

PRIVY COUNCIL.

Before Lord Macmillan, Sir Shadi Lal and Sir George Rankin.

1937

AYA RAM AND ANOTHER—APPELLANTS.

June 10.

versus

RUP CHAND AND OTHERS—RESPONDENTS.

Privy Council Appeal No. 101 of 1934.

On appeal from the High Court at Lahore (1).

Shamilat — Sale of proprietary lands “ with external and internal rights ” — Whether share in Shamilat included — Unsophisticated conveyancing — Construction of.

By a deed of sale in 1885 a vendor sold his proprietary lands in a village “ together with the external and internal rights,” stating in the deed: “ In future I have been left no concern or connection with the aforesaid land sold.” The southern boundary of the land sold was described as “ the area of the *shamilat* of the village.”

Held, that the words “ external rights ” were appropriate to include a right in respect of the proprietary lands to participate in the ultimate partition of the *shamilat* and the deed was effectual to convey and did convey the vendor’s right of participation in the *shamilat*.

In construing unsophisticated conveyancing like the one in question it would be unreasonable to apply the rigid canons of interpretation of English conveyancing, and regard may be had to such circumstances as characterise the present case, namely, that the sale included the whole of the land which the vendor owned in the village and that after the sale he left the village and showed no more interest in his former property.

Rahman v. Sai (2), *Kalu Khan v. Umda* (3), and *Shahamul v. Ibrahim* (4), referred to.

Appeal (No. 101 of 1934) from the decree of the High Court (January 19, 1933) (1), which reversed a decree of the Senior Subordinate Judge of Mianwali (November 24, 1928).

(1) See I. L. R. (1933) 14 Lah. 496. (3) 47 P. R. 1916.

(2) I. L. R. (1928) 9 Lah. 501.

(4) 57 P. R. 1915.

The material facts are stated in the judgment of their Lordships.

1937, April, 26, 27. EDDY, K. C. and KRISHNA MENON, for the appellants:—In the sale deed of August 4, 1885, the southern boundaries of the land sold is given as *shamilat* lands. *Shamilat* lands are, therefore, on the true construction of the deed excluded. The Subordinate Judge rightly held them to be excluded. The High Court presumed an intention to include rights in the *shamilat*. *Shamilat* rights are not accessory to the land conveyed. An intention to convey *shamilat* must be proved.

Reference was made to *Jhanda v. Nana Lal* (1), *Rahman v. Sai* (2), and the Indian Evidence Act, SS. 91, 92 and 94.

In 1878 the *shamilat* was attached to the village. Parsa Ram then got a title to an undivided share which he could have conveyed. If he did not convey it, and it is submitted he did not do so by the deed, it descends to his heirs—*Ram Das v. Amir Shah* (3).

Shahamad v. Ibrahim (4), is distinguishable. There the sale included “all culturable and unculturable lands.”

Reference was also made to *Bulaki v. Bahala Singh* (5), and *Kalu Khan v. Umda* (6). Land cannot be appurtenant to land—*Lister v. Pickford* (7).

DEGRUYTHER, K. C. and PARIKH, for the 1st respondent: Parsa Ram sold all the *khewat* land he had in the village and went away. There were 2 subsequent settlements and no claim was made by him at these

1937

AYA RAM
v.
RUP CHAND.

(1) 148 P. R. 1882.

(4) 57 P. R. 1915.

(2) I. L. R. (1928) 9 Lah. 501.

(5) 37 P. R. 1884.

(3) 113 P. R. 1901.

(6) 47 P. R. 1916.

(7) (1865) L. R. 34 L. J. Eq. 582, 584.

1937

AYA RAM
v.
RUP CHAND.

Settlements. The fact that the *shamilat* is mentioned as the southern boundary does not mean that no rights in the *shamilat* were conveyed. There were no ascertained shares in the *shamilat* at the time of the sale though there was an interest in it. The "external rights" covers that interest. In later Settlements allocations were made.

Reference was made to *Prem Chand v. Sardara* (1), *Bara v. Jhanda* (2), *Ram Das v. Amir Shah* (3), *Shahamad v. Ibrahim* (4), *Mirza v. Kahan Singh* (5), *Maluk Singh v. Muhammad* (6), *Baju Shah v. Hukma* (7), *Gobind Ram v. Ali Muhammad* (8), and *Rahman v. Sai* (9).

EDDY, *in reply*: Nothing is more dangerous than to try to construe a deed by the subsequent acts of the parties.

Rijraj Nopani v. Pura Sundary Dasee (10), and Rattigan's Customary Law (10th Edition), p. 349, referred to.

