

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Banerjee.*

HASSAN ALI (PLAINTIFF) v. CHUTTERPUT SINGH DUGARH  
AND ANOTHER (DEFENDANTS).\*

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December 17.

*Registration, exemption from, of documents purporting to be, or to evidence, grants or assignments by Government of land or of any interest in land—Registration Act (III of 1877), s. 90, cl. (d)—Nawab Nazim's Debts Act (XVII of 1873).*

The Agent to the Governor-General in a letter to the Nawab Bahadur of Murshidabad announced the intentions of the Government as to his position and income, and informed him that he was to have possession of the State lands and jewels. In a suit by the son of the Nawab to recover possession from a person wrongfully in possession of land which was held by the lower Courts to be portion of such State lands, it was *inter alia* objected that the letter required registration.

*Held*, that the letter operated as a grant or an authority from Government, and was exempt from registration, under the provisions of s. 90, cl. (d) of the Registration Act.

*Held*, further, that the Commissioners appointed under the Nawab Nazim's Debts Act had jurisdiction to declare the land claimed in the suit to be State property, notwithstanding the fact that an alienation of such land had taken place before the date of the Commissioners' award.

*Omrao Begum v. The Government of India* (1) followed.

THE plaintiff's father, the late Nawab Nazim of Bengal, by an *atanama*, dated the 10th Bhadro 1267, made a gift of a lakhiraj mahal Sridhurbati with its mudafats and mauza Alinagar, in the district of Murshidabad, in favour of one Tarini Sanker Bhatta, since deceased, the father of the second defendant, Upendro Nafain Bhatta. Subsequently a decree was obtained against Tarini Sanker by Lutchmiput Singh Dugarh, the father of the first defendant, who purchased the above properties at an execution sale on the 17th November 1874 and obtained possession of the same. The Commissioners appointed under the Nawab Nazim's Debts Act (XVII of 1873) ascertained and certified that these mauzas were *nizamut* properties (that is, properties held by the Government for the

\* Appeal from Appellate Decree No. 1796 of 1890, against the decree of W. H. Page, Esq., District Judge of Murshidabad, dated the 11th of September 1890, reversing the decree of Babu Raj Chunder Sanyal, Subordinate Judge of Murshidabad, dated the 9th of June.

purpose of upholding the dignity of the Nawab Nazim for the time being), and the plaintiff, as the heir of the late Nawab Nazim, who died on the 4th November 1884, sued Chutterput Singh, the son of Lutchmiput Singh, making Upendro Narain Bhatta, a *pro forma* defendant, to have the *atanama* above referred to declared void, and to have his title to khas possession of the properties declared, alleging that the properties were not transferable or liable to be attached or sold by auction in satisfaction of the debts of Tarini Sanker Bhatta, whose right therein (if any) determined upon the death of the late Nawab Nazim.

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The defendant, Chutterput Singh Dugarh, in his written statement traversed the above allegations, and pleaded, *inter alia*, that his father obtained a decree for Rs. 42,202 against Tarini Sanker Bhatta which was still unsatisfied; that the declaration made by the Commissioners under Act XVII of 1873 was made without jurisdiction and invalid; that the properties had passed to Tarini Sanker before the Act came into operation, and that Lutchmiput Singh was a *bonâ fide* purchaser for value without notice of the rights of the Government.

The Subordinate Judge found that the plaintiff's cause of action arose on the 4th November 1884, the date of the late Nawab Nazim's death; that the Commissioners had full jurisdiction in respect of properties purporting to have been alienated by the late Nawab Nazim prior to the passing of the Act, as settled in the Privy Council decision of *Omrao Begum v. The Government of India* (1), that the alleged gift to Tarini Sanker became void upon the death of the late Nawab Nazim, and that the plaintiff had established his right to khas possession.

Upon appeal the District Judge held that the Secretary of State alone was entitled to institute a suit for immoveable property held by the Government of India. The concluding portion of his judgment was as follows:—"I apprehend that so far as State property is concerned, there is no ground for saying that the present plaintiff is the legal representative of the deceased Nawab Nazim, for the Act of 1873 only gave the Commissioners power to declare what property was held by Government for the purpose of upholding the dignity of the Nawab Nazim for the time being,

1891 and there has been no Nawab Nazim since 1884, when the father  
HASSAN ALI of the plaintiff died.

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“The Subordinate Judge says that ‘Exhibit II shows that the plaintiff is competent to bring a suit for possession of a *mahal* which has been declared to be State property by the Commissioners.’ Exhibit II is a letter from the Commissioner of the Presidency Division to the Collector of Murshidabad, giving his opinion on some points and instruction on others, but it does not show that the plaintiff is competent to sue for possession of a *mahal* or of anything else, and it is impossible in the nature of things that it should. The Government pleader, in supporting the decree, says that if Exhibit II does not, then Exhibit III does. Exhibit III is a letter from the Agent to the Governor-General to the present Nawab Bahadur, and is dated 1st September 1881, that is to say, three years before the Nawab Nazim’s death. The Agent communicates the orders of Government respecting the future position and income of the present Nawab Bahadur and other matters. Paragraph 2 of the letter announces what will be the Nawab’s title and stipend, and continues ‘you will also have possession of the State lands and jewels.’ I do not consider this as equivalent to a conveyance of immoveable property or any right to sue for immoveable property, and if it were so, the Registration Law would be a bar to its being used in evidence in its present condition. I observe that the judgment of the lower Court is silent on the subject, and the document does not appear to have been put forward as having any such character as is attributed to it here.

“It appears to me that I must hold that only the Secretary of State can institute a suit of this nature, and that this suit should be dismissed.”

