

1883

SARSUTI
v.
KUNJ
BEHARI
LAL.

to hold that according to what I conceive to be the true construction of s. 7 of Act VIII of 1859, read by the light of s. 43 of Act X of 1877, as amended by Act XII of 1879, possession of the property ought to have been claimed in the previous suit brought for declaration of right, and that not having been so claimed, it could not be asked in a subsequent suit.

CIVIL JURISDICTION.

1882

March 30.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight and
Mr. Justice Tyrrell.

STAMP REFERENCE.

*Lease granted to a cultivator—Kabuliyat—Exemption from stamp duty
—Act I of 1879 (Stamp Act), sch. ii, No. 13, (l) and (e).*

By the term "cultivator" in No. 13, sch. ii of the Stamp Act, 1879, only those persons are connoted who actually cultivate the soil themselves or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stock. The class of husbandmen or actual agriculturists is meant; not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease.

Held therefore, where the land, the subject of a *kabuliyat* (counterpart of a lease) was for a large part not cultivable or susceptible of being treated as a "cultivator's" holding in any legitimate sense of that word that such *kabuliyat* was not exempted from stamp-duty under No. 13 (e), sch. ii of the Stamp Act, 1879.

THIS was a reference under s. 46 of Act I of 1879 (Stamp Act) by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, in his capacity as Chief Controlling Revenue Authority for Oudh, under cl. 7, s. 3 of that Act. The case, and the opinion of His Honour thereon, as stated in the letter from the Secretary to Government, North-Western Provinces and Oudh, in the Oudh Revenue Department, dated the 21st January, 1882, was as follows:—

"One Lachman Prasad, *lambardar*, and Gopal Prasad Awasti, lessee of mauza Pariar in the Unao district, gave a *kabuliyat* agreeing to pay Rs. 611 per annum for five years from 1287 *fasli*, for the fallow land attached to Jora Katarhar, including jungle, *ghil*, grass, *tin*, &c. The Deputy Commissioner found that the *kabuliyat* was on plain paper, and asked the Commissioner of Stamps what stamp it should bear. He pointed out (i) that the

kabuliyat, though to the same purport, was not the counterpart of the pattah; and (ii) that the lessee was not a cultivator, *i.e.*, that he did not cultivate the whole of the land leased.

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“The Commissioner of Stamps did not notice the first point, as indeed it was hardly necessary that he should. On the second point he replied that a person who cultivates something less than the entire area of his holding is not the less a cultivator on that account, and relying on schedule ii, art. 13 (c), of Act I. of 1879, expressed his opinion that the kabuliyat required no stamp.

“The papers were called for by the Lieutenant-Governor and Chief Commissioner, and the conclusion arrived at by His Honor after their perusal is that the ruling of the Commissioner of Stamps was erroneous. It appears to Sir George Couper that if that ruling be correct, the lessee of a village, or even of a taluka, need only cultivate a single bigha within the area leased by him to escape the payment of stamp-duty on the kabuliyat, which he gives. His Honor is of opinion that the kabuliyat, to be exempt from duty, must relate to land in the *bonâ fide* cultivating occupation of the person executing it: by this the Lieutenant-Governor and Chief Commissioner does not mean that the whole of the land must be cultivated by such person, but that it should be in his *bonâ fide* holding and worked with his stock. It was not intended, nor does the law provide, that a thikadar should be excused the payment of duty. Moreover, it is evident from the language of the kabuliyat that the two persons executing it did not propose to cultivate the whole of the land themselves. In short, the exemption from duty is only in favour of a lease of land let as an agricultural holding to a cultivator, the size being immaterial, so long as the cultivation is undertaken by the lessee, and he is, in a true sense, the cultivator and not merely a farmer.”

The kabuliyat referred to above was in these terms:—“Kabuliyat executed by Lachman Prasad, lambardar, and Gopal Prasad Awasti, lessee, of mauza Pariar, in which they ask for a lease of the fallow land attached to Jungle Jera Natarhar, from the border of Manapur to the borders of Gadian, Angwan, Haji, and Barbola Rampur, together with the land belonging to mauza Pariar, or five years, from 1287 fasli, and promise to pay the money,

1883 instalment by instalment, without raising any objection, whether
 STAMP the land is cultivated or not: Rs. 611.—Jungle *jhil*, grass,
 REFERENCE. *tin*, &c.”

The High Court gave the following opinion:—

STUART, C. J., and STRAIGHT and TYRRELL, JJ.—The case stated for our opinion is, whether a kabuliyat (counterpart of a lease) given under certain specified circumstances is or is not exempt from stamp-duty under the provisions of the Stamp Act of 1879, as laid down in its schedule II, art. 13, sub-articles (b) and (c).

The kabuliyat embodies the terms of a contract on the part of two persons, the lambardar and lessee, respectively, of a village called Pariar, whereby they undertake to pay Rs. 611 per annum, for a period of five years, to the owners of certain fallow and other land belonging, apparently, to the proprietors of a village called Jora Katarhar, on the other part, for the use of such land with all its appurtenances.

