

Privy Council Appeal No. 52 of 1932.

Nizam Din and others - - - - - *Appellants*

v

Godar and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH OCTOBER 1933.

Present at the Hearing :

LORD ATKIN.

LORD MACMILLAN.

LORD WRIGHT.

SIR JOHN WALLIS.

SIR GEORGE LOWNDES.

[*Delivered by* SIR JOHN WALLIS.]

The only question in this appeal is whether in 1891 or 1892 one Gharib, who was then sub-mortgagee in possession of the suit lands and is now represented by the defendants, acquired the equity of redemption which was then vested in the plaintiffs as sons of the deceased mortgagor. The defendants set up this purchase in answer to the claim for redemption in the present suit filed by the plaintiffs in 1920, and the Subordinate Judge of Lahore holding that there were no sufficient reasons for questioning the sale, dismissed the suit. This decree was reversed by the High Court of Lahore, and the defendants have appealed.

As Gharib and his descendants, the present defendants, have been recorded as proprietors of the suit lands ever since 1893 in the annual *jamabandi* statements, and were also so recorded in the village record of rights prepared after the settlement of 1911—12, a statutory presumption arises under Section 44 of the Punjab Land Revenue Act (17 of 1887), that the aforesaid entries are correct. They were admittedly based on an order in the mutation register signed by the Revenue Assistant, and dated the

4th February, 1892, in which it is stated that the plaintiffs had appeared before him and admitted the sale and receipt of the consideration, and in which mutation was ordered in favour of Gharib the vendee. It was also stated that Rupa Mal the mortgagee, also appeared, and admitted the receipt of the mortgage debt due to him, and that Bhamba the *lambadar*, or village headman, also approved the above facts. The plaintiffs, therefore, cannot succeed without displacing this sale, and the onus on them is the heavier because the title of the defendants as recorded proprietors since 1893, has stood unchallenged until the institution of the present suit in 1920, when the vendee and the officials whose names appear in the mutation proceedings, were dead and the alleged vendors who sue as plaintiffs, were the sole survivors.

The suit lands consist of a three-quarter undivided share of 2,440 kanals 3 marlas in the village of Qutba in the district of Lahore, and at the beginning of 1883 belonged to one Shaman.

On the 21st January, 1883, Shaman sold them for Rs. 4,000 to the defendants' ancestor Gharib, who was a *Zaildar* and a man of position, but did not reside in the village or own any land in it. He was at once sued for pre-emption by Rama, one of the Kamboh landowners in the village, and by Ala the plaintiffs' father, a landowner belonging to another tribe. He did not contest Ala's suit, and Ala accordingly pre-empted him and became the owner of the suit lands, Rama's suit being apparently dismissed.

On the 13th June, 1884, Ala borrowed Rs. 4,000 from Rupa Mal on simple mortgage of the suit lands, and on the 22nd May, 1886, mortgaged them usufructually to Rupa Mal for Rs. 9,000, and on the 4th January, 1887, Rupa Mal submortgaged them for the same sum to Gharib, who thus came into possession as usufructuary mortgagee of the lands of which he had been deprived by pre-emption. The Kamboh Rama then filed another suit for pre-emption, this time against Ala joining Rupa Mal and Gharib, which was dismissed. In his evidence in that suit Gharib stated that the suit lands were then worth Rs. 15,000–Rs. 16,000, and that was why so many people were after them.

