

THE  
INDIAN LAW REPORTS,  
Allahabad Series.

PRIVY COUNCIL.

MAQBUL HUSAIN AND ANOTHER, APPELLANTS v. LALTA PRASAD,  
RESPONDENT.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Construction of a Government order—Release of nazul property—  
—Limitation.*

P. C.  
J. C.  
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February 28.  
May 11.

The proprietary right in the site of a bazar, and interests in the houses thereon, were disputed between the zamindar claiming them, and the resident occupiers, whose rights by agreement were to be determined by the decision in the case of the defendant who was one of them. In 1879 the Government released the bazar from the nazul, it having been entered in the District Register of that property in 1860.

In the written order of Government sanctioning the withdrawal of the entry in the Register there were words as to the effect of which the Courts below differed; the Court of first appeal holding that the release was to the zamindar, the Court of second appeal holding that the occupiers of the houses were severally made proprietors of them. The words were "as the occupiers appear to have all along exercised proprietary rights without question of their power to do so, it is now too late to disturb their status."

*Held*, that the intention of the Government, as shown, was merely to annul the entry in the Register, and to restore the rights which existed when the entry had been erroneously made. More importance was attached to the act of the Government than to the words used in their order. The effect was a disclaimer of title and a release to those who would have been entitled but for the confiscation by the act of State of 1858; thus following out the policy at the general settlement of Oudh lands. There was no intention to benefit one party more than the other, or to confer title upon either as against the other, in this release.

*Held*, also, that limitation did not apply. Before the annexation of the province there was no limitation causing either bar of suit or title to accrue. So long as the ownership was in the Government, and till the release, neither party had any interest to enforce. The earliest date from which limitation could commence was the date of the release.

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*Present*:—LORDS HOBHOUSE, DAVEY, and LINDLEY, SIR RICHARD COUGH,  
and SIR FORD NORTH.

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On questions not yet disposed of below as to the titles of the parties, irrespectively of those supposed to have been conferred by the order of 1879, and as to the claim in regard to the materials, the suit was remanded to the first Court for trial upon issues.

An official report forwarded with the application for sanction of the release of the property from the nazul was referred to as showing the materials which the Government had before them for deciding to act as they did.

APPEAL from a decree (3rd June, 1897) of the Judicial Commissioner, reversing a decree (26th February, 1895) of the District Judge of Hardoi, and restoring a decree (30th August, 1894) of the Subordinate Judge who had dismissed the plaintiff's suit.

The appellants were the sons and successors in estate of Chaudhri Abdul Baki, a zamindar of Ashraftola in the town of Sandila, who filed this suit on the 12th of May, 1890, and died while it was pending. The claim was for the proprietary possession of the site of, and an interest in, two houses occupied as shops in Amaniganj bazar in that town. The defendant was a grain dealer occupying them. He had built a third of which the materials were now claimed.

The town of Sandila came within the general confiscation under the act of State of the 26th of March, 1858. Property other than the bazar, was restored to the Chaudhri family afterwards; but in 1860, Amaniganj bazar was entered in the Nazul Register of the Hardoi district, the bazar being then erroneously believed to have been the property of the ex-King of Oudh. In March, 1877, the assessment of a ground rent was ordered by the Deputy Commissioner, but was not paid.

On the 3rd of September 1877, the present plaintiff petitioned the Deputy Commissioner to order an executive inquiry into his claim for the proprietary right to the bazar as against the title of the Government. On the 20th of July 1878, the Tahsildar, after taking the evidence of some of the resident occupiers and others purporting to have knowledge of the facts, sent a report on the case. This was forwarded on the 1st of March, 1879, to the Government by the Deputy Commissioner. The particulars of this, with all the facts relevant to the appeal, are stated in their Lordships' judgment.

On the 26th of May, 1879, the order sanctioning the application that the entry of bazar in the Register should be withdrawn was

sent to the above officer through the Commissioner of the Sitapur Division (within which Hardoi was then comprised). The Government letter stated that as the occupants appeared to have all along exercised proprietary rights without question of their power to do so, it was now too late to attempt to disturb their status.

