APPELLATE CIVIL.

Before Stephen and Mullick JJ.

RAM SARAN LALL

v.

RAM NARAYAN SINGH.*

1914

June 16

Jaigir—Sanad, construction of—Tenure created by document—Custom—Life estate—Use of the words 'putra poutradi'—Absolute and heritable estate—Regulation XXXVII of 1793 s. 15.

A grant of a *jaigir* is a grant for life only, but in the absence of any custom to the contrary, the addition of the words "*putra poutradi*" in the grant implies an absolute and heritable estate and passes an estate of inheritance.

Under a *sanad patta* the ancestor of the plaintiff granted a *jaigir* in the district of Hazaribagh to the grantee and his *putra poutradi*. On the death of the grantee and of his sons without any male issue, the plaintiff, finding that the tenants of the *jaigir* stopped paying him the rents, brought a suit for resumption of the *jaigir* on the ground that according to custom the grant was a service-grant and resumable by the grantor and his representatives on failure of male issue in the line of the grantee, and obtained a decree. On appeal to the High Court :—

Held, that the original grantee took an absolute, heritable, and alienable estate and that all his heirs were capable of inheriting it.

Ramlal Mookerjee v. *The Secretary of State for India* (1) followed.

Gulabdas Jugjivandas v. *The Collector of Surat* (2), *Bhujanga Rau* v. *Ramayamma* (3), and *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy* (4) referred to.

Perkash Lal v. *Rameshwar Nath Singh* (5) and *Roopnath Konwur* v. *Juggunnath Sahee Deo* (6) distinguished.

Appeal from Original Decree, No. 464 of 1910, against the decree of S. C. Pal, Subordinate Judge of Hazaribagh, Aug. 12, 1910.

(1) (1881) I. L. R. 7 Calc. 304 ; L. R. 8 I. A. 46.
(2) (1878) I. L. R. 3 Bom. 126 ; L. R. 6 I. A. 54.
(3) 1884) I. L. R. 7 Mad. 387.
(4) (1897) I. L. R. 24 Calc. 834 ; L. R. 24 I. A. 76.
(5) (1904) I. L. R. 31 Calc. 561.
(6) (1836) 6 S. D. A. 1. Rep. 158.

1914

RAM SARAN LALL v. RAM NARAYAN SINGH.

APPEAL by Ram Saran Lall and others, the defendants.

Under a *sanad patta* Maharaja Sambhu Nath Singh Bahadur of Ramgarh, the ancestor of the plaintiff, Maharajah Ram Narain Singh, granted a *jaigir* of Mouza Salga, Pergana Karanpura, in the district of Hazaribagh in 1852, to one Kanai Singh and his *putra poutradi*. Kanai Singh had two sons, Sewbux who predeceased him without any issue, and Bansi Lal who died subsequent to him in 1897, leaving no male issue. After the death of the latter, the plaintiff took *khas* possession of the said Mouza, and some of the rents for the years 1897 and 1898 were collected by his *tehsildars*. Thereafter, the Manager of the encumbered estate of Bansi Lal, deceased, brought a suit in the Collectorate for arrears of rent against some of the *raiyats* and made the plaintiff a third party defendant. The suit was tried in a summary manner without determining the title of the plaintiff and was decreed in favour of the said Manager on the ground of previous possession. From that date the plaintiff was dispossessed from the Mouza and the other *raiyats* of the Mouza stopped paying rents to the plaintiff. On the 4th February, 1909, the plaintiff brought this suit for resumption of the *jaigir* of Mouza Salga and for mesne profits against the defendants who were the male descendants of the brother of Kanai, and alleged that the *jaigirs* of Ramgarh Raj according to custom were granted in lieu of services to be rendered and were resumable on failure of male issue in the line of the original grantee. The defendants in their written statement denied that the grant was a service grant and that it was resumable on failure of male issue in the direct line of the grantee, and alleged that the grant was made to their great grandfather, one Raghu Singh, who was the father of Kanai, and not

to Kanai, and that the plaintiff's right of resumption on the ground of failure of male issue was premature. The Subordinate Judge decreed the suit. The defendants, thereupon, appealed to the High Court.

Babu Umakali Mukerjee (with him *Babu Manmatha Nath Mukerjee* and *Babu Satindra Nath Mookerjee*), for the appellants. The words '*putra poutradi*' for the purposes of the present case must be taken to mean 'from generation to generation,' and not descendible only in the male line of descent. The case of *Ramlal Mookerjee* v. *The Secretary of State for India* (1) has laid down the construction to be put on those words. An estate tail-male was opposed to Hindu law. This was decided in *Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore* (2). The words "*putra poutradi*" were words of purchase and not words of limitation and were recognised as such in the cases of *Bhujanga Rau* v. *Ramayamma* (3) and *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy* (4). The case of *Perkash Lal* v. *Rameshwar Nath Singh* (5) was not applicable. Unless the meaning of those words was limited by the word "*jaigir*", they must be held to convey an estate of inheritance.