The material portion of the Agent’s letter was as follows:—

“His Highness the Nawab Nazim Syed Mansur Ali, Khan Bahadur, having relinquished his position as such, and having renounced all personal rights of interference with *nizamut* affairs, I am directed to communicate to you the following orders of Government regarding your future position and income, and the allowances to be assigned to the other members of the Nawab Nazim’s family.

2. "You will be styled the 'Nawab of Murshidabad.' Your stipend will be Rs. 1,50,000 per annum, and you will receive an allowance of Rs. 30,000 per annum for the repair of the Palace, &c. You will also have possession of the State lands and jewels. The terms upon which you hold these latter will form the subject of a future communication."

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The subsequent paragraphs contained the orders and directions of Government as to the allowances of the other members of the Nawab Nazim's family, establishment charges, buildings assigned as residences to members of the family, and other matters of a similar nature.

Mr. *Evans* and Moulvie *Seraj-ul-Islam* for the appellant.

Dr. *Rash Behari Ghose*, Baboo *Degumber Chatterjee*, and Baboo *Dwarkanath Chuckerbutty* for the respondent.

The judgment of the Court (PETHERAM, C.J., and BANERJEE, J.) was delivered by—

PETHERAM, C.J.—This was a suit brought by the Nawab Bahadur of Murshidabad to recover possession of certain property, on the ground that it was a part of the State property of the Nizamut of Murshidabad which was wrongfully in the possession of the defendants under an alienation from the last Nawab Nazim.

The Subordinate Judge decreed the suit. The District Judge reversed his decision, and has dismissed the suit on the ground that the only person who could bring such a suit was the Secretary of State, that the title was in the Secretary of State, as representing the Government of India, and that no one could bring the suit but that person.

The matter has been argued before us by Mr. *Evans* for the plaintiff and by Dr. *Rash Behari Ghose* for the defendants, and Mr. *Evans*, on this point which I have mentioned, relies upon the letter of the Agent to the Governor-General, which is referred to in the judgment of the District Judge.

That was a letter in which the Agent conveyed to the plaintiff, the Nawab Bahadur, the intentions of the Government with reference to his future, and as to his income, and the provision which was to be made for it; and in that letter he says, "you will also have possession of the State lands and jewels." Both Courts

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found that the property in question was part of the State lands referred to in that letter, but the District Judge considers that that letter did not transfer the title to this property to the Nawab Bahadur, and even if it did, it would be shut out by the Registration Act.

We think that it was not necessary that the letter in question should transfer the title to give a right of action in this case. These lands were found by the Commissioners to be a part of the State lands, and I do not think it is necessary for us to enquire in whom the title, in the English sense of the word, in these lands is vested. It is sufficient, we think, that the Government of the country, which had power to do what it pleased with these lands, informed the Nawab Bahadur, the present plaintiff, that he was to have possession of them for his life. It is not necessary for us to enquire what was the technical interest created in him for the purpose of this suit, that is to say, for the purpose of a suit to recover possession from a person who has no title. It is enough, we think, that he was entitled to the possession under a grant, or an authority, given him by the only person who could give him right of possession.

Then comes the objection which is raised by the learned District Judge that, even if this is so, it cannot be used because of the provisions of the Registration Act. We think it is enough to quote section 90 of that Act, sub-section (d), which provides that "Sanads, inam title-deeds, and other documents purporting to be, or to evidence, grants or assignments by Government of land or of any interest in land" shall be exempted from registration.

If this is a grant by any one, it is a grant by Government, and consequently it is exempted from the operation of that Act, so that both the objections to this suit fail.

Then Dr. *Rash Behari Ghose* takes a point here that if you look at the Commissioners' award, as a whole, it will be found that it does not determine that this particular property was one of the State lands of this Nizamut, and consequently the Nawab is not entitled to possession of it under the award and under the letter; and he relies upon paragraph 24 of the award.

In that paragraph the Commissioners say—"We have confined our enquiries to the property now in the possession of the

Nawab Nazim. It appears to us that the Act does not empower us to follow property which has been wrongfully alienated, or of which other parties have acquired wrongful possession." Dr. *Rash Behari Ghose* says that, inasmuch as it appears that the alienation by the Nawab Nazim of this property had taken place before the date of this award, that shows that this award did not operate on this particular property. But this is recital only, and when one comes to the operative part of the award, the Commissioners deal with this property by name and declare it to be State land.

This, one would think, should be enough to decide this point; but, in addition to that, the same point had been argued in the Privy Council in the case of *Omrao Begun v. The Government of India*, (1) and in that case the same point was decided in exactly the same way. So that, both on principle and authority, we think this award clearly deals with this particular property, and declares it to be State property. We think that the letter, which authorized or informed the present plaintiff that he was entitled or was to hold possession of all these State lands, and which has been acted upon ever since, is sufficient to entitle him to bring an action for possession of this property against a person wrongfully in possession, and consequently this appeal must be allowed, the decree of the lower Appellate Court reversed, and the decree of the Court of First Instance restored with all costs.

*Appeal decreed.*

A. A. C.

*Before Mr. Justice Pigot and Mr. Justice Banerjee.*

YAKUTUN-NISSA BIBEE (PLAINTIFF) v. KISHORBE MOHUN  
ROY AND OTHERS (DEFENDANTS).\*

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*August 11.*

*Court fee—Memorandum of appeal insufficiently stamped—Deficiency in stamp on memorandum of appeal made good after period of limitation—Court Fees Act (VII of 1870), s. 28.*

A memorandum of appeal, insufficiently stamped, was presented in the Court of the District Judge on the 24th May, the last day allowed for it

\* Appeal from Appellate Decree No. 1101 of 1890 against the decree of D. Cameron, Esq., District Judge of Dacca, dated the 28th May 1890, affirming the decree of Babu Beni Madhub Mitter, 2nd Subordinate Judge of that district, dated the 30th of March 1889.