The bazar having been released from the nazul, Abdul Baki instituted suits after the lapse of some years. In 1890 he sued thirty-seven occupiers of whom the defendant was one.

The main question on this appeal was as to the effect on the rights of the parties of this act of release by the Government. The plaintiff-appellant, and the thirty-six other occupiers, had consented to abide by the decision in the case of the present defendant.

The plaintiff stated that the plaintiff had title to the bazar by ancestral right, that the houses were built by those who lived there as ryots, the defendant occupying two, and having built another without permission; and that since the release of the bazar from the nazul, all the ryots had been rendering zamindari dues to the plaintiff, in favour of whom the release had been made, and who had since then had possession. A custom of the town was that the materials of a house left by a ryot of his own accord became the zamindar's and that on the ryot's selling a house he paid one-fourth of the price to the zamindar; who, if he made the occupier quit, paid to him three-fourths of the estimated price. The claim was for possession of the two houses on payment by the zamindar of three-fourths of the value of the materials. Those of the other house were claimed without payment.

The defendant's written answer denied that the site was ever the ancestral property of the plaintiff and that the defendant had ever paid zamindari dues, he and his predecessors having been in free possession for upwards of a hundred years. Limitation was also pleaded. It was added that no such custom about the materials existed and that it was not the fact that the bazar was made over to the plaintiff from the Nazul Department, also that the bazar was released because no one ever paid dues in respect of it.

The issues related to whether the plaintiff had the title alleged by him and whether the bazar was re-leased to him in

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1879; whether he had since been in possession receiving zamindari dues; whether limitation was applicable; whether the custom was as stated, and what was the price to be paid in respect of the materials if the plaintiff should be found entitled as he alleged.

The Subordinate Judge dismissed the suit. His judgment passed over the question of the plaintiff's right by ancestral title. He was of opinion that nothing had been granted or allowed to the plaintiff on the release of the bazar from the nazul by the order of Government, and that therefore he had no interest in the property. In effect he found that the grant was to the resident occupiers and not to the Chaudhri zamindars. He also held that the suit failed because it was barred by limitation under Article 142, Schedule II, Act No. XV of 1877.

The District Judge on the plaintiff's appeal reversed the above decision. He was of opinion that by "occupants" the Government order of the 26th of May, 1879, meant the zamindar. The circumstances of the case made it clear to him that the expression was used in this sense. No question had been raised between the Government and the resident occupiers when the letter of that date was written. It had then not yet been asserted that the occupiers had the proprietary right to the land on which the bazar stood. The only question that had been raised with them was whether they were liable to pay rent; and that question was left in abeyance by the local authorities until it should have been decided whether the Government or Abdul Baki should be the recognised proprietor. The District Judge found for these reasons that the plaintiff was the proprietor. He held that the suit was not barred by time. He remanded it for decision upon the issues not decided by the first court as to the rights of the parties in the materials of the houses and their estimated price.

The defendant then appealed to the Judicial Commissioner, who reversed the decree of the District Judge, and restored that of the Subordinate Judge, dismissing the suit. He was of opinion that the Government order of 1879 referred to the "occupants" of the houses. He would not construe that order, by the aid of the Deputy Commissioner's letter of the 1st of March, 1879, as referring to the zamindars, and as conferring the proprietary title to the bazar Amaniganj on the plaintiff.

