Privy Council Appeal No. 104 *of* 1946

Raje Shrinivasrao - - - - - - - - - *Appellant*

v.

Raje Vinayakrao - - - - - - - - - *Respondent*

The Same - - - - - - - - - - - *Appellant*

v.

The Same - - - - - - - - - - - *Respondent*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT NAGPUR

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH JULY, 1948

Present at the Hearing :

LORD SIMONDS

LORD MACDERMOTT

SIR MADHAVAN NAIR

[*Delivered by* LORD SIMONDS]

These consolidated appeals from a judgment and two decrees of the High Court of Judicature at Nagpur arise out of two suits brought by the respondent claiming a share of the income of certain Jahagir villages which are registered in the name of the appellant and they reveal a conflict of judicial opinion upon a matter of substantial importance in Berar.

Before stating the facts which are peculiar to this case it will be convenient to refer briefly to the background of history and law in which they are set.

By a Treaty made in the year 1853 the territory of Berar was ceded by the Nizam of Hyderabad to the British Crown. At once (as was contemplated by the Treaty) the work began of investigating claims, briefly to be called Jagir and Inam claims, to hold lands free of revenue under or by virtue of sanads granted by the Nizam or his ministers and it may be regarded as significant that the Government of India deemed it necessary in view of the fact that conditions in Berar differed from those in other parts of India to frame a separate set of Rules for the settlement of such claims.

In 1859 the Berar Inam Rules were sanctioned and brought into force and they are applicable, subject to what will hereafter be said, to all grants made by the British Government or recognised by it as valid. Rule I provided for the manner in which the validity of grants should be established. It may be observed here that, though in their origin these Rules were intended only as instructions to the executive authority, they have been held to acquire the force of law. Rule II provided for the division of Inams into classes, the first class being described as " Personal Jagirs ", the second as " Grants or endowments to religious or charitable institutions and for service therein ", the third as " Personal

or subsistence grants ". Two other classes need not be mentioned. The distinction between " Jagir " and " Inam ", which is sometimes made, in Berar at least, lies in this that the term " Jagir " is applied to a grant of a village or group of villages while " Inam " means a lesser grant. But generally a Jagir is an Inam.

Rules III and IV are of importance in this case. They are as follows:—

" Rule III. Personal Jagirs to be continued, subject to a legacy duty or succession fee, graduated on a scale according to the degree of relationship of the heir as follows:—

" Widows, lineal heirs, or undivided brothers, 2 per cent. on the real value of the property estimated at 10 years' annual rental;

" Heirs by adoption, 3 per cent.;

" Collateral heirs of one remove, 5 per cent.;

" Collateral heirs of two removes, 8 per cent.;

and further degrees of relationship disallowed except under special orders.

" Rule IV. 1. If the Inam was given for religious or charitable objects, such as for the support of temples mosques colleges choultries or other public buildings or institutions or for service therein whether held in the names of the institutions or of the persons rendering the service, it will be continued to the present holders and their successors so long as the buildings or institutions are maintained in an efficient state and the service continued to be performed according to the conditions of the grant.

" 2. * * * * * ".

Their Lordships observe (1) that amongst those contemplated by Rule III as possibly constituting the " heir ", to whom a personal Jagir may be continued, are a wide variety of persons including widows, (2) that Rule III does not itself, except in its final words of disallowance, purport to control the succession, but merely prescribes the rate of duty, (3) that Rule IV on the other hand does purport by the use of the words " to the present holders and their successors " to indicate the mode of descent. It is possible however that these words mean no more than the " successors according to the terms of the sanad or grant ".

Rule V relating to personal or subsistence grants is not strictly relevant to the present case. For it is common ground between the parties that the grants here in question fall under Rules III and IV. Reference however is made to Rule V in certain authorities and it may be noted that a grant covered by it was to be confirmed according to its actual tenure and that if the then present incumbent was a descendant of the original grantee, the Inam would be continued to him hereditarily subject to certain conditions, which, inter alia, limited the right of succession and prohibited alienation of the Inam. A number of other conditions, including a right of conversion into a perpetual freehold, which it is unnecessary to mention, were annexed to these grants. Amongst the other Rules it is necessary only to mention Rule IX, which provided that the settlement would be made with the " head member of the family holding the office or enjoying the Inam ", and Rule XV, which provided that on the validity of an Inam being established by enquiry in accordance with the Rules, a title deed would at once be furnished to the Inamdar by the Inam Commissioner or Settlement Officer acknowledging his title to the Inam on its present tenure and specifying the terms upon which this tenure might be converted into a freehold.

