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ORDER OF THE HIGH COURT.

THE CROWN
v.
CHAND MAL.
TEK CHAND J.

TEK CHAND J.—I accept the recommendation of the learned Sessions Judge and set aside the order of the District Magistrate directing the issue of process. I also order that the case be remitted to the District Magistrate for holding a preliminary enquiry under section 10 of the Act. Let the records be returned at once.

A. N. C.

Revision accepted.

APPELLATE CIVIL.

Before Addison and Currie JJ.

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Oct. 2.

BISHNA, DECEASED, (THROUGH HIS REPRESENTATIVES)
AND OTHERS (DEFENDANTS) Appellants

versus

COMMITTEE OF GURDWARA, SUDHAL.
AND OTHERS (PLAINTIFFS) Respondents.

Civil Appeal No. 2075 of 1928.

Sikh Gurdwaras Act, VIII of 1925, Section 3 (1): Defective list of properties—No mention of, or notice to, real owners—but to two servitors of the Gurdwara—who made no claim—Section 32 (2): whether claim of Gurdwara should be decreed against the owners—who had no knowledge of the matter—Proviso to Section 32 (2). whether applicable—Section 34: Procedure—when Proviso is applicable.

The property in dispute between the management of Gurdwara Sudhal and the village proprietors was the *shamilat* of village Sudhal. The property was shewn in the list of properties claimed under section 3 (1) of the Sikh Gurdwaras Act, as being 436 *bighas*, 6 *biswas* 'belonging to the Gurdwara,' and as being in possession of two persons who were servitors of the Gurdwara. There was no mention of the land being *shamilat* nor was a copy of the relevant entry in the Record of Rights attached thereto. Notice was issued

only to the two persons said to be in possession and as they made no claim a notification by the Local Government was issued under section 5 (1) specifying the rights, etc. in the properties in respect of which no claim had been made and this included the *shamilat* of the village. The trial Court found that the land belonged to and was in possession of the village proprietary body and was shewn as such in the Revenue Records since 1852, but that as no petition had been sent to the Local Government, within the time allowed, to claim the property, the suit must be decreed under Section 30 (ii) of the Act on the ground that the right might have been made the subject of a claim in a petition to the Local Government.

Held, that as the village proprietary body had no knowledge of the fact that their *shamilat* land had been included in the list published under the provisions of sub-section (2) of section 3 of the Act, and as they could not by the exercise of reasonable diligence have come to know of the fact that their land had been so included, therefore under the proviso to sub-section (ii) of section 30 of the Act this was a case in which the Court should not decide the claim against the village proprietary body merely because they did not make a claim in a petition under the provisions of section 5 of the Act within the time fixed.

Held further, that this being so, the case must be remanded to the District Judge who should frame an issue in respect of the claim of the village proprietary body and then forward the record to the Sikh Gurdwaras Tribunal, which has to decide the issue and then return the record to the District Judge, *vide* sub-sections 1 and 2 of section 32 of the Act.

First Appeal from the decree of Lala Suraj Narain, District Judge, Ambala, dated the 4th July, 1928, decreeing the plaintiffs' suit.

JAGAN NATH AGGARWAL and ASA RAM AGGARWAL, for Appellants.

BHAGAT SINGH, for Respondents.

ADDISON J.—This case refers to Gurdwara Sudhal in village Sudhal, Tahsil Jagadhri, District

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Ambala. A list was submitted of the properties claimed under section 3 (1) of the Sikh Gurdwaras Act. The list was in form 1 prescribed under rule 4 of the rules framed under the Act. There is no dispute as to part (1), *i.e.* the Gurdwara itself. Part (ii) is headed "rights, titles or interest entered in the record of rights." In this part of the list 75 *bighas*, 16 *biswas* entered in the revenue papers as belonging to the Gurdwara were properly entered. Below this entry was another entry claiming all the *shamilat* land of the village, namely, 436 *bighas*, 6 *biswas*, as belonging to the Gurdwara and as being in the possession of Puran Singh and *Mussammat* Partapi. According to the form, copies of the relevant entries in the record of rights should have been attached. This was not done. If it had been done it would have at once been seen that this land was entered as belonging to the *shamilat deh*, *i.e.* to the entire proprietary body, and was in the possession of the entire proprietary body, and not in the possession of the two persons already named who were not proprietors in the village but mere servitors of the Gurdwara. The *shamilat deh* entered comprises all the grazing land in the village as well as all streams, water-courses, roads and pathways, and wells. Notice issued in the usual way to the two persons named as being in possession while the defective list was also affixed at various places in accordance with the rules. No notice was, however, sent to any of the persons in possession or to the owners of the village. The persons in possession were the owners, certain occupancy tenants, certain tenants, and *kamins* of the village. No claim was made by these persons and accordingly under section 5 (3) of the Act a notification specifying the rights titles or interest in the properties in

respect of which no claim had been made was issued by the Local Government. This, of course, included the *shamilat* land of the village referred to. Thereupon the Gurdwara Committee brought a suit under section 28 of the Act for possession of this land. They impleaded the owners, occupancy tenants, etc. as the defendants and also added the names of Puran Singh and *Mussammat* Partapi, to whom alone notice issued; but they admitted in their plaint that these were mere *pro forma* defendants against whom they sought no relief as they were not in possession. The owners pleaded that they had no knowledge of any kind with respect to the notification claiming their *shamilat* land as part of the Gurdwara property.