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Mr. L. DeGruyther, for the appellants, argued that the Judicial Commissioner had misconstrued the order of the 26th of May 1879, and that he was wrong in holding that the plaintiff had failed to prove his title to the site of the bazar. The Judicial Commissioner had considered that the order placed the property at the disposal of the occupants, whose status was not to be disturbed, and he construed that term to mean the resident occupiers. The District Judge had taken the correct view that the word referred to the zamindar, finding that the circumstances justified this interpretation. It was submitted that the recommendation of the Deputy Commissioner on the 1st of March, 1879, on which the Government had acted, could only refer to the recognition of the title of the zamindar as against the claim of the Government. It could not mean a recognition of a proprietary right in the occupiers who had then claimed no such title; whose rights had not been investigated, and who were referred to on any view of the subject-matter, by a doubtful expression. It was argued that the word "occupants" referred to the zamindars who were Abdul Baki and his ancestors. The latter had all along exercised enough proprietary rights to show that such rights existed. The occasion, the documentary evidence, and the order of 1879, were all such as to show that the object of the Government was to restore the state of things which existed before the events leading to the entry in the Nazul Register. It was within the power of the Government to grant or to withhold the title. Reference was made to the judgment in *Nawab Malka Jehan Sahiba v. The Deputy Commissioner of Lucknow* (1), showing that all who claimed property that had fallen within the confiscation of 1858, must claim through the Government in whom it had vested.

The respondent did not appear.

On the 11th May their Lordships' judgment was delivered by LORD DAVEY.

This is an appeal from the decree of the Judicial Commissioner of Oudh of the 3rd of June, 1897, reversing the decree of the District Judge of Hardoi of the 26th of February, 1895, and restoring the decree of Subordinate Judge of Hardoi of the 20th of August, 1894, which dismissed the suit of the plaintiffs and

(1) (1879) L. R., 6 L. A., 63, at p. 74.

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present appellants. The respondent has not appeared, which their Lordships regret the more because it is stated to be a test case upon the decision of which 36 similar cases will depend. It is surprising that the 37 defendants did not combine to instruct counsel to argue their case at their Lordship's Bar.

The appellants are the heirs of the original plaintiff Chaudhri Abdul Baki who by his plaint claimed to be entitled to the land or soil occupied by a bazar called Amaniganj in the town of Sandila in Oudh as his ancestral property. It was alleged that the residents of the said bazar live there as ryots, having built houses at their own costs, and that the defendant was one of such residents in occupation of two shops and having without permission built another shop on a piece of fallow. The plaint contains an allegation of a custom in the town of Sandila that if a ryot leaves of his own accord a house or shop occupied by him the materials thereof become the property of the zamindar. If he wishes to sell the materials of a house or shop he pays one-fourth of the price to the zamindar and if the zamindar desires the ryot to vacate a house or shop he pays the ryot three-fourths of its estimated price. The prayer is for possession of the land occupied by the defendant subject to the payment of three-fourths of the price of the defendant's shops (other than the one erected without permission) according to the custom.

The defence is in substance a denial of the plaintiff's title and a plea of limitation.

After the mutiny the town of Sandila shared the general confiscation of Oudh territory. Other family property was restored to the plaintiff, but in 1860 the bazar was entered in the Nazul Register under the belief (which appears to have been mistaken) that it was previously the property of the King of Oudh. In the year 1877 the Government determined to impose the payment of a ground rent upon the occupiers. The occupiers refused to pay, apparently on the ground that they were not liable by their tenure to pay rent, and the Tahsildar was ordered to institute a test action. Before anything was done, however, an inquiry was directed to be made as to when and by whom the shops were built, how did they become a nazul property, and what proof there was of their being such. On

the 3rd of September, 1877 Abdul Baki (the plaintiff) petitioned the Government "that an executive inquiry be made through the Tahsildar or some other officer, and if the bazar be found to be the petitioner's property an order for its release be passed," and an inquiry was directed accordingly.

The report of the Tahsildar by whom these inquiries were conducted is dated the 20th of July, 1878. It is a lengthy document and contains a history of the case. He reported that the entry in the register was the only proof of the bazar being nazul, and that with regard to the proprietorship of the bazar there was no contradiction to the Chaudhris being the owners of it, whose heirs were Abdul Baki and others. And he also found that although payment of rent in money or of two pice and betel at the construction of a new shop had not been stated by any witness, yet no one denied the proprietorship of the petitioner and his ancestors, and the payment of other dues was also admitted.

