1932

DEBI DAS
v.
JAINI MAL.

him in considering the statements of the witnesses named above. In our opinion, the finding of the trial Court must be restored and the suit dismissed with costs throughout.

The cross-objections are also dismissed with costs.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Harrison and Addison JJ.

1932

March 15.

ABDUL HAQ (PETITIONER) Appellant

versus

SHIROMANI GURDWARA PARBANDHAK COMMITTEE AND ANOTHER (DEFENDANTS) Respondents.

Civil Appeal No. 1439 of 1929.

Punjab Land Revenue Act, XVII of 1887, section 44: Revenue Records—presumption of truth—Jamabandi—*primary authority as regards title—not cancelled by entries in* Muafi *Register—Position of a Muafidar—explained.*

Held, that the primary authority on title consists of the *Jamabandis*, and their value is very much greater than that of any entry in any *Muafi* Register. Where the entries in all the *Jamabandis* from 1851 onwards consistently shewed the *Mahant* for the time being as the owner of the land in suit, entries in the *Muafi* Register of 1856 describing the land as " attached to the Gurdwara or temple of the Sikhs, dedicated ..... " etc. and " to be maintained during the continuance of the Gurdwara," could not be accepted as cancelling or reversing the entries in the *Jamabandis*.

Held also, that a *Muafidar* is not necessarily, though in fact he often is, the owner of the land exempted from the payment of revenue.

Ramjas v. *Sangan Lal* (1), *Sant Bhim Sain* v. *Fazal* (2), and Douie's Settlement Manual, Article 183, page 89, referred to.

First appeal from the decree of the Sikh Gurdwaras Tribunal, Lahore, dated the 12th March, 1929, decreeing the suit as to house property and dismissing it in respect of the other property.

M. C. MAHAJAN, LABH SINGH, and NAZIR HUSSAIN, and BARKAT ALI, for ZAFRULLAH KHAN, for Appellant.

CHARAN SINGH, for Respondents.

The judgment of the Court was delivered by :—

HARRISON J.—The petitioner Abdul Haq is a mortgagee of the year 1919 from *Mahant* Hari Singh of certain land situate inside the municipal limits of Amritsar City and also of certain house property. He is the second mortgagee and both he and the first mortgagee presented a petition under section 5 of the Sikh Gurdwara Act, claiming that the property mortgaged could only be taken by the Committee after their claims had been met. The mortgagor took no action under section 5 and his rights, if any, have lapsed. The petition regarding the house property has been decreed and this has satisfied the first mortgagee. By a majority of the members of the Tribunal the petition regarding the land has been dismissed, and the second mortgagee has appealed, presumably being under the impression that the house property will not suffice to satisfy his mortgage in addition to that of the first mortgagee.

The point involved in the case is simple enough, it being merely this, whether the presumption as to the title in the land, raised by the entries in the *Jama-*

(1) 184 P. R. 1883. (2) 2 P. R. (Rev.) 1916.

1932

ABDUL HAQ v. SHIROMANI GURDWARA PARBANDHAK COMMITTEE.

bandis and the history of the succession over the last 80 years, is displaced by certain entries in the Muafi register of the year 1856 and an order passed at the time of the last settlement in 1911 by the Settlement Officer. The President of the Tribunal was of opinion that the onus had been displaced, and that the Committee had established their right to the land. The second member, *Lala* Munna Lal, held a contrary opinion and the third, *Sardar* Kharak Singh, has discarded the revenue entries, not as being disproved by the Muafi register, but as being practically valueless; his words being :

" There is no doubt, that the extract from the revenue papers prepared by the special Qanungo from the settlement papers of 1865 and the subsequent settlements mentions the land as the property of the *Mahants*, but these revenue entries are inconclusive, and they have a tendency to obscure the real nature of the tenure of the property and to facilitate its secularization and division by the *Mahants* to their private uses. But it is the duty of the Courts to protect the property from breaches of trust by the trustees whenever the beneficiaries bestir themselves to save their interests from spoliation."

Whatever be the exact meaning of this passage it in no way affects the authority of section 44 of the Land Revenue Act or the presumption of correctness, which attaches to revenue entries. The following portion of this member's judgment applies section 18 (*b*) and (*d*). These have no bearing on the case for the second portion of section 18 makes it quite clear that the preceding portion does not apply to a claim to a right, title or interest made by a person deriving title previous to the 1st day of January 1920 from a past

or present office holder. The mortgage of this appellant is of the year 1919.

The facts are as follow:—The pedigree table is given at page 34 of the printed paper book and goes back to one Sher Singh, four generations before the present minor, whose father alienated the land and houses in favour of the present petitioner. In 1851 Narain Singh had been *Mahant* for 32 years, and is shown in the column of *Maliks* as owner of the land in suit. On his death without leaving a son he was succeeded by Mehr Singh, his brother, who died in 1879 and was succeeded by his widow *Mussammat* Prem Kaur. On her death Karam Singh succeeded, he being the third brother. On his death he was succeeded by his two sons Rup Singh and Hari Singh. On Rup Singh's death his two widows Har Devi and Gur Devi were first shown but they subsequently waived their right in favour of their brother-in-law Hari Singh and the share of Rup Singh was then entered in the name of Hari Singh. Hari Singh died in 1926. From 1851 to the present day, therefore, the *Mahants* have been shown in the column of proprietor and have been shown throughout as sons of their fathers, the only exception being Mehr Singh who succeeded Narain Singh, his brother, and is shown as *Chela* of his own father—not of the preceding *Mahant*. This is in the settlement of 1865. In certain documents the word *Chela* has been used, and Narain Singh described himself indiscriminately as *Chela* and son. It is quite clear that any idea of religious inheritance disappeared a very long time ago. These entries, therefore, are very strongly in favour of the ownership of the successive *Mahants* as opposed to the ownership of the institution and against them we have the entry