The trial Court has found that the land belongs to the village proprietary body and has been entered in the revenue papers as belonging to and possessed by it since 1852. In spite of this the suit has been decreed under section 30 (*ii*) of the Act on the ground that the right might have been made the subject of a claim in a petition forwarded to the Local Government and that as this claim had not been duly made within time the Court had to decide the claim against the persons claiming the right. In coming to this decision the learned District Judge said that he realized that such a declaration in favour of the plaintiffs was bound to entail untold hardship on the defendants and might eventually have the effect of their leaving the village since the area in dispute was the only land in the village reserved for common purposes and used as such; but the law must have its course and he could not deviate from it. He also came to a clear finding that the land in suit was beyond doubt *shamilat deh* belonging to the proprietary

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body in the village and in its possession. He further held that the village proprietary body could not have been misled by the notification of the 31st August, 1927. Against this decision the village proprietary body has appealed.

In my judgment the appeal must succeed. There is evidence which has not been rebutted, to the effect that not a single soul in the village knows Urdu or English. There is also evidence that no notification was affixed in the village. The clerk of the Sikh Gurdwaras Tribunal admitted that no certified copy of entries of revenue or settlement records or a Patwari's *fard* was filed by the petitioners along with their application or at any later stage, showing that the land was entered in the revenue papers as belonging to the village proprietary body. It must, of course, be held that the consolidated list was published, *i.e.* affixed at certain places in accordance with the rules. The two persons shown to be in possession were served. They, however, had nothing to do with the land nor were they in possession. I have already shown that the consolidated list was defective and merely showed the large area of 436 *bighas*, 6 *biswas* as owned by the Gurdwara. This entry came below the entry about the 75 *bighas*, 16 *biswas*, which actually belonged to the Gurdwara. There was nothing to put the village proprietary body on its guard. Had anyone had any idea that the village *shamilat* land was being claimed, a claim was bound to have been put in; for the land claimed contains a pond, the village roads, water-courses, streams and the only grazing land in the village as well as a small area of land cultivated by occupancy tenants, *kamins*, etc. In my judgment this state of affairs has been pro-

vided for in the first proviso to section 30 (ii) of the Act which runs as follows:—

“ Provided that in the case of a claim that might have been made under the provisions of section 5 the Court need not decide the claim against the person claiming the right if it is satisfied that the failure to make the claim was owing to the fact that the person who might have made the claim either had no knowledge of the existence of the right, title or interest that he might have so claimed or had no knowledge of the fact that the right, title or interest had been included in a list published under the provisions of subsection (2) of section 3 * * * and could not by the exercise of reasonable diligence have come to know of the existence of such right, title or interest, or of the fact that such right, title or interest, was so included.”

In the present case the proceedings taken in connection with the consolidated list were most misleading and defective. Had the persons in possession received notice as they should have done they would at once have been put on their guard. How the two servitors came to be shown in possession and served with notice it is impossible to imagine. It is difficult to understand how the extract from the revenue papers was not put in and if that had been done notice must automatically have gone to all the owners of the village who were shown in the revenue papers as holding and possessing the land in common. Mere affixation of the notification at the headquarters of the *Tahsil*, at the Gurdwara and at some public place in the estate cannot be held to be a sufficient notice in the circumstances of this case. As there is no evidence as to what the public place was where the notice

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was affixed and as the notification itself was most obscure, and there was nothing in it to put the villagers on their guard that the whole of the *shamilat* land of the village was being claimed, in my judgment it must be held that the village proprietary body had no knowledge of the fact that the entire *shamilat* land had been included in the list published under the provisions of sub-section (2) of section 3 of the Act and could not by the exercise of reasonable diligence have come to know of the fact that their land had been so included. Under the proviso to sub-section (ii) of section 30 of the Act, therefore, I would hold that this is a case in which the Court should not decide the claim against the village proprietary body merely because they did not make a claim in a petition under the provisions of section 5 of the Act within the time fixed.

This, however, does not dispose of the suit. It is provided in section 32 of the Act that where in any suit or proceeding instituted after the commencement of the Act in a civil or revenue Court it has become or becomes necessary to decide any claim in connection with a Notified Sikh Gurdwara which the Court finds might be made under the provisions of sections 3, 5, etc., within the time prescribed therein, the Court shall frame an issue in respect of such claim and shall forward the record of the suit or proceeding to the Sikh Gurdwaras Tribunal. Under sub-section (2) of section 32 the Tribunal has to hear and determine the issue and record its decision and then return the record with a copy of its decision to the Court and the Court shall then proceed to determine the suit or proceeding in accordance with such decision subject to the provisions of section 34.

In the result I would accept the appeal and set aside the order of the District Judge as I hold that this is a case in which the proviso to sub-section (ii) of section 30 applies. I would remand the case to the District Judge, directing him to frame an issue in respect of the claim of the village proprietary body, and then to forward the record to the Tribunal, etc. etc., as already stated. The appellants will get their costs in this Court. Costs in the Court of the District Judge will abide the event.

CURRIE J.—I agree.

A. N. C.

Appeal accepted;

Case remanded.

APPELLATE CIVIL.

Before Dalip Singh J.

MUSSAMMAT BHAG BHARI AND ANOTHER

(DEFENDANTS) Appellants

versus

MOHAMMAD AND OTHERS

(PLAINTIFFS) AND BUTI, DECEASED,
(THRO. HIS REPRESENTATIVES)

AND OTHERS (DEFENDANTS)

} Respondents.

Civil Appeal No. 2533 of 1926.

Custom—Succession—Self-acquired property—Awans of Mauza Mardwal, Tahsil Khushab, District Shahpur—Daughters or Collaterals of 5th degree—Riwaj-i-am.

Held [following *Khan Beg v. Mst. Fateh Khatun* (1)], that by custom among *Awans* of *Tahsil Khushab, District Shahpur*, daughters succeed to their father's self-acquired property in preference to collaterals of the 5th degree and that the presumption of the *Riwaj-i-am* has been rebutted.

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