On the 1st March, 1879, the Deputy Commissioner of Hardoi forwarded to the Commissioner the following docket as to "the Nazul Amaniganj":—

"Sir,

"Certain shops in Sandila, known as Amaniganj, are in the Nazul Register. Last year I imposed a light ground rent on them, and the rent not being paid, threatened to sue.

"Petitions of objections were lodged, first, by the zamindars, who claimed that the proprietary right was theirs; secondly, by Musammât Lado, who claimed a portion of the property as hers. A very careful inquiry has been held on the spot by the Tahsildar in each case. I forward translations of his reports.

"2. The result may be summed up as follows:—

"I. That the bazar was built 80 or 90 years ago and was called after the reigning King, but no one can say who built it.

"II. That the zamindars hold:—

"(a) a *mazhar* or attested statement of title;

"(b) a mortgage deed executed by them;

"(c) a deed of gift on their part in favour of Musammât Lado, with regard to a portion of the property.

"III. That these documents are apparently genuine.

"IV. That they appear to have received presents from the owners of shops in acknowledgment of their proprietorship up to 1860, when the *ganj* was declared nazul.

"V. That as far as is known no proprietary rights have ever been exercised or rents received either by the Kings of Oudh or by the present Government.

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"Under these circumstances I recommend that the *ganj* (market) be struck out of the Nazul Register. A copy of the entry in the register is annexed.

"(Sd.) J. QUINN,  
Deputy Commissioner."

Their Lordships do not refer to these documents as evidence against the respondent of the truth of the matters stated in them, but for the purpose only of showing the materials which the Government had before it when it gave its decision in the ambiguous terms to be next stated, and the nature of the case upon which that decision was given.

On the 26th of May 1879 the Government addressed the following letter to the Commissioner of Sitapur :—

"From ROBERT SMEATON, Esq.,  
Junior Secretary to Government, N.-W. Provinces and Oudh,  
To the Commissioner of the Sitapur Division.

"WITH reference to correspondence ending with your No. 1464, dated 10th May, regarding the removal from the Hardoi Nazul Register of certain shops, known as Amaniganj, in Sandila, I am directed to say that as the occupants appear to have all along exercised proprietary rights without question of their title to do so, it is too late now to attempt to disturb their status; and the Lieutenant-Governor and Chief Commissioner is accordingly pleased to sanction the Deputy Commissioner's proposal to expunge these shops from Nazul Register."

In compliance with this order the bazar was struck off the Nazul Register and proclamation made thereof.

The principal question on this appeal is what the effect was of this act of the Government? The appellants contend by their pleadings and at the bar that the letter of the 26th of May 1879 was according to its true construction and when read by the light of previous proceedings a regrant to the zamindar of the land and soil of the bazar. The respondent on the other hand relied upon the letter of the 26th of May 1879 as a grant to the occupiers of full proprietary rights in their houses and shops and the land upon which they are constructed and thus turned them from ryots and occupiers into landowners. It is of course agreed that any person claiming land in Oudh must show a title from Government subsequent to the confiscation; but the question is to whom it is to be inferred from these informal proceedings that the grant was intended to be made.



The following issues were framed by the Subordinate Judge :—

“ 1. Is the land on which the bazar called Amaniganj in Sandila is situate plaintiff's ancestral property and the residents of the bazar live in it like ryots ?

“ 2. Was the bazar restored in favour of the plaintiff, or given to the plaintiff, and the plaintiff has been in possession ever since, and has regularly received or taken zamindari dues from all the tenants of the same ?

“ 3. When did the cause of action accrue to plaintiff, and is plaintiff's claim within limitation ?

“ 4. Is there any custom prevailing in Sandila to the effect that whenever the zamindar or owner of the land wishes to turn out any tenant living on his land, he can do so and pay three-fourths of the value of the materials of the tenant's house, and if so, does such custom apply or govern the bazar of Amaniganj ?

“ 5. If the plaintiff be found to be entitled to the possession of the houses and shops, what is the amount in each case on payment of which he can obtain possession ? ”

The Subordinate Judge did not think it necessary to determine the first issue because he held that the letter of the 26th of May, 1879, operated as a grant by the Government of full proprietary rights to the occupiers. He also found on the third issue that the plaintiff had not been in possession within limitation and his suit was barred by Article 142, Schedule II, of the Limitation Act.