Jaigir was not necessarily a life tenure: see Regulation XXXVII of 1793, section 15, and *Gulabdas Jugjivandas* v. *The Collector of Surat* (6). Its meaning must be regulated by the words of the *sanad* and the meaning assigned to it by the Subordinate Judge was wrong. None of the other disputed *sanads* contained the words "*putra poutradi*" and, therefore, these *sanads* must be disregarded. The case of

(1) (1881) I. L. R. 7 Calc. 304; L. R. 8 I. A. 46.
(2) (1872) 9 B. L. R. 377.
(3) (1884) I. L. R. 7 Mad. 387.
(4) (1897) I. L. R. 24 Calc. 834; L. R. 24 I. A. 76.
(5) (1904) I. L. R. 31 Calc. 561.
(6) (1878) I. L. R. 3 Bom. 186; L. R. 6 I. A. 54.

1914

RAM SARAN LALL v. RAM NARAYAN SINGH.

Bhagwat Buksh Roy v. *Sheo Pershad Sahu* (1) was relied on. There was no document which proved that the words in controversy meant lineal male descendants and confined the grant to the issue in tail-male. Those words, therefore, in the *sanad* meant 'from generation to generation' and conveyed an estate of inheritance. That was the meaning to be given to them, both in Chota Nagpur and in Bengal.

There was no evidence in this case to prove the existence of custom. When the deed itself purported to give an estate of inheritance to the grantee, unless the respondent was able to give evidence of custom that the words in controversy meant tail-male, he could not succeed. The custom must be alleged and proved by the party who alleged it.

Babu Provash Chandra Mitter (with him *Babu Susil Madhub Mullick*), for the respondent. The cases of *Roopnath Konwar* v. *Juggunnath Sahee Deo* (2) and *Perkash Lal* v. *Rameshwar Nath Singh* (3) were relied on as authorities for the alleged custom. The words '*putra poutradi*' in Bengal, just as the words '*naslan baad naslan*' in the United Provinces, meant an absolute and heritable estate. But it was different in Chota Nagpur. The only two cases in favour of the appellants, namely, the cases of *Ramlal Mookerjee* v. *The Secretary of State for India* (4) and *Bhujanga Rau* v. *Ramayamma* (5) did not refer to Chota Nagpur and were of no use to them. The other cases referred to by the appellants were not cases on customary tenure, a *jaigir* being essentially a customary tenure. Etymologically the meaning of the words '*putra poutradi*' was in the respondent's favour. Their

(1) (1913) 18 C. L. J. 277.
(2) (1836) 6 S. D. A. Sel. Rep. 158.
(3) (1904) I. L. R. 31 Calc. 561.
(4) (1881) I. L. R. 7 Calc. 304; L. R. 8 I. A. 46.
(5) (1884) I. L. R. 7 Mad. 387.

meaning was, subsequently, extended to estate of inheritance. At the time of the *sanad* in 1852 there was no fixed meaning to the word "*jaigir*", which was then in its transition stage, for it was not clear whether it meant a tenure descendible in the male line or a life estate. Originally it meant a life estate: see Regulation XXXVII of 1793 section 15 and the cases of *Gulabdas Jugjivandas* v. *The Collector of Surat* (1) and *Shrimant Raje Bahadur Raghojirao Saheb* v. *Shrimant Raje Lakshmanrao Saheb* (2), and gradually it came to mean a tenure descendible in the male line. To remove the ambiguity, the words '*putra poutradi*' were used in the deed. In 1877, *jaigir* came to mean an estate descendible in the male line and resumable by the grantor after failure of male issue. Therefore, in construing the *sanad* that meaning must be put to the document, which was intended to have been conveyed by it at the time of the execution.

Babu Manmatha Nath Mukerjee, in reply. If there was any intention to use the cases *Roopnath Konwur* v. *Jugguunath Sahee Deo* (3) and *Perkash Lal* v. *Rameshwar Nath Singh* (4) as evidence of custom, they ought to have been cited and used as evidence in the Court of the Subordinate Judge, so as to have enabled the appellants to rebut them. The custom on which the present suit has been based, has not been proved.

Cur. adv. vult.