The fixed annual payments were covenanted to be made “*kist* by *kist*, whether the land is cultivated or not.” The appurtenances of this land were described at the foot of the kabuliyat as being *jangal* (forestry), *jhil* (water-produce), *ghás* (grass), *tin* (straw), and *sikarhar* (beds of rushes). This deed was not stamped, and the question is raised whether it is exempt from duty. Under the stamp laws from time to time in force up to the year 1878 the following leases and counterparts thereof—that is to say pattahs and kabuliyats—were exempt from stamp-duty, to wit:—“Any lease executed to a ryot or their *actual* cultivator, provided that no fine or premium be paid as part of the same transaction,” and “any counterpart of a lease executed by a ryot or other *actual* cultivator of the soil, provided that no fine or premium be paid as part of the same transaction.” All agricultural leases and their counterparts were thus before 1879 practically exempt from duty. But a large change in this respect was introduced by Act I of 1879. In sch. ii of that Act, art. 13 exempts from duty the following leases, *viz.*, “leases executed in the case of a cultivator without the payment or delivery of any fine or premium—(1) when a definite term is expressed, (2) and such term does not exceed one year, (3) or when the annual rent reserved does not exceed one

hundred rupees," but "all the counterparts of any lease granted to a cultivator" were made free from stamp-duty. Thus the area of exemption was circumscribed in respect of leases, and enlarged in regard to their counterparts: while the somewhat vague word "ryot" being omitted, the receipt of unstamped pattahs and kabulyats was limited definitely to "cultivators" only. The Select Committee appointed to consider the Stamp Bill, which eventually became Act I of 1879, reported on this subject as follows:—"48. The entries in the exemption schedule are for the most part transferred from existing enactment or from notifications issued by the Government under the powers conferred by the present Stamp Act; but among those *now added* we may mention (2) "lease, pattah, kabulyat, or other undertaking to cultivate, occupy, or pay rent for land granted to or by a cultivator without the payment, &c., &c.," and (3) "counterparts of any lease granted to a cultivator."—*Gazette of India, 7th September 1878.*

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The word "cultivator" alone is used in these portions of the Stamp Act of 1879, and by this term we are of opinion that only those persons are connoted who actually cultivate the soil themselves, or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stock. The class of husbandmen or actual agriculturists is meant; not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease. It is true that for the purposes of the North-Western Provinces Rent Act (No. XII of 1881) a "tenant" is defined so as to include a "thickadar" (farmer), and a "katkanadar" (lessee), and the term "rent" is made to cover "whatever is to be paid, delivered, or rendered by such persons (*i.e.*, tenants, farmers, and lessees), on account of the holding, use, or occupation of land." But *quoad* the Stamp Law and its scheduled exemptions, we are of opinion that such tenants only as are actual *bonâ fide* "cultivators" in direct connection with the soil are entitled to get their kabulyats free from duty. In the Oudh Rent Act No. XIX of 1868, we find no such extension of the term "tenant" as we noticed above in Act XII of 1881, but we think that, however, this may be, the definition of "tenant" in the Rent Acts, and for their purposes only, is

1883 not relevant to the question before us. In this view of the strict
 limitation to be applied to the word "cultivator" of the Stamp Act,
 STAMP we hold that a farmer or lessee would not ordinarily be entitled to
 REFERENCE. the benefit of the exemption provided in sch. ii, art. 13, (b) and (c):
 and that, in respect of the particular kabuliyat before us, it is
 obvious that the land, the subject of the deed, is for a large part
 not cultivable or susceptible of being treated as a "cultivator's"
 holding in any legitimate sense of that word. Our answer to this
 reference would therefore be, that we concur in the opinion of His
 Honor the Chief Commissioner of Oudh as expressed in the 4th
 paragraph of his Secretary's letter No. $\frac{2271}{1882}$, dated the 21st
 January, 1882.

FULL BENCH.

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 February 18.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight,
 Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

RAGHUBAR DAYAL (PLAINTIFF) v. THE BANK OF UPPER INDIA,
 LIMITED, (DEFENDANT).*

*Sale in execution set aside—Suit by purchaser for interest and purchase-
 money—Act VIII of 1859 (Civil Procedure Code)—Act X of 1877 (Civil
 Procedure Code), s. 315.*

A judgment-debtor, whose property had been sold in execution of the
 decree, under Act VIII of 1859, appealed from the order disallowing his
 application to set aside the sale, after Act X of 1877 (Civil Procedure Code)
 came into force. The appellate Court set aside the sale. The purchaser
 sued the decree-holder for interest on the purchase-money and the expenses
 of the sale, the purchase-money having been returned to him, under the order
 of the Court executing the decree, without interest and less such expenses.

Held by the Full Bench that the provisions of Act X. of 1877, and not
 of Act VIII of 1859, were applicable to the determination of the matter in
 dispute in the suit.

Held by the Divisional Bench (STRAIGHT and TYRRELL, JJ.) that, with
 reference to the ruling of the Full Bench, the suit was maintainable.

Held also by the Divisional Bench that, under the circumstances of the
 case, the plaintiff ought not to be granted the relief sought.

THE plaintiff in this suit was the purchaser of certain immove-
 able property put up for sale in execution of a decree held by the

* Second Appeal No. 1810 of 1881, from a decree of Babu Kachhi Narh Biswas,
 Additional Subordinate Judge of Cawnpore, dated the 15th August 1881, revers-
 ing a decree of Maulvi Ahmad-ullah, Munsif of Patehpur, dated the 20th June 1881.