As has already been stated, this appeal arises out of two suits. In the first suit, which was brought in the Court of the Subordinate Judge, Malkapur, the respondent claimed against the appellant to be joint owner with him of two villages, Deodhaba and Kamardipur, and to recover from him Rs.3,076 as his share of the income of these villages. In the second suit, which was brought in the Court of Small Causes, Malkapur, the respondent claimed against the appellant and one, Shankar Rao, the sum

of Rs.125, being one-half of the sum of Rs.250 payable by Shankar Rao to the appellant in respect of the village of Makodi. It is convenient to state here that the respondent's claims in both suits were rejected by the trial Judges. His appeal in the first suit to the District Judge, Akola, was dismissed. He appealed from that dismissal to the High Court at Nagpur and at the same time appealed for a revision of the Order of the Subordinate Judge in the second suit. On the 16th December, 1940, the High Court delivered one judgment covering both matters, in which they upheld the claims made by him in both suits. Hence the appeal of the present appellant to His Majesty in Council.

The facts relevant to the respondent's claims, which have thus been upheld, can now be stated.

The appellant is the elder brother of the respondent. They are the great-great-grandsons of Raja Govind Narayan Bahadur, to whom before the year 1853 the villages of Deodhaba and Kamardipur with other villages including Makodi had been granted as Jagir villages. The history of the matter in the intervening years is obscure, but it appears that in or before 1869 in accordance with their policy of investigation and settlement the Government of India had, upon a claim being made by Harihar Rao, a son of the Raja, directed an enquiry into these and other villages. The Inam Investigating Officer reported that, none of the patents under which they were held having been produced, they had been treated as Government villages, but that in the case of Kamardipur upon the representation of the Poojarir of the temple, on account of which the village was held, a certain allowance had been made. But, his report being otherwise favourable, in 1877 orders were in due course made by the competent authorities in favour of the claimant, Harihar Rao, of which the material parts provided that the villages of Deodhaba and Makodi should be restored to him under Rule III and the village of Kamardipur under Rule IV of the Berar Inam Rules. It was however expressly provided that these Inams should continue to be held by the Inamdar on the usual condition of loyalty and good behaviour and during the pleasure of the British Government which reserved to itself the right of resuming them at any time it might think proper to do so. Further, in regard to the villages falling under Rule III the Inams were continuable only to lineal heirs of the original grantee, while that falling under Rule IV was expressed to be continuable to the grantee's successors, whether lineal heirs or not, on the conditions stated in Rule IV. Thus Harihar Rao, the great-grandfather of the parties to these suits, had restored to him Deodhaba and Makodi under a grant to him and his lineal heirs and Kamardipur under a grant to him and his successors, subject to the conditions of Rule III and Rule IV respectively. There is neither in the grants nor in the Rules a word which suggests that primogeniture is to be the order of descent or that the estate is to be impartible.

For reasons, into which it is not necessary to enter, an arrangement was subsequently made between Harihar Rao and his brother Janardhan Rao whereby the former retained Deodhaba and Kamardipur but surrendered Makodi to the latter, retaining nevertheless an annual sum of Rs.250 out of its income. This arrangement was challenged at a later date by the family of Janardhan but was upheld. It is only necessary to mention it to explain why not Makodi itself but an annual sum of Rs.250 payable out of its income is the subject of dispute between the present litigants, who claim through Harihar Rao. It is to be noted, however, that the appellant and respondent made common cause against the family of Janardhan, and were in revenue proceedings in the year 1903, which were taken from the Deputy Commissioner to the Commissioner and thence to the Resident at Hyderabad, established to be the heirs of Harihar. So also in Civil Proceedings commenced in the year 1904 there was the same alignment of parties, the appellant and the respondent as plaintiffs claiming, and successfully claiming, against Laxmanrao, the son of Janardhan, that they were entitled to the villages and sum of rupees in question. But, united against Laxmanrao, they fell out among themselves, and in the

year 1916 submitted to arbitration the very question which in the present proceedings has found its way to their Lordships' Board. In that arbitration it was decided in favour of the respondent that the brothers should divide the whole revenue of the villages in equal shares after deducting the expenses and also that one-half of the sum of Rs.250 out of the income of Makodi should go to each of them.