STEPHEN AND MULLICK JJ. The plaintiff in this case is the zemindar of Perganas Raj Ramgarh which includes Mauza Salga, of which he says that a *jaigir*

(1) (1878) I. L. R. 3 Bom. 186; L. R. 6 I. A. 54.
(2) (1912) 16 C. W. N. 1058.
(3) (1836) 6 S. D. A. Sel. Rep. 158.
(4) (1904) I. L. R. 31 Calc. 561.

1914

RAM SARAN LALL v. RAM NARAYAN SINGH.

was granted to one Kanai Singh in 1852. Kanai had two sons, of whom one predeceased him, dying childless, and the other Bansi Lal succeeded him, but died in 1897 without leaving male issue. The plaintiff succeeded in collecting rents for two years, but was dispossessed by the defendants in 1899. He now sues for possession and mesne profits, alleging that he is entitled to resume his ancestor's grant on the failure of male issue of the grantee.

To this claim the defendants set up two defences, one based on fact and one on law. The first was that the grant was made not to Kanai, as the plaintiff says, but to Raghu, Kanai's father, of whom the defendants are descendants in the male line. There are many difficulties about this defence which is not supported by the evidence, and it was given up in the lower Court, and not raised here, and need not, therefore, be further noticed. The second defence raises a question of some importance. The facts are that the subject matter of the original grant was certainly a *jaigir*, and it was conveyed to Bansi with the words, or word, "*putra poutradi*" the significance of which we have to determine. Also there is evidence which may be summarised by saying that it shows that *jaigirs* granted by the Raj were terminable on the death of male heirs, though there is no case to show that this was so where the words "*putra poutradi*" were used.

There is good authority for saying that a grant of a *jaigir* is a grant for life only: *see* Reg. XXXVII of 1793, section 15, and *Gulabdas Jugjivandas* v. *The Collector of Surat* (1). The question is how is this estate extended by the addition of "*putra poutradi*." The words literally translated are, as we understand *putra*-son, *poutra*-grandson, and *adi*-others, but the expression must of course be construed in the first

(1) (1878) I. L. R. 3 Bom. 186; L. R. 6 I. A. 54.

place according to any construction that has been legally recognised. Such a construction is to be found in the following cases. In *Ramlal Mookerjee* v. *The Secretary of State for India in Council* (1), the Privy Council recognised as correct a construction of "*putra poutradi kramè*" which regarded it as implying an absolute and heritable estate, and as passing an estate of inheritance. The principal question there argued was whether the words would apply to a female as well as a male descendant; but the question arose in an administration suit and the decision that the words in question passed an absolute estate of inheritance cannot be treated as *obiter*. The same view seems to have been taken in *Bhujanga Rau* v. *Ramayamma* (2). In *Lalit Mohan Singh Roy* v. *Chukkun Lal Roy* (3), the same words as before were treated by the Privy Council in the same way. On the other hand, in *Perkash Lal* v. *Rameshwar Nath Singh* (4) this Court laid down that in Chota Nagpur the general rule recognised by the Privy Council was modified by a custom that the words "*al aulad*" were to be interpreted as limiting a grant to the lineal male descendants of the grantee, and it is argued, and in our opinion cannot be denied, that no wider construction can be given to the words "*putra poutradi*." But this custom was in effect applied only to a village in the Pergana Kanda. It is stated to be applicable to Chota Nagpur, which may mean the Pergana so named, or the area now known as the Chota Nagpur Division. If the former, the custom does not apply in this case; if the latter, it seems that the decision was wider than was necessary on the facts of the case.

(1) (1881) I. L. R. 7 Calc. 304, 315; L. R. 8 I. A. 46, 62. (2) (1884) I. L. R. 7 Mad. 387. (3) (1897) I. L. R. 24 Calc. 834, 849. (4) (1904) I. L. R. 31 Calc. 561, 569.

1914

RAM SARAN LALL v. RAM NARAYAN SINGH.

In the case of *Roopnath Konwur* v. *Juggunnath Sahee Deo* (1), a *jaigir* was granted "*nussulun-bad-nussulun*" in lieu of services, and a custom that the zemindar should resume the grant on the death of the *jaigirdar* without lineal descendants was recognised. The limits of the custom are not however prescribed, and the custom there acted on is not that which is now set up.

The result is that we see nothing in the cases to modify the general rule laid down by the Privy Council, in its application to the present case.

Under these circumstances, we hold that the original grantee took an absolute heritable and alienable estate; and that all his heirs are capable of inheriting it.

The result is that the appeal is allowed, the judgment and decree of the lower Court is set aside and the suit is dismissed with costs here and in the lower Court.

O. M. *Appeal allowed.*

(1) (1836) 6 S. D. A. Sel. Rep. 158.