

Before Mr. Justice Kemp and Mr. Justice Glover.

MUSSAMAT LAKHU KOWAR (ONE OF THE DEFENDANTS) v.
ROY HARI KRISHNA SING (PLAINTIFF,)*

Mokurrari Istemrari—Hereditary Title—Construction of Patta.

1869
June 1.

The words "mokurrari istemrari," contained in a patta, must be taken in themselves to convey an hereditary right in perpetuity.

THIS was a suit brought in the Court of the Sudder Ameen of Tirhoot, for possession of certain land and for mesne profits during the time of the possession by the defendant, since the death of her husband, Taiknarayan Sing, who held under a "mokurrari istemrari" patta dated 17th April 1855. The plaintiff sued as representative and successor of the original grantor of the patta. He alleged that the mokurrari patta was only a life-tenure, existing during the life of Taiknarayan Sing. The defendants alleged it was an hereditary tenure in perpetuity. The Sudder Ameen, on the ground that the word "istemrari" meant "perpetuity," and nothing else, dismissed the plaintiff's suit. He said, that though it was customary in pattas after the words "mokurrari istemrari" to use the terms "from generation to generation and offspring to offspring," yet these words were only used to give force to the words "istemrari" or "perpetuity," and not to show the actual meaning of the word. In the present case he observed: "The use of the words 'he who stands in my place,' indicated perpetuity, that is to say he who stands in the room of the grantee of the patta will fulfill the conditions of the patta, and had the patta been only for life, the use of these words would have conveyed no sense."

On appeal to the Additional Judge of Tirhoot, the Sudder Ameen's decision was reversed. The lower Appellate Court referred to *Musst. Ameerunissa Begum v. Maharaja Hitnarayan Singh* (1), and finding as a fact that no intention to make

* Special Appeal, No. 3328 of 1868, from a decree of the Additional Judge of Tirhoot, dated the 8th September 1868, reversing a decree of the Sudder Ameen of that district, dated the 31st January 1868.

the lease one in perpetuity had been proved, held that, in the absence of any words denoting that the lease was to be hereditary it must be held to be a lease for the life of the grantee. A decree was therefore given in favor of the plaintiff.

The defendant appealed to the High Court, where the question was entirely as to the force of the words "mokurrari istemrari."

Mr. R. T. Allan and Baboo Debendra Narayan Bose for appellants.

Mr. C. Gregory for respondents.

GLOVER, J.—This is a suit to set aside a mokurrari patta granted to the husband of the defendant by the then proprietress of the estate, Mussamut Tahimunnissa, on the ground that the lease conveyed only a life-interest to the grantee Taiknarayan. The plaintiff is the purchaser of Mussamut Tahimunnissa's rights in the estate.

The Sudder Ameen, Moulvie Wahadudin, held that the patta gave an hereditary right to hold at a fixed rate of rent, and dismissed the plaintiff's suit; but the Additional Judge on appeal considered that there being no proof of intention, the absence of any direct words conveying hereditary right was fatal to the defendant's claim. He relied upon a decision of the Sudder Dewanny Adawlut in the case of *Musst. Ameeruunnissa Begum v. Maharaja Hitnarayan Singh* (1), and gave plaintiff a decree for possession.

The only point for consideration in special appeal is the construction of the defendant's patta. It is contended on her behalf that the Additional Judge has misconstrued it, and that there was evidence of the grantor's intention to give the lease in perpetuity, which the lower Appellate Court misunderstood.

The last portion of this objection may, I think, be put aside from our consideration, as it is quite clear from the receipt which was read to us, that the rent received by the plaintiff from the son of the original grantee, was for a period when the father was alive; so that no inference can be drawn from the circumstance favorable to the special appellant.

1869.
 MUSSAMUT
 LAKHU
 KOWAR
 ".
 ROY HARI
 KRISHNA
 SING.

(1) S. D. A., 1853, 648

1869
 MUSTAMUT
 LARHU
 KOWAR
 v.
 ROY HARI
 KUSHNA
 SING.

Then as to the meaning of the patta. The words used are "mokurrari istemrari," and it is urged that these words are sufficiently large to include an hereditary grant at fixed rates. The case of *Munorunjun Singh v. Raja Lelanund Singh* (1) is quoted in support of the contention with reference to the grounds of the Additional Judge's decision.

I do not understand that a Divisional Bench of this Court is in any way bound by a decision of the late Court of Sudder Dewanny Adawlut, or that if we held a different opinion to that expressed in a former judgment of that Court we should be obliged to refer the question to a Full Bench. In the present case moreover the question is the proper construction of a document; in answering which, we are not, I apprehend, bound by any decision whatever of the Sudder Court, or of this Court.

