

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Prince Mirza Jehan Kudr Bahadur v. Nawab Afsur Bahu Begum, from the Court of the Commissioners of Lucknow Division, Oudh ; delivered November 16th, 1878.

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships are of opinion that the decisions of both the Lower Courts on the question of limitation must be reversed, and that this case must be remanded to be retried and determined in the Lower Courts upon certain issues which will be directed by their Lordships.

The action is brought by Prince Mirza Jehan Kudr Bahadur against Nawab Afsur Begum. The property in respect of which the action is brought consists of two portions, the one of certain houses in the City of Lucknow, and the other of Mouzah Sahrawan situate in the district of Unao in the province of Oudh. The Defendant obtained possession of both properties, and the Plaintiff brought his suit claiming two thirds of the property. His claim is now reduced to two thirds of two fifths. He claimed two thirds of the property upon the following grounds: He said that the property originally belonged to Nawab Malkar Kishwar, who may be called, as she has been called in the argument, the queen mother. He said, "After the
" mutiny the said estate was taken possession of
" by the British Government, and the Govern-

“ ment retained its possession, pending an inquiry
 “ into the conduct of the owner and other matters
 “ connected with the State, till 1864. In 1864
 “ the Government, after inquiry, ordered the
 “ property to be released in favour of the heirs
 “ of Nawab Malkar Kishwar Sahibah, and the
 “ Defendant obtained possession of the same on
 “ her own part and on the part of the other heirs
 “ of Nawab Malkar Kishwar Sahibah. Thus it
 “ was that on the 16th November 1863 the
 “ Settlement Court ordered the settlement of
 “ Mouzah Sahrawan to be made with the heirs of
 “ Nawab Malkar Kishwar Sahibah, and in accor-
 “ dance with that order the Defendant got
 “ possession of the village on her own part and
 “ on the part of the other heirs of Nawab Malkar
 “ Kishwar Sahibah.” With reference to that
 allegation the Defendant says, “ In the settlement
 “ papers of Mouzah Sahrawan the Defendant’s
 “ name only has been recorded; and this being a
 “ claim for an amendment of the settlement,
 “ cannot be entertained in this Province.” No
 issue appears to have been raised in the Lower
 Courts with reference to that contention of the
 parties.

By Lord Canning’s proclamation of the 15th
 March 1858 all the proprietary rights in the soil
 of the province were confiscated; and by a
 proclamation of Sir James Outram it was
 notified that “for those who have fled from the
 “ city”—speaking of the city of Lucknow—
 “ having locked up their houses, that if they
 “ would not return within ten days and re-occupy
 “ their houses, the property, with their houses,
 “ will be confiscated.”

Their Lordships think it unnecessary to deter-
 mine what was the effect of Lord Canning’s
 proclamation with reference to the houses, or
 what was the effect of Sir James Outram’s
 proclamation of the 22nd March 1858, because,

with reference to all the houses in Lucknow, which are the subject of the present suit, the Government gave up altogether their rights under the confiscation. Paragraph 4 of the Letter of the 6th July 1863 from the Secretary of the Chief Commissioner to the officiating Commissioner is as follows: "The Chief Commissioner understands from the Deputy Commissioner that the value of the property lies almost entirely in the buildings which consist of shops, mosques, tombs, and mehal serais. The value of the land is so trifling in comparison that the principle of treating the buildings as having become by accretion part of the land, and having lapsed with the latter, as was ruled in the case of the Khas Mohul's claim to the Alumbagh, should not, in the Chief Commissioner's opinion, though incontestably sound, be enforced in this case. The property, as Chief Commissioner learns from the Deputy Commissioner, yields a rent of no more than Rs. 2,000 a year, as few of the shops hold tenants. It is therefore of no great value to Government, nor is it likely to become of greater, whereas it may improve under private management. For these reasons the Chief Commissioner thinks the right of Government to the property should be abandoned, and possession relinquished, but not in favour of Afsur Bahoo or anyone else. Claimants must agree among themselves or apply to the Civil Court to decide their pretensions."