The judgment of the Judicial Committee was delivered by—

LORD MACMILLAN—This suit is concerned with the right to the *shamilat* or village common land "which will be allotted by partition to 207 kanals of proprietary land, being one-third share of Samoranwala well," situated in the village of Harnauli in the Mianwali district of the Punjab. Rup Chand, the original plaintiff, was the owner of these 207 kanals and claimed a declaration that he was entitled to the share of *shamilat* land in question; he has since died

(1) 10 P. R. 1894.

(6) 65 P. R. 1889.

(2) 113 P. R. 1900.

(7) 42 P. R. 1897.

(3) 113 P. R. 1901.

(8) 1925 A. I. R. (Lah.) 99.

(4) 57 P. R. 1915.

(9) I. L. R. (1928) 9 Lah. 501.

(5) 96 P. R. 1919.

(10) (1915) L. R. 41 I. A. 189;
I. L. R. 42 Cal. 56 (P. C.).

and the present respondents, 1 (a), (b), (c) and (d) as his legal representatives, have taken his place as plaintiffs in the action.

Rup Chand's title to the 207 kanals was derived from one Nur Muhammad who in 1851 sold the property to Parsa Ram. On 4th August, 1885, Parsa Ram sold the property to Nota Ram by a registered deed specifying the fields by their numbers in the revenue records and giving the boundaries of the area, the southern boundary being described as "the area of the *shamilat* of the village." After stating that the vendor had "now made an absolute sale of the land measuring two hundred and seven kanals together with a share in the well and well gear" the deed of sale contains the following material passage:—

"The agreement is that from today's date the said vendee will enjoy possession of the land sold together with the external and internal rights for ever. In future I have been left no concern or connection with the aforesaid land sold. The two thatched houses together with the four walls situate at the well which are owned by me shall also be considered as the property of the vendee. But I myself will remove the malba (materials) *i.e.*, timber."

Twenty one years later, on 4th October, 1906, Nota Ram and his brother Kota Ram sold the property to Mehnga Ram, the father of Rup Chand, the original plaintiff, by deed of sale which described the subjects sold as "the entire land measuring 207 kanals owned by us together with one-third share in the well, well gear, etc., accessories of the well and a share in the *shamilat* pertaining to the land That is to say, the area of the *shamilat* land which will be apportioned to the aforesaid land will be taken by the vendee."

1937

AYA RAM

v.

RUP CHAND.

1937

AYA RAM
v.
RUP CHAND.

There were originally 1,028 defendants to the suit, consisting of (1) descendants of Parsa Ram, (2) their alienees, and (3) the whole proprietors of the village. By an order of the Court seven of the defendants were appointed to defend the suit on behalf of all, but some 19 pages of the printed book before their Lordships are nevertheless quite unnecessarily occupied with the names and designations of all the original defendants. The members of the proprietary body of the village admitted the plaintiffs' claim, but it was contested by the descendants of Parsa Ram and their alienees who are represented before their Lordships by the present appellants Aya Ram and Jiwan Singh. They resist the claim of the plaintiffs on the short ground that by the deed of sale of 4th August, 1885, Parsa Ram did not convey to the plaintiffs' author Nota Ram the share of *shamilat* land appertaining to the 207 kanals of land sold, but that Parsa Ram retained the right to that share, which, they say, has now passed to them.

The Senior Subordinate Judge of Mianwali dismissed the suit, holding that no right to a share in the *shamilat* was conveyed to the vendee by the deed of sale of 4th August, 1885. On appeal the High Court of Judicature at Lahore reversed this decision and granted decree in favour of the plaintiffs. It is now for their Lordships to determine which of those views should prevail.

It appears that the land which is now the *shamilat* or common land of the village of Harnaui was formerly part of the *thal* or waste belonging to the Crown on which the villagers enjoyed the privilege of grazing their cattle. In the Gazetteer of the Bannu District, compiled by Mr. Thorburn in 1883-84 and published under the authority of the Punjab Government, it is stated that in 1856-57 boundaries were laid

down in the *thal* and a large portion was allotted to the village of Harnaui, but no change was made in the existing grazing rules and apparently no proprietary rights in land were created or conferred. Then in 1878 at the first "Regular Settlement the whole question was taken up, a liberal area of grazing land attached to each village as its separate property and the remainder marked off as Government *rakhs*" (reserves). But while in 1878 the village community of Harnaui thus acquired right to a large tract of land as their *shamilat*, no specific appropriation of areas within that tract was made to the individual landholders in the village and the *shamilat* was held in common. Subsequently a process of division was begun and in an extract from the *Wajib-ul-arz* or village administration papers of Harnaui, undated, but said to be of about 1920, it is stated that the "entire *shamilat* land of this village is under partition." In the plaint it is said that the share of the *shamilat* which on a proportionate basis will fall to the 207 kanals of village land belonging to the plaintiffs will be 3,496 kanals.