It has not been contended before the Board that this award precluded the appellant from again raising the question and their Lordships express no opinion upon that matter. They will dispose of the matter as did the High Court of Nagpur upon the footing that the single question is what are the rights of the parties, regard being had to the terms of the grants and of the Inam Rules.

Upon this question they see no reason to doubt that the decision of the High Court is right. The Subordinate Judge would, it appears, have come to the same conclusion but that he thought that he was bound to decide otherwise by the authority of *Kutubuldin* v. *Gulam Rabbani,* 21 Nagpur L.R. 185. In that case (which has been followed in two other cases, the judgments in which are printed in the Record in the present appeal) it was decided according to the headnote, which appears to be accurate, that an estate in Berar granted under Rule V of the Inam Rules of 1859 cannot be divided up amongst the persons beneficially interested in it, nor are those persons entitled to any defined shares in the income, but they are entitled to get from the life holder only so much as is sufficient to provide them with suitable maintenance. In the course of his judgment in that case Hallifax, A.J.C., referred to a decision to the contrary effect of Dhobley, A. J. C., in *Krishnaji* v. *Nalkanth,* 18 Nagpur L.R. 163, and observed upon it that he was apparently unaware of earlier rulings of the Court in *Krishnaji* v. *Manwar Ali,* 6 Nagpur L.R. 72 and *Aman Ali* v. *Imambi,* 9 Nagpur L.R. 188. It is clear then that there has been some conflict of judicial opinion at any rate in regard to grants that are governed by Rule V of the Inam Rules, though it may be that the distinction between impartibility and inalienability has not always been very clearly kept in mind. It appears, however, to their Lordships that the decision in *Kutubuldin* v. *Gulam Rabbani* disregards the principle which was established two months later in *Mir Subhan Ali v. Imami Begam,* 21 Nagpur L.R. 117. In that case it was decided by this Board that the devolution and incidents of an Inam estate in Berar are regulated by the Inam Rules of 1859, but only in matters not expressly mentioned in the Sanad or Certificate or other document evidencing the special terms of the grant in the particular case. In the particular case, which their Lordships have to consider, this means that they must determine what is the effect of a grant in the one case to the grantee and his lineal heirs, in the other to the grantee and his successors. Here they are guided by the old authority of *Bodhrao Hunmont* v. *Nursing Rao,* 6 Moore I.A. 426. In that case the sanad was to the grantee that " he and his sons and sons' sons should enjoy the same in male line all succeeding generations in Inam " and it was held that there was no reason why the Inam villages in question should not be governed by general principles of Hindu law respecting partition of the father's estates among his heirs. So also in the case in 21 Nagpur L.R. 117 already cited, where the grant was " in perpetuity to the present holder and his male descendants " it was decided that, notwithstanding the language of the Inam Rules, female descendants were excluded, but their Lordships do not find any suggestion that among male descendants of equal degree the elder was to be preferred to the exclusion of the younger. Nor, again, does this view appear to be consistent with the recent decision of this Board in *Sahebrao* v. *Jaivantrao,* 29 Nagpur L.R. 210, which recognised that an Inam village might be held after the death of the grantee by his " lineal descendants and co-sharers ". There is in fact no justification for the view which found favour with the Court in *Kutubuldin* v. *Gulam Rabbani* that Inam villages are necessarily held upon a tenure involving impartibility and primogeniture. That is a form of tenure which might be prescribed by the grant and, if the grant contemplated that certain personal services would continue to be performed

or a certain office to be enjoyed by the holder of the Inam land, it might be easy so to construe it, if its terms were ambiguous. But in the present case there is neither ambiguity in the grant nor any special circumstance which should lead to a departure from the ordinary principles of Hindu law. Upon this footing the appellant and the respondent have an equal title to be considered the "lineal heirs" and the "successors" of the original grantee.

It remains to consider a contention advanced on behalf of the appellant that he alone was entitled, since to him alone a Certificate of Title had been issued in 1914. Upon this question their Lordships so fully agree with the judgments both of the learned Subordinate Judge and of the High Court that they need add little. The Certificate if it is issued to one who has no right to it in the judgment of the Civil Courts or if it requires amendment must be cancelled or amended accordingly. In the present case, as was pointed out in the judgment of the High Court, the officer enquiring into the matter had already made the necessary adjustment before that judgment was delivered and, as their Lordships have been told, an appeal from his order was dismissed while the appeal to the Board was pending. The appellant can get no assistance from an error which has now been recognised.

For the reasons above appearing their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.

(60401) Wt. 8062—31 180 7/48 D.L.

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