That this was one of the most important holdings in the village may be gathered from the fact that in the suit for partition of the *shamilat* or common lands of the village to which Gharib's heirs in possession and the plaintiffs were parties, Gharib's heirs were awarded a 6 annas or three-eighths share of the common lands as proprietors of this holding, the plaintiffs being awarded a 1 anna or one-sixteenth share as proprietors of the holding which had belonged to their deceased father Ala, when he pre-empted Gharib. The proprietary interest in the suit lands which the plaintiffs had inherited from their father Ala, even though subject to a usufructuary mortgage for Rs. 9,000, could not have been a matter of indifference to the plaintiffs, as it was calculated to enhance their position in the village, and might

at any time become very valuable if there was a rise in prices. It is therefore very difficult to accept their story that they remained unaware that Gharib and his descendants were the registered proprietors ever since 1893 until the institution of this suit as alleged in the plaint, or until a few years before that time as stated in their evidence. The story that their ignorance was due to absence from the village, as observed by the Subordinate Judge, is disproved by the fact that in the deeds to which they were parties during this period they are described as residents in the village. Again, the fact that the defendants were the registered proprietors would receive the utmost publicity in the proceedings at the settlement on which the record of rights was based, and they were so recorded without challenge in that record. From that time their position must have been a matter of notoriety in the village. Indeed, seeing that they were unwelcome intruders who had acquired one of the most important properties in the village, it was probably common knowledge ever since the *jamabandi* statement of 1893.

As already stated in the partition suit the plaintiffs made no claim to the 6 annas share in the common lands, which was awarded to the defendants as proprietors of the suit lands.

It is suggested in the written statement that this suit is a third attempt on the part of Kamboh proprietors in the village to acquire the suit lands for their own tribe, and some colour is given to this suggestion by the admission of Lakha, the third plaintiff, in his evidence that the Kambohs asked the plaintiffs to bring the suit and are financing it, and by the fact that one of the plaintiff's compromised the case and abandoned the appeal to the High Court against the dismissal of the suit, and that the guardian of the minor sons of another plaintiff was only prevented from taking the same course by the refusal of the High Court to sanction the compromise prior to the hearing of the appeal.

In their plaint, which was filed on the 24th February, 1920, the plaintiffs, after alleging that for four years the defendants had been putting off their claim to redeem with evasive answers, stated that it was only in the month of September, 1920, when they obtained copies of the revenue papers for the purpose of instituting this suit, that they came to know that the defendants and their ancestors had by making a wrong statement got their names entered as proprietors instead of mortgagees. They said they were poor and indigent while the defendants were the descendants of a *Zaildar*, and that the defendants "got the above-mentioned entry made in the revenue papers by dint of their personal influence and pressure," thus entirely ignoring the mutation order of the 4th February, 1892.

The defendants in their written statement denied that they or their ancestor, Gharib, had made any wrong statement, and alleged that the plaintiffs had sold the suit lands to Gharib and

had appeared before the attesting officer and admitted the sale when mutation was ordered in favour of Gharib on the 4th February, 1892. They also alleged that the defendants by their acts and words had subsequently admitted the sale, and that the defendants had been continuously shown as owners in the revenue papers ever since 1892, and had been in possession of the suit lands as proprietors to the knowledge of the plaintiffs and without any objection being taken, and that the plaintiffs were estopped from disputing the sale.

In their replication the plaintiffs denied that they had got mutation of names effected in the name of the defendants or their father, and alleged that the mutation proceedings on which the defendants relied "had been taken on the basis of wrong statements." In their grounds of appeal to the High Court the plaintiffs went further, and alleged that the mutation proceedings were fabricated and false entirely, and no proof of the defendants' title as owners.

In their Lordships' opinion the plaintiffs in order to succeed must establish that the mutation order is a false document. The denial of two of the plaintiffs in their evidence that they were present and admitted the sale and receipt of consideration is worthless, and the question must be whether an examination of the revenue records exhibited in the case affords sufficient reason for coming to that conclusion. There is no apparent irregularity in the mutation order itself, but reliance is placed on certain alleged irregularities of the village *patwari* in submitting the report on which the order is based, and also on the fact that effect was not given to it, as it should have been in the *jamabandi* statement of 1892, but only in the *jamabandi* statement for the following year. The Subordinate Judge has found that the mutation order is "quite above suspicion," and the learned Judges of the High Court have not found affirmatively that it is false, but only that having regard to the suspicion arising out of the irregularities already mentioned and other circumstances, the defendants have failed to prove it.

