

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

HARBHAJ AND OTHERS (PLAINTIFFS) v. GUMANI AND ANOTHER (DEFENDANTS)*

1879
November

Wajib-ul-arz—Absent share-holders—Trust.

Held that a village administration-paper which provides for the surrender to absent share-holders on their return to the village of the lands formerly held by them does not necessarily constitute a valid trust in their favour, although it may be evidence of such a trust.

Where a village administration-paper provided for the surrender to certain absent share-holders on their return to the village of the lands formerly held by them, but did not contain any declaration of a trust as existing between such absent share-holders and the occupiers of their lands at the time such administration-paper was framed, *held* that the administration-paper could not be regarded as evidence of a pre-existing trust between such persons, nor as an admission of such a trust by such occupiers.

THIS was a suit for the possession of certain land and a house situated in a certain village. The plaintiffs sued on the allegation that one Amir Chand and one Sarhu, from whom they were descended, departed from such village for a village in the Rohtak district some thirty years before the suit was brought, intrusting the property in suit to Ramjas, the father of the defendants, to be held by him on the condition that, whenever they or their children returned to the village, the property was to be restored to them : that Ramjas had accepted this trust, and had held the property subject thereto, and after his death the defendants had so held it, and had admitted the trust and caused it to be recorded at the recent settlement of the village : and that the plaintiffs having returned to the village had demanded the restoration of the property but the defendants refused to restore it. The defendants denied that the property had been made over to their father to be held in trust for Amir Chand and Sarhu and their children, alleging that their father, and they after him, had held the property in their own right, for forty years, and the right of the plaintiffs was consequently extinguished. The clause of the administration-paper, which was dated the 7th January, 1869, on which the plaintiffs relied as establishing the alleged trust, was as follows :—

* Second Appeal, No. 117 of 1879, from a decree of S. Melville, Esq., Judge of Meerut, dated the 5th December, 1878, reversing a decree of Munshi Ram Lal, Munshi of Gháziabad, dated the 25th June, 1878.

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“ Clause 16.—Absent share-holders : the following persons are at present absent from the village : (here follows a list of absent share-holders, the entry relating to the plaintiffs being as follows :)—

Thoke.	Absent share-holders.	Present occupier.	Period of absence.	Present residence of absent share-holder.
Thirteen biswas, Thoke of Ramjas.	Harbhaj and Hansa sons of Amir Chand, and Dya Ram son of Sarhu, Jata.	Ramjas son of Amir Chand, Jata.	Twenty-two years.	Mauza Dhorana, pargana and Tahsil Gohara, Zila Rohtak.

“ Whenever the absent share-holder, or his descendants, returns and settles in the village, he shall immediately be put in possession of his property without taking any account of profit or loss : the person occupying the property shall not object to relinquish his occupation of the said property : if from any cause the share of the present occupier is transferred the property of the absent share-holder shall be held by the brother of the present occupier or by one belonging to the same stock : whenever the absent share-holder, or his descendants, returns and settles in the village, effect will be given to the above condition : if any absent share-holder is a defaulter in respect of the Government revenue, he or his descendants shall pay the same, before they become entitled to obtain possession.”

The Court of first instance gave the plaintiffs a decree. On appeal by the defendants the lower appellate Court reversed this decree, and dismissed the suit.

The plaintiffs appealed to the High Court from the decree of the lower appellate Court on the grounds that the finding of that Court, that the defendants had held the property in suit adversely to the plaintiffs was directly opposed to the admission contained in the administration-paper : that according to the terms of that document the defendants were bound to surrender the property ; and that the terms of that document established conclusively the trust alleged by the plaintiffs.

Pandit *Nand Lal*, for the appellants.

The respondents did not appear.

The High Court (STUART, C. J. and SPANKIE, J.) delivered the following

JUDGMENT.—The plaintiffs, appellants, asserted that Amir Chand and Sarhu, some thirty-two years ago, made over their zamin-

dari share and a house in trust to Ramjas, the father of defendants, on condition that when they or their children returned to the village they would be allowed to re-occupy their lands : Ramjas and his successors had all along remained in possession as trustees, and had admitted the trust when the settlement papers were last revised : the plaintiffs returned in 1934, Sambat, and are heirs of Amin Chand and Sarhu, but defendants refused to surrender the share. The defendants deny that any land or house was made over to Ramjas in trust by Amin Chand and Sarhu : Ramjas and they (defendants) have held the property adversely to plaintiffs for forty years, and the suit was barred by limitation : Amin Chand and Sarhu owed nearly Rs. 600 to defendants, they broke down and could not pay the Government revenue : Ramjas held possession for eight years and paid it : when he asked Amin Chand and Sarhu to pay him their debt they left the village, and since then the possession of Ramjas and defendants has been adverse. The Munsif decreed the claim for the land and dismissed it for the house. He held that the administration-paper provided for re-entry. The Judge in appeal has reversed the Munsif's decree, holding that there was no satisfactory proof that Sarhu and Amin Chand intrusted their property to defendant's father Ramjas : parol evidence after such a time was not good for anything, and the administration-paper was not a proof of the trust : it recites that absentees or their descendants may on their return re-enter on their lands : the community assented to this, but any one could recall his consent : the entry is no proof that any one in possession of the share of an absentee held it as a trustee : the possession of the defendants was shown to have been adverse, and to have been so for at least twenty years.

We are not disposed to interfere. The finding as to the adverse character of the possession of defendants is one of fact. A village administration-paper does not necessarily constitute a valid trust. It might be evidence of a trust, but in this case, as regards the share in dispute, the persons entered as " absent shareholders " were neither present in the village when the settlement was in progress, nor were they assenting parties to the arrangement recorded in the administration-paper. The arrangement as to the re-entry of an absentee was made amongst the co-sharers present in the vil-

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lage; possibly the main object in making it was to secure peaceable possession to those in occupation of the shares of absentees. In this administration-paper there is also a proviso that no owner who is a defaulter as regards Government revenue will be re-admitted until he pays up the arrears due by him. If an administration-paper containing a clause such as that before us is to be regarded as constituting a trust, it would appear to be a trust created by the share-holders of the estate, ostensibly for the benefit of absentees, though the latter really derive no present benefit from their land remaining in the possession of the share-holders in the estate, whereas the share-holders are at once benefited by taking up the shares of the absentees which they may possibly be never called upon to surrender without, as in this case, the institution of a suit. Moreover the arrangement may be one which the share-holders actually present when it is made may afterwards, if they please, revoke, or omit to record in a future settlement. However this may be, it is sufficient in this case to say that the Judge has not acted erroneously in refusing to accept the administration-paper as conclusive evidence of a trust, and we must not overlook the nature of this claim as stated in the plaint. The claim of the plaintiffs was that thirty-two years ago Amin Chand and Sarhu made over their share in trust to Ramjas, so that it is not pretended that the trust was raised by the administration-paper; that paper is relied on as evidence of the trust, and an admission by the parties who signed it that there was a trust. But there is no such admission of any actual trust as that set up by the plaintiffs. There was a long list of absentees, and amongst them are the plaintiffs, as sons of Amin Chand and Sarhu. The declaration is general that any absconding parties returning to and settling in the village shall immediately be put in possession: the occupants shall not object to relinquish their holdings. There is no declaration of any pre-existing trust as between the absentees and the occupants of their shares individually. We accept the finding of the lower appellate Court on the matter of fact that there is no evidence to establish the claim that Amin Chand and Sarhu personally intrusted their shares to Ramjas thirty-two years ago. The present appeal is therefore dismissed with costs.

Appeal dismissed.