Their Lordships, taking this Letter into consideration, are of opinion that it was the intention of the Government to abandon altogether the confiscation as regards the houses and property in the city of Lucknow, and to leave the former owners to their rights in the same way as if there had never been any confiscation. If the Defendant in the suit had been in possession, as she alleges,

of the houses and other property in the city of Lucknow before the proclamation, the question of limitation might arise as against the Plaintiff with regard to those houses and other property. But this question has not been tried in the cause, and upon the evidence before them their Lordships have not the means of determining it. All they can do is to express their opinion with regard to those houses and other property, that if the Defendant was in possession before the proclamation, the question must be determined in the same manner as if there had never been any confiscation at all.

With regard to the mouzah, it appears to their Lordships to be clear that the question of limitation does not arise. Their Lordships are of opinion that the effect of Lord Canning's proclamation of 1858 was to put an end to all previous titles. Whatever title then either party has to the mouzah must have been acquired by some grant or some proceeding of the Government subsequent to that proclamation, and any grant or proceeding under which he can have acquired a title must have been within the period of 12 years prior to the commencement of the suit. Therefore, with regard to the mouzah, the question of limitation will not apply, but the question of title must be determined, and the Defendant being in possession, the Plaintiff must recover on his own title.

From a minute of the Chief Commissioner, dated the 29th October 1863, and which will be found at page 16, it appears that in a suit between Bhyroon Singh and others, and the present Defendant Afsur Bahoo Begum, Bhyroon Singh and others claimed that, having mortgaged the mouzah to the queen mother, they were entitled to have the revenue settlement made with them. The settlement commissioner decided that the settlement ought not (for certain reasons

which were given) to be made with the then Plaintiffs, but that it ought to be made with Afsur Bahoo, the present Defendant. Upon an appeal which came before the Chief Commissioner, he says: "I agree with the Commissioner in holding that the mortgagee was really the queen mother, though the deed was drawn up in the name of Agha Ahmed, and the Zemindars in their appeal plainly indicate her as the party who acquired possession of the village by the mortgage. But in the meantime the Commissioner's orders must be so far modified as to make his decree run in the name of the heirs of Mulkar Kishwar, and not of her daughter Afsur Bahoo alone; for it has been shown in another case that there is no proof of the alleged gift by the deceased queen of all her property. Afsur Bahoo and her other children can claim to share in it."

It has been contended that the words "the heirs of Mulkar Kishwar" did not include the present Plaintiff, inasmuch as he was not an heir of his grandmother. But it may be a question whether by the words the "heirs of Mulkar Kishwar" the Chief Commissioner did not intend to include the Plaintiff to the extent of the share which but for the confiscation he would have inherited from his father, the General Sahib, who was one of the heirs of the queen mother, and was living at the time of her death. That is a question which will have to be considered in determining whether the Plaintiff by reason of the Chief Commissioner's decree was not entitled to two thirds of the share of his father, that being the only portion which he now claims.

The question, however, does not depend merely upon the order of the Chief Commissioner, which does not appear to have been ever carried into effect. It was not a decision between the present

Plaintiff and Afsur Bahoo, the present Defendant, but it was in a proceeding between certain Hindoo gentlemen, who are not now parties, and the present Defendant. The Chief Commissioner said that the decision of the Commissioner ought to be that the settlement should be made with the heirs of the queen mother. We have not got the proceedings which took place subsequently to the order of the Chief Commissioner. The order was sent by the secretary to the Chief Commissioner to the Settlement Department, and at page 10 of the Record it will be found that the document was filed in that Department. The settlement, however, does not appear to have been made in accordance with the direction of the Chief Commissioner. As far as can be ascertained from the record, it seems to have been made with the present Defendant alone, for at page 10 there is a proceeding in which a person, evidently the agent of the Plaintiff, says, "At the regular settlement"—that is the proceeding in 1864 after the date of the Chief Commissioner's ruling—"the village has been assessed at Rs. 2,973, which I, the agent, will, under the terms entered in my application, continue to pay by instalments detailed below for 30 years from Rabi 1271 F. to Kharif 1301 Faslî (corresponding with 1894), and thereafter, pending the wishes of the Government." So that then he offers, as the agent of the present Defendant, to take the settlement of this mouzah for 30 years at the revenue of Rs. 2,973. We have not the kubulyut which was entered into at the time when the regular settlement was effected. Possibly it was a kubulyut executed by the agent on behalf of his client, the present Defendant; and it appears, as far as one can judge from a document which is set out at page 9,—though that document has not any date attached to it,—that the settlement was

