, and hearing all parties. Moreover, it would seem from the judgment of the Judicial Commissioner that he would have had "no difficulty in finding" that the respondents or their predecessors in title held "direct under native rule, and after annexation," and that the Talukdar is only entitled to a malikana allownace.

Their lordships will humbly advise His Majesty that these appeals ought to be dismissed, and the decrees of the Court of the Judicial Commissioner confirmed. The appellant must pay the costs of the appeals.