It must not be forgotten moreover that the case of *Musst-Ameerunnissa Begum v. Maharaja Hitnarayan Singh* (2) decided by the Judges of the Sudder Adawlut, was a very peculiar one, and proceeded to a considerable extent at least on evidence, which tended to qualify the wording of the patta and to show that it was not intended to convey an hereditary title. The learned Judges of the Sudder Court say in their judgment, page 655: "The defendant's plea, when read in the light of this document (a letter from the grantee complaining that the terms of his patta were not sufficiently explicit) "seems to have no good foundation.

It appears therefore that the decision went not so much on the fact the words "mokurrari istemrari" were not *per se* sufficient to give hereditary title as on other attendant circumstances which showed what the grantor's intentions were at the time the lease was given, and that the grantee was all along cognizant of the weakness of his title.

The case of *Rajah Modenarain Singh v. Kantal* (3) proceeds on the assumption that the Sudder Court had in previous case ruled that the absence of words signifying "from generation to generation" took away from a mokurrari grant absolutely any claim

(1) 3 W. R., 84 S. C., 5 W. R., 101.

(2) S. D. A. 1833. 648.

(3) S. D. A., 1839, 1573.

to hold in perpetuity. For the reasons stated above, I do not consider that any such broad rule was laid down, and if it had been I should not be prepared to assent to the ruling.

Then as to the meaning of the words themselves. It cannot, I imagine, be for a moment contended that the words "mokurrari istemrari" do not, in their lexicographical sense, mean "something that is fixed for ever." No doubt there is a custom which adds to these words "generation after generation," but this is by no means an universal custom, and the extra words are etymologically redundant. Moreover if the patta were merely for the life of the grantee, what could be easier than to say so, and what was the object of using words that could be applied, in their ordinary sense, only to hereditary rights? I should say, that when a grantee holds under a patta worded in this way he has at least made out the very strongest *prima facie* case, and that the *onus* of showing that by the custom of the district, pattas conferring hereditary title always contained and were obliged to contain the words "bafarzandan" "nashin bayd nashin" or similar phrases, would be heavily upon the person seeking to set aside the lease.

In this case there is no evidence given as to any particular custom, and we must fall on the words of the patta itself.

Some stress was laid by the special appellant's pleader on the words "kaem mokam," "representative," which are found in the patta, but these appear to me to refer solely to the rupees 411 paid as nazar or bonus for the grant of the lease, and do not in any way indicate that after Taiknarayan's death he was to be succeeded *quoad* the lease by any one, or that the plaintiff received rent from the grantee's son for any period subsequent to his father's death.

It appears to me therefore that in the absence of any evidence on the part of the special respondent to show that the grant was one for life only, the words "mokurrari istemrari" are sufficient to make that grant hereditary.

I do not think that the decision of the Privy Council in the case of *Dhunput Singh v. Goman Singh* (1) applies to this case. I may remark however that their Lordships seem to consider that a

(1) 9 W. R., 3.

1839

MUSSAMAT
LAKHU
KOWAR
v.
ROY HARI
KRISHNA
SING.

1869
 MUSSAMUT
 LAKHU
 KOWAR
 V.
 ROY HARI
 KRISHNA
 SING.

“mokurrari istemrari” lease protected for ever a tenant from enhancement; they say, “if it can be shown that the defendants’ sub-tenure is a ‘mokurrari istemrari’ there is an end of the matter.”

I refer to this case merely because it was made use of in the argument before us.

I would reverse the decision of the Additional Judge and restore that of the Sudder Ameen, with costs of all Courts on the special respondents.

KEMP, J.—I concur in this judgment.

Before Mr. Justice Macpherson and Mr. Justice E. Jackson,

1869
 July 8

GANGA NARAYAN DAS AND OTHERS (DEFENDANTS) v. SARODA MOHAN ROY CHOWDHRY (PLAINTIFF.)*

Suit for Rent—Co.-Sharers—Enhancement—Proof of Receipts.

A landlord, one of several co-shares cannot sue a tenant of the joint estate for his separate share of the rent, unless the tenant has paid or agreed to pay to him separately.

In decreeing enhanced rent, it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed.

To prove receipts it is not necessary to produce the writer of them. The ryot can prove his own receipts.

Baboo *Mahendra Lal Shome* and *Kedar Nath Chatterjee* for appellants.

Baboo *Srinath Das* and *Ramesh Chandra Mitter* for respondent.

THE facts are sufficiently set out in the judgment of

MACPHERSON, J.—I think that this case ought to be remanded in order that it may be tried *de novo* by the Judge, whose present decision is in various respects defective. The plaintiff sues as one of several joint proprietors to recover a certain

* Special Appeal, No. 102 of 1869, from a decree of the Officiating Judge of Rungpore, dated the 18th November 1868, affirming a decree of the Deputy Collector of that district, dated 29th July 1868.