The District Judge on appeal held that the Government in 1879 surrendered the proprietary right in the land of the *ganj* to Abdul Baki, and that he was not barred by limitation from bringing the suit, and remanded the case for trial of Issue No. 4 and, if necessary, Issue No. 5. The District Judge thought that it was clear from the history of the case that by the word “occupants” in the letter of the 26th of May 1879 was meant the zamindar. Their Lordships cannot see their way to adopting this construction. But they think that the following sentences of the learned Judge's judgment are well founded :—“ It was a question of proprietary right between Government and the zamindar. It was not a question between Government and the shopkeepers. It was never asserted that the shopkeepers had a proprietary title to the land. The only question with them was whether they could be made to pay rent and that question was left in abeyance

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“until it was decided whether Government or Abdul Baki was  
“the proprietor of the land.”

Finally the Judicial Commissioner reversed the decree of the District Judge and restored that of the Subordinate Judge substantially for the same reasons. The Judicial Commissioner comments upon the fact that the whole of the correspondence upon which the Government Order of the 26th of May is based was not before the Court. Since the hearing before the Judicial Commissioner the appellants have obtained from Government copies of certain letters which preceded those of the 26th of May and asked leave to read them on the hearing of this appeal. But as the respondent has not appeared and it did not appear that any notice had been given to him that leave to produce fresh evidence would be asked for, their Lordships did not think fit to accede to the application, though they do not doubt their power to do so. Both sides seem to be equally in default in not obtaining earlier production of these letters.

Their Lordships are impressed by the weight of the observations which have been quoted from the judgment of the District Judge. Throughout the exhaustive report of the Tahsildar there is not a trace of any claim by any of the occupiers (of whom seven gave evidence) to the ownership of the land, but on the contrary it is expressly stated in the report that there was no denial of the title of Abdul Baki and his ancestors.

They cannot without the clearest evidence attribute to the Government any intention to adjudicate upon or decide a matter which was not before it, or gratuitously to confer title on persons who never claimed it to the prejudice of others whose claim was reported by the Government Officers to be well founded. Their Lordships attach more importance to the act of the Government than to the terms of the letter. They think that the intention of the Government was simply to annul the entry in the Nazul Register and restore the rights which existed when it was erroneously made. And they think that the effect of expunging the entry in the register was a disclaimer by the Government of all title, and a surrender or release of the property to those whom it might concern, or (in other words) those who would have been entitled but for the confiscation, according to

their several rights and interests, thus following out the policy of the Government at the general settlement of the land in Oudh. It would seem that some of the land had been parted with by ancestors of the appellants before the confiscation. Nor is there anything in the letter of the 26th of May 1879 which is inconsistent with this view of the effect of expunging the bazar from the register. Whatever the opinion of the Government might be on the materials before it, it would naturally not desire to prejudge any rights which might be asserted before the Law Courts, and the only direction in it is "to sanction the Deputy Commissioner's proposal to expunge the shops from the Nazul Register." This proposal, based on the report of which he gives a summary, is certainly not to give the ownership of the land to the occupiers. The earlier words in the letter which are relied on state the reasons for this order, which may have been based on an imperfect appreciation of the Deputy Commissioner's recommendation. But it must be remembered that the bazar was classed with the other lands belonging to the King of Oudh and so was entered as nazul. The minds of the Oudh Executive in 1879 would doubtless be addressed to the question whether the bazar did really belong to the King. As the report showed that zamindars and shopkeepers alike dealt with the land independently of the King, it was not far from accurate, though not well chosen, language to say that "the occupants appear, &c., &c.," with the meaning that the private claimants of interests enjoyed them undisturbed, in the same way as other people enjoy private property. What the Government does is to sanction the Deputy Commissioner's proposal, and reading the letter with the Tahsildar's report, and the Deputy Commissioner's recommendation, their Lordships cannot find in it any indication of the Government's intention to benefit either party at the expense of the other.