The practice as regards these mutation orders, as appears from the numerous exhibits in the case, was for the *patwari* on being notified of any devolution of land in the village by death or transfer to fill in a form setting out the entry in the last *jamabandi* statement and the entry to be substituted for it, and to put up this form, with his report, before the Revenue Officer, whose duty it was to make the order for mutation. The papers so put up for orders in each case are numbered consecutively, and are included in the mutation register, together with the orders passed upon them by the Revenue Officer. The first alleged irregularity is that Application No. 46 with reference to this sale is dated the 15th December, 1891, while several applications bearing earlier

numbers were not completed and signed until the 20th January, 1892. The second irregularity is that it states incorrectly that the vendors, the present plaintiffs, were recorded in the previous *jamabandi* as mortgagors of the suit lands, whereas Application No. 40, which was completed and signed on the 20th January, was then pending for mutation in the plaintiffs' favour of all the lands in the village which had been registered in the previous *jamabandi* in the name of Ala, their deceased father, including the suit lands, and the mutation order in respect of it was not made until the 24th August, 1892.

As regards Application No. 46, as the learned Judges say that the date, 15th December, 1891, was clearly an interpolation added after the completion of the report, it may safely be inferred that No. 46 was rightly numbered, but was antedated, and that the oral sale now in question was reported to the *patwari* about or after the time when he completed the preceding No. 45, viz., the 20th January, 1892. Now it was obviously important for Gharib the vendee to get the order of mutation in respect of the oral sale effected with the plaintiffs made promptly for fear they might be induced to go back upon it, and it certainly looks as if it was to expedite the making of the mutation order that No. 46 was antedated and the false statement inserted in it that the plaintiffs were entered as mortgagors of the suit lands, in the *jamabandi* of 1891—Application No. 40 for mutation of the plaintiffs' names in respect of all properties of their deceased father being kept back and not disposed of until some months later. Some difficulty might have arisen about making an order of mutation in respect of the sale in No. 46, if it had come to the notice of the Revenue Assistant that the lands sold were still registered in the names of the vendor's deceased father, Ala.

With regard to the further objection that effect was not given in the 1892 *jamabandi* to the mutation ordered in No. 46, it may be observed that the order in No. 40 for mutation of the plaintiffs' names in place of their deceased father, made on the 24th August, 1892, was too late for the *jamabandi* statement of that year, and it may have been thought better by those responsible for these irregularities not to give effect in the *jamabandi* to the order in No. 46 until the order in No. 40 had been made. From Gharib's standpoint this would have the additional advantage of diminishing the risk of his being sued once more for pre-emption of the suit land before the one year period of limitation prescribed by Article 10 of the Limitation Act had expired.

In their Lordships' opinion the possibility that these irregularities were procured by Gharib for the purpose of getting a prompt order of mutation in respect of this oral sale, cannot be excluded, but such action on his part, however reprehensible, would not if established, afford any ground for questioning the mutation order itself. In their Lordships' opinion the plaintiffs

have not discharged the onus which lies upon them of displacing the sale.

Their Lordships will only add that they do not share the learned Judge's suspicions as to the transaction itself. Ala, who had run into debt to Rupa Mal before the submortgage of 1887, may well have contracted a further debt to him on a registered bond for Rs. 1,000 before he died in May, 1891, as recited in the mutation order, and his sons, the plaintiffs, may well have been willing to sell their equity of redemption in the suit lands for this sum to prevent their ancestral lands and the village from being brought to sale. Their Lordships will humbly advise His Majesty that the appeal be allowed and the decree of the Subordinate Judge restored. The respondents will pay to appellants their costs of the appeal to the High Court and of the present appeal.



In the Privy Council.

NIZAM DIN AND OTHERS

v.

GODAR AND OTHERS.

DELIVERED BY SIR JOHN WALLIS.

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