actually made with the present Defendant alone, and that she was recorded as the person who had taken the settlement from the Government. The document is No. 4. Under the head "name of Lambardar" is the name of the present Defendant. Then the property is mentioned, and in the column headed "names of sharers" the Defendant is mentioned as the only person, "Nawab Afsur Bahu Begum Sahibah, daughter of the King Amjad Ali Shah," and then the amount of the revenue assessment is Rs. 2,973; that is the revenue which was stated in the offer made by the agent. Without seeing these documents it is impossible to say whether the Plaintiff did or did not acquire a title to this property, or to a share in it, from the Government after the confiscation; and it appears to their Lordships that the case must be remanded in order that the question may be tried whether the Plaintiff, after the confiscation, acquired a title to any share in this mouzah. One issue should be raised, whether, after the Chief Commissioner's order that a settlement was to be made with the heirs, a settlement was made with the heirs, or whether it was made with any other and what person, and under what circumstances, and what was the effect of the settlement. It also appears to their Lordships that if any kubulyut was executed, that kubulyut ought to be called for and examined by the Court in order that it may be ascertained whether the Defendant took the settlement on her own behalf adversely to the other heirs, or whether she took it as a trustee for herself and the other heirs.

Upon the whole their Lordships are of opinion that, as regards the mouzah, there is no question of limitation, but only a question of title which must be tried. With regard to the houses, the question of limitation may arise in the manner which their Lordships have already indicated.

Several issues were raised in the Lower Court which now appear to be irrelevant, and their

Lordships think that the cause ought not to go down upon those irrelevant issues; on the other hand, there are fresh issues which ought to be settled and tried; and their Lordships are of opinion that the proper course will be that the learned Counsel for both parties should submit to their Lordships any issues which they think ought to be tried in the Court below. Their Lordships will then finally settle the issues upon which the record is to be remanded.

On the 14th December 1878.

AT THE COUNCIL CHAMBER.

As to the Mouzah.

Minutes having been prepared by Counsel, in obedience to the foregoing directions of their Lordships, their Lordships considered and approved the same, and agreed thereupon humbly to advise Her Majesty that the decisions of the Civil Judge of Lucknow and of the Commissioner of the Lucknow Division, bearing date respectively the 16th August 1875 and the 22nd January 1876, be reversed, and that the case be remanded to the Court of the Commissioner of the Lucknow Division to direct the cause to be tried and determined by the Civil Judge of Lucknow upon the following issues, viz. :—

1st. Whether the Plaintiff, after the confiscation of the mouzah Sahrawan under Lord Canning's proclamation, acquired by any and what means any and what right or title to any and what share of and in the said mouzah ?

2nd. Whether, after the Chief Commissioner's Order of the 25th of October 1863, directing that a settlement should be made in the names of the heirs of Malka Kishwar (the queen mother), the settlement was so made; or whether a settlement was made with the Defendant, or with any other and what person or persons, and under what circumstances, and what was the effect thereof ?

3rd. Whether, at the time of such settlement, any, and, if any, what *Kabuliyet* was executed by any and what person or persons?

4th. Whether the Plaintiff was, according to Mahomedan law, one of the heirs of the said Mulka Kishwar; or whether the Commissioner intended by the word "heirs" to include the Plaintiff to the share or any portion of the share which his father would have been entitled to if he had been then alive?

As to the houses and other property in the City of Lucknow.

1st. Whether, considering that the confiscation of some of the above houses and property was abandoned by the Government, leaving all the former owners to their rights by law, the Plaintiff was entitled to any and what share thereof at the time when he brought his suit?

2nd. Whether the Defendant was in possession of the said houses and property, or of any and what portion thereof, and, if so, under what circumstances before the proclamation of Lord Canning, and, if so, whether the suit of the Plaintiff in respect thereof was barred by the Act of Limitation?

As to all the property in suit.

3rd. Whether the late Mulka Kishwar (the queen mother) did in her lifetime make some and what gift in respect of the said properties, or any and what portion thereof, in favour of the Defendant, and, if so, whether the same was valid in law?

The costs of this Appeal on both sides will be taxed here, and the respective amounts will be costs in the cause, and abide the event of the final decision of the Lower Court.

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