Their Lordships are also of opinion that the Appellants are not barred by limitation. There could not be any bar or title by limitation prior to the annexation. The act of State known as the confiscation, which followed soon afterwards, made a clean sweep of all titles and vested them in the Company from whom they passed to the Crown. There is no suggestion of a

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title by limitation against the Crown. As long as the Crown remained owner neither zamindars nor ryots had interests which they could enforce against one another. Nothing was done to divest the title of the Crown and to restore it to the former owners prior to the letter of the 26th of May 1879. To take that letter rather than the actual alteration of the registers as the act which conveyed title to the former owners from the Crown is the most favourable view for those who plead the bar of limitation. But this suit was commenced within 12 years of the date of the letter, and bar by time is therefore out of the question.

There was no actual finding by the Subordinate Judge on the first issue as to the title of the appellants. That Judge presumed for the purpose of argument that it might be answered in the plaintiff's favour, but, as already stated, it became immaterial. There should be a finding upon it now, and in this respect the decree of the District Judge requires amendment.

Their Lordships are of opinion that the Judicial Commissioner should have left the decree of the District Judge undisturbed except by directing that the matters contained in Issue I should be tried as well as the other matters of remand. Issue I, however, as at present framed will not enable the Court to finally adjudicate on the respective rights of plaintiff and defendant. It may be that the ryots have by long occupancy acquired some rights which will protect them against eviction at the will of the zamindar. Their Lordships therefore think it should be broken up into two issues as stated below.

In the result their Lordships think that the order of the Judicial Commissioner should be reversed and that the simplest course will be to discharge all the orders made in the Courts below and to direct that a decree be passed in the following form. On the second issue declare that the letter of the Government dated the 26th of May, 1879, coupled with the consequent removal of the bazar from the Nazul Register operated as a surrender and regrant by the Government of the bazar and the shops and houses in it to these persons, who, if they had not been confiscated, would now be entitled thereto according to their several rights and interests, and on the third issue find that the plaintiff was

not barred from bringing his suit by limitation. Substitute for Issue 1 the following issues:—

IA. Is the plaintiff (having regard to the foregoing declaration) proprietor of the land on which the bazar called Amaniganj in Sandila is situate?

IB. Have the residents of the bazar any and, if so, what rights and interests in the houses and shops therein occupied by them?

Remand the case to the Subordinate Judge for trial of the above issues, and also (if and so far as necessary) of Issues 4 and 5. Direct that the costs of the trial which has already taken place and of the appeals to the District Judge and Judicial Commissioner respectively abide the result of the suit. And they will humbly advise His Majesty accordingly.

Their Lordships observe that the Issue 4 does not accurately follow the words in which the custom is pleaded in paragraph 4 of the plaint, inasmuch as it speaks of "the value of the materials of the tenant's house" whereas the plaint says "its" (*i.e.* the house's) "estimated price." But no doubt the variance was deliberately made and is the result of explanations given at the time of the settlement of the issues. Their Lordships content themselves with pointing out the variance and will not advise any alteration to be made in the language of the issue.

Their Lordships will direct that the costs of this appeal also do abide the result of the suit and be disposed of by the Courts below accordingly.

*Appeal allowed; suit remanded.*

Solicitors for the appellant:—Messrs. *Watkins and Lemprière*.  
C. B.

GANGA BAKHSI SINGH (PLAINTIFF) v. DALIP SINGH AND OTHERS  
(DEPENDANTS).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Act No. XIV of 1891 (Oudh Courts Act), section 8—Appeal—Jurisdiction—Appeal below heard by a Court not properly constituted—Practice.*

The Oudh Courts Act (XIV of 1891), section 8, enacts that "an appeal from a decree or order of a Subordinate Judge to the Judicial Commissioner shall be heard by the Judicial Commissioner and the Additional Judicial Commissioner

*Present:—Lord HOBHOUSE, Lord DAVEY, Lord ROBERTSON and Sir RICHARD COUCH.*

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