ABDUL HAQ v. SHIROMANI GURDWARA PARBANDHAK COMMITTEE.

in the Muafi register in the year 1856. This is on page 100 of the paper book. The printed heading has been destroyed. In column 3, Prem Singh and Mehr Singh are shown, Prem Singh being the uncle of Mehr Singh. The next entry runs as follows:—" To be maintained during the continuance of the Gurdwara." And the next is:—" The Gurdwara or temple of the Sikhs, dedicated to the memory of Gur Hargobind (6th Guru) to which the small piece of land is attached is a *pucca* old building where the Granth is read. I agree (Sd.) C. Raikes, Commissioner I concur. (Sd.) J. Lawrence, Chief Commissioner." At this time Narain Singh had clearly died and been succeeded by his brother and his uncle, and the brother Mehr Singh is shown in this register as having been the *Chela* of Narain Singh, his brother, whereas in the *Jamabandi* he is shown as the *Chela* of his father Man Singh—a curious state of confusion.

Now, the all-important question is whether the words " to which the small piece of land is attached " disprove the correctness of the entries in the *Jamabandi*. Counsel for the Committee further relies on the entry made in the last settlement which is as follows:—" By order of the Settlement Officer dated the 14th January, 1913, this Muafi to continue in the name of the Gurdwara through Hari Singh, on the terms previously settled." He contends this means not only the Muafi but the land also. In 1856 it was held by responsible officers from the Chief Commissioner downwards and by the Settlement Officer in 1911, that the Muafi was the property of the institution, and it has been contended that the distinction between a Muafi and a *Jagir* lies in the fact that the title to the land and the right to the remission of

revenue always go together in the case of a Muafi but have no necessary connection the one with the other in the case of a *Jagir*. The words used might imply that this is the case, but the authorities on the subject, *viz.* Douie's Settlement Manual, article 183, page 89 and *Ramjas* v. *Sangan Lal* (1) and *Sant Bhim Sain* v. *Fazal* (2), make it quite clear that there is no such distinction and a Muafidar is not necessarily, though in fact he often is, the owner of the land exempted from the payment of revenue. The words used in 1911 are clear enough, but, as pointed out by counsel for the appellant, the Settlement Officer could merely interpret and could not expand what has been entered in the Muafi register in the year 1856, and this register, as its name implies, deals only with remission of the revenue and not with title to the land. The practice had grown up in the interval of entering this Muafi in the name of the person shown as the owner of the land, and this practice was stopped in 1911 and it was made clear that the Muafi was to be shown as attached to the institution. From this it follows that the primary authority on title consists of the *Jamabandis* and the value of the entries continued over a long period of time is very much greater than that of any entry in any Muafi register; and although the words are used in 1856 that the land is attached to the institution, this in no way can be taken as cancelling or reversing the entries consistently made from 1851 onwards in all the *Jamabandis* showing the *Mahant* for the time being as the owner of the land in suit.

The result, therefore, is that the appeal must be accepted and a decree given to the petitioner that the land in suit is liable to pay any balance of principal or interest due on his mortgage and not satisfied by the

(1) 184 P. R. 1883. (2) 2 P. R. (Rev.) 1916.

1932

ABDUL HAQ v. SHIROMANI GURDWARA PARBANDHAK COMMITTEE.

sale of the house property mortgaged at the same time and by the same deed. The costs of the petitioner will be paid throughout by the respondent.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Harrison and Addison JJ.

1932

March 16.

HANS RAJ AND ANOTHER (PLAINTIFFS) Appellants

versus

KHUSHAL SINGH AND ANOTHER (DEFENDANTS) Respondents.

Civil Appeal No. 2404 of 1928.

Hindu Law—Alienation of joint family property by father—in order to redeem a mortgage on the estate of a separated brother—whether binding on sons.

H.S. a separated grandson of K.C. a retired Hindu District Judge, having mortgaged land, which came to him from his grandfather, for Rs. 4,000, K.R. a brother of his father in order to maintain the integrity of the estate mortgaged his own land for Rs. 4,500 out of which the Rs. 4,000 mortgage of H.S. was redeemed. K.R.'s sons, one a major and the other a minor, thereupon brought the present suit for a declaration that the mortgage for Rs. 4,500 being without necessity was not binding on them.

Held, that to repurchase or acquire mortgage-rights in the estate of a separated brother can never be for the benefit of the family and that the mortgage was therefore not binding on the sons of K.R.

Sheo Den Singh v. *Habhi Ullah Khan* (1), relied upon.

Jagat Narain v. *Mathura Das* (2), distinguished.

Second appeal from the decree of Mr. J. D. Anderson, District Judge, Gurdaspur, dated the 15th

(1) 1924 A. I. R. (All.) 721. (2) (1928) I. L. R. 50 All. 969 (F.B.).