It would thus appear that at the date of the deed of sale by Parsa Ram to Nota Ram, namely, 4th August, 1885, which is the material date for the present purpose, no division of the *shamilat* had been effected. It was only as the common land acquired increasing value through the development of irrigation that interest awakened in the question of separate rights of property in it.

In a previous litigation an attempt to dissociate the right to a share in the *shamilat* from the plaintiffs' present property of 207 kanals failed. On that occasion the claimants were representatives of Nur Mohammad who sold the property to Parsa Ram in

1937

AYA RAM
v.
RUP CHAND.

1937

ATA RAM
v.
RUP CHAND.

1851 and they sought to make out that Nur Mohammad did not then part with his right to share in the *shamilat*. The claim failed on the ground that in 1851 the village proprietors had no proprietary rights in the *shamilat* and consequently that at that date Nur Mohammad could neither sell nor reserve any such right.

It only remains to mention that the 207 kanals constituted the only property which Parsa Ram in 1885 owned in the village of Harnauli; that after the sale he resided in another village twenty miles away and took no further concern with the land which he had sold or any rights connected with it; and that although there were two Settlements and revisions of records subsequent to 1885 Parsa Ram's heirs and successors displayed no interest in them.

For the appellants it was argued (1) that the *onus* of proving that a sale of village land carried with it the right to a share of the *shamilat* lay on the vendee; (2) that the right to a share of *shamilat* land was not a mere accessory which passed with the village property to which it was attached; (3) that the subject of sale in the 1885 deed consisted expressly of the 207 kanals alone; and (4) that there were no general words of conveyance apt to carry the right to a share of the *shamilat*.

Their Lordships recognise that for the first two of these submissions there is a considerable body of authority [*cf. Rahman v. Sai* (1)], though there is much to be said for the view that the right of a village landowner to have a share of the *shamilat* apportioned to his holding is a right inherent in his ownership of his holding which might well be held to pass with it.

Their Lordships, however, do not find it necessary to discuss this question for they find in the extract which they have quoted from the deed of sale of 1885 words which in their opinion clearly show on the part of the vendor an intention to convey to the vendee not only the 207 kanals, but also all rights and interests which he possessed in association with the 207 kanals, including the right to a share in the *shamilat*. The sale is not only of the 207 kanals but also of "the external and internal rights for ever" and the vendor declares that in future he is to have "no concern or connection with the aforesaid land sold." There could be no more emphatic words of divestiture and the suggestion that the vendor who used them nevertheless intended to reserve to himself a right to claim an as yet unascertained share of the *shamilat*, which right belonged to him only as the owner of the 207 kanals, appears to their Lordships untenable. The words "external rights" are quite appropriate to include a right in respect of the 207 kanals to participate in the ultimate partition of the *shamilat*. In the case of *Kabu Khan v. Umda* (1), the deed of sale in question contained the words "*jumla haquq-o-marafiq hai dakhli wa kharji*," which Their Lordships are advised have a similar signification and these words were in that case held to carry a share of the *shamilat*.

The circumstances that the holding which was sold constituted the vendor's whole property in the village, and that he subsequently quitted the village and showed no more interest in his former property—circumstances which also characterise the present case were regarded as important indications of the vendor's intention in the case of *Shahamad v. Ibrahim* (2), in which the deed of sale, though silent as to the

1937

AYA RAM
v.
RUP CHAND.

(1) 47 P. R. 1916.

(2) 57 P. R. 1915.

1937
AYA RAM
v.
RUP CHAND.

vendor's share of the *shamilat*, was held to have effectually carried it. In Their Lordships' opinion regard may be had to such considerations in construing the unsophisticated conveyancing of which the deed before them is an example and to which it would be unreasonable to apply the rigid canons of interpretation appropriate to the finished products of Lincoln's Inn.

Their Lordships are accordingly of opinion that the deed of sale of 1885 was effectual to convey and did convey the vendor's right of participation in the *shamilat* and they will humbly advise His Majesty that the appeal should be dismissed and the decree of the High Court of Judicature at Lahore of 19th January, 1933, be affirmed. The appellants will pay the costs of those respondents who appeared.

C. S.-S.

Appeal dismissed.

Solicitors for the appellants: *Nehra & Co.*

Solicitors for the 1st respondent: *T. L. Wilson & Co.*

(The other respondents were not represented).
