Bhikari Das Vs. Shib Lal and ors.

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Court : Allahabad

Decided On : Jul-16-1909

Reported in : 3Ind.Cas.91

Judge : George Knox, A.C.J.

Appellant : Bhikari Das

Respondent : Shib Lal and ors.

Judgement :

George Knox, A.C.J.

1. Bhekari Das, who describes himself as zamindar of mahal Bhekari Das in mouza Khizirpur in the District of Mainpuri, is the plaintiff in this suit out of Which this appeal arises. He instituted this suit to enforce a right of pre-emption which' lib claimed in his own favour as against one Shib Lal who is admittedly a stranger to the mahal. The land which is the subject-matter of dispute is certain land sold by two persons Gulab Singh and Chet Singh in favour of Shib Lal. According to Bhikhari Das, Gulab Singh and Chet Singh are co-sharers in mahal Bhekari Das and according to the wajib-ul-arz Bhekari Das claims that ho has a right of pre-emption over the land. The portion of the wajib-ul-arz which governs the case runs as follows:

Dastur dar Kab haq shuffa-Dawa haq shuffa kadar surat intqal haqiat hissadar bazariya bai wa rahen sewai hiba ke, awal bhai bhetije haqiqia wphir bhai chachazad Shank haquiat,' our phir Shurkiyan patti aur phir Shurkiyan thok, azan bad deegar hissadaran deh ko pehunchega.

2. Shib Lal contested the claim and maintained that land sold was haqiet mutafarika and that no claim could arise in respect of such a haquiet under the terras of the wajib-ul-arz. The Court of first instance held the view that Gulab Singh and Chet Singh owned no share in the zamindari of the village, that the land in question was an isolated plot of land assessed to Government Revenue, that the names of Gulab Singh and Chet Singh appear in the khewat of the village, but neither the fact that their names appear in the khewat northe fact that Government Revenue is assessed would make Gulab Singh and Chet Singh hissadars within the meaning of the wajib-ul-arz. The learned Munsif apparently based his decision upon a case which he describes as being on all fours with the case before him viz. Jodha Singh v. Bholanath A.W.N. (1904) p.118. A reference to that case shows, however, that so far from its being on all fours with the case before the learned Munsif, it differs from it toto coelo. The land in dispute there as found by the Courts was certain bighas etc. of sir land made over to a Hindu lady for her maintenance by certain persona who were joint owners of azamindari share in the village. Subsequently to the grant above mentioned, the

rights of the grantors in the zamindari, except rights in sir, were sold by auction. When the grantee died, the sir land granted to her reverted to and was taken possession of by the son of one of the grantors, who at the time of revision and possession could not possibly have held higher rights in the village than that; of an Ex-Proprietor. There is nothing whatever to show that the land was assessed to Government Revenue. The strong presumption is that it was not and the son of the grantor, even if he held any position in the village, held the position of a tenant with privileged rights and not the position of a proprietor in the village. We would search for his name in vain' in the khewat of proprietors, as the khewat under the head of proprietors recognises only those who are proprietors and not those who are tenants whether they be tenants privileged or otherwise. The Munsif accordingly dismissed the suit. The Subordinate Judge from the questions which. he sets himself to decide evidently found, though he does not say so in express words, that Gulab Singh and Chet Singh were owners, as he calls them, of an isolated plot in the village. He does not anywhere in the judgment challenge the findings of the Munsif that these two persons were assessed to Government Revenue and that their names were entered in the khewat; and indeed these two matters have not been challenged in appeal here. The learned Subordinate Judge then appears to have lost his way entirely in a jungle of rulings which he sets forth at great length and from which he considers certain rules may be safely deduced. He does not seem to have in any way considered the various rulings, but simply to have contented himself with a review of them without any regard to the circumstances of this particular case. Such a course is especially dangerous when questions of the kind now in dispute are involved. We have over and over again pointed out that each wajib-ul-arz and each case of pre-emption must be decided on its own merits and that it by no means follows that what is true concerning pre-emption deduced from particular wajib-ul-arz should govern a right of pre-emption inferred from the terms of another wajib-ul-arz. To give one or two instances, the case of Kallian Mal v. Madan Mohan A.W.N. (1895) p. 93 to which the learned Subordinate Judge refers, was certainly not a case in point. In that case there was evidence showing that the persons who styled themselves humdars, and the other sharers in the village had apparently acquiesced in the matter and said that they had no concern of any kind with the plot which was in question. We have no such evidence in the present case. It has nowhere been shown that Bhekari Das or Gulab Singh or Chet Singh ever said the one or the other, that Bhekari Das had nothing to do with the particular plot of land or that Gulab Singh and Chet Singh had nothing to do with the village. Similarly the Full Bench ruling Niamat Ali v. Asmat Bibi A.W.N. (1885) p. 185 was a case in which a co-sharer was transfering certain sir cultivation of his and other co-sharers in the village sought to avoid the transfer on the ground that they as co-sharers in the mahal were jointly interested in such sir land. How the learned Subordinate Judge could have supposed that the Full Bench ruling was in any way similar to the case before him, it is difficult to understand. In the Second Full Bench Safdar Ali v. Dost Muhammad 12 A. 426 the matter in dispute was whether a person who had bought an isolated plot of land in the mahal and certain sir land in the mahal was or was not a co-sharer with rights of pre-emption as regards the land which was being sold in the mahal. The learned Judges were unanimously of opinion that the purchase by the person who had bought the isolated plot and the sir land in the mahal gave him the right to be considered a co-sharer in the whole mahal and to have a right of pre-emption as regards other lands in the mahal. I have nothing to do with what was found in the case beyond pointing out that if it was a safe guide in the present case it was a guide in favour of the contention raised by Bhekari Das and not against, for the unanimous opinion of the Judges of this High Court then was that the purchaser of an isolated plot which may or may not be assessed to revenue was a co-

sharer in the whole mahal of which the isolated plot formed a part.

3. In the case before me, by an order of the Settlement Officer dated 1st November 1905, the plot in dispute together with other-land is carried out of the area of the share held by Bhekari Das who is described in the khewat as share-holder. The revenue payable is also carried out of the revenue formerly payable by Bhekari Das and the order is to the effect that Gulab Singh and Chet Singh are to be entered in the khewat as owners of haquiat mutfarika. This brings them within the liability and responsibility described in Section 142 of Act III of 1901 whereby all the proprietors of a mahal are jointly and severally responsible to Government for revenue for the time being assessed thereon, viz., on the mahal and by the explanation appended to the section, the word proprietor' is defined as meaning a person in proprietary possession for his own benefit. The result is that possibly. the shares of the whole mahal and not merely the shares held therein by Gulab Singh and Chet Singh are liable to be annulled and even sold for an arrear of revenue which may not be due strictly speaking from Gulub Singh and Chet Singh. Also they may have paid the Rs. 6-6-0 entered in the khewat against their names and yet be liable for the revenue due. for any portion of the whole mahal. If this does not constitute then hissadars in the mahal it is difficult to understand what would. Whatever may be the precise nature of the shares they hold, they do hold a share and come within the term used in the wajib-ul-arz.

4. The result is that the appeal is decreed. The finding of the lower appellate Court on preliminary points is set aside and the case is remanded under Order 41 Rule 23 through that Court to the Court of first instance with directions to readmit it in its pending file of suits and dispose of it according to law. Costs to abide the result. Costs in this Court will include fees on the higher scale.