

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Bijai Bahadur Singh v. Baboo Bhyron Bux Singh, from the Court of the Commissioner, Rae Bareilly Division, in Oudh ; delivered Saturday, July 19th, 1879.*

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Present :

SIR MONTAGUE SMITH.  
SIR ROBERT P. COLLIER.  
SIR HENRY S. KEATING.

THEIR Lordships, after giving full consideration to the arguments of Mr. Arathoon in support of this Appeal, do not see their way to disturb the concurrent judgments of the two Courts below.

The action was brought by the Respondent Bhyron Bux Singh, who is the illegitimate son of Rajah Shumshare Bahadur Singh, against the Appellant Rajah Bijai Bahadur Singh, who is the legitimate son of the late Rajah, and his claim was to obtain villages or shares of villages in talook Behlolpur, yielding an annual jumma of Rs. 3,650, in lieu of a village called Sawansa which had been given to him by various pottahs executed by his father, and by other pottahs which were executed by the present Rajah.

The first pottah is one which by the English date was made on the 14th June 1846. It seems that the village Sawansa was under mortgage to the late Rajah, who appeared to entertain a doubt whether the mortgagor would redeem it; but in the grant of it to his illegitimate son he made a provision for the event of the mortgagor redeeming the estate. The grant is in these

terms: "I, Raja Shamshare Bahadur Singh, do hereby declare that I having obtained taluka Sawansa by mortgage, have given it as a zemindary grant to Babu Bhyron Bux Singh and relinquish my claim in his favour." Then, "In the event of the mortgage being redeemed, I will make over to him in lieu of the Sawansa estate villages from taluka Belholpur yielding an equal revenue. I have therefore executed this as a zemindary grant lease." That is a clear provision that in the event of the village Sawansa being redeemed, other villages of equal value shall be substituted for it.

The next grant from the father is on the 27th November 1847, which is in confirmation of the former grant, but gives the estate on more favourable terms: "I, the Raja, give the entire taluka of Sawansa, &c., including land revenue and cesses, as rent free nankar to Babu Bhyron Bux." It is given rent free, and therefore, on terms more favourable to the son.

Then there is a further grant in the lifetime of the father on the 28th August 1850. It seems to have been made by the Rani on behalf of the Rajah. It is stated in the Record to be "executed by Rani Bulraj Kinwar;" but the grant is in the following terms:—"Raja Shamshara Bahadur Singh. I execute this as an ancestral zemindary lease of Ghatampur, Raepur, Muarpur, and Manyarpur in favour of Bhyron Bux Singh. He is to have these villages rent free." That is a grant of other villages than Sawansa, and is only material as part of the history of the gifts made by the father to the illegitimate son. These grants were all made in the time of the Nawab, and before the conquest of Oude by the British. That conquest having taken place, and Lord Canning's proclamation confiscating the estates in Oude having been made

on the 15th March 1858, the present Appellant obtained the sunnud of the Bhelolpur talook from the British Government; but before he got the sunnud, and presumably after the British Government had settled the talook with him, he granted two pottahs to his brother, which are material in considering the position in which the two brothers stood at the time when the present dispute arose between them.

The first of these pottahs is dated the 9th August 1858 and is in these terms: "I, Raja Bijai Bahadur Singh, of parganah Partabgarh, have given taluka Sawansa to Babu Bhyron Bux Singh as a zemindary for his maintenance. I will take Rs. 2,501 as rent by usual instalments." He grants to his brother the taluka Sawansa, but reserves a rent of Rs. 2,501. By a postscript to the grant the rent is virtually reduced by 500 rupees. This is the postscript: "He is to receive further Rs. 500 nankar annually, leaving the rent payable to be Rs. 2,001. I will have no objection to having the said amount deducted." That grant does not refer to the provision in the original grant by the father for the substitution of other villages in case Sawansa should be redeemed; but in a subsequent grant, which is of the date of 17th November 1861, there is a passage the construction of which has been disputed, and to which reference will presently be made. That grant is: "I, Raja Bijai Bahadur Singh, of parganah Partabgarh, do hereby execute this as a lease of the whole of taluka Sawansa, including land revenue and sayar, and of the villages of Raepur, Kalan, and Ghatumpur in taluka Behlolpur,"—which were the villages mentioned in the subsidiary grant of the father,—“in favour of my brother, Bhyron Bux Singh, at an annual rent of Rs. 2,001 Queen's coin, which

“ he will pay by usual instalments. This lease “ is given to him in perpetuity.” Then there is this passage: “ Whatever Dadwa Sahab, my “ father, had granted, I have maintained also.” Those words were obviously inserted with reference to something beyond what had been contained in the previous part of the grant; and their Lordships think it may reasonably be inferred that it was intended by the Rajah to confirm by these words that part of the father’s grant which provided for the substitution of villages in case Sawansa was redeemed and taken away from his illegitimate son. There is nothing else shown to which these words could refer. These are the grants on which the Plaintiff founds his case.

What happened was, that after the Act 13 of 1866 had been passed, by which it was understood that the rights of mortgagors were set up and the bar of limitation removed, the mortgagor of the estate of Sawansa took proceedings to redeem it, and obtained a decree for redemption. That decree was obtained in a suit against the Rajah and his illegitimate brother; both were bound by it, and the estate of Sawansa passed from the hands of the illegitimate son into the possession of the mortgagor. He was therefore deprived of the estate which his father had given, and his brother had confirmed to him.

That being his position, he brought this suit in order to obtain other villages in the talook in substitution for the estate which he had thus lost. The first and great defence of the present Rajah is that he was not entitled to anything; that the agreement in the father’s original grant that the estate should be substituted was not continued in the father’s subsequent grants, and was not contained in the grants made by himself. Their Lordships however think that the father’s

subsequent grants did not abrogate this agreement, and they have already declared their opinion to be that in the last grant which he himself made he confirmed it. They are therefore clearly of opinion that the Plaintiff was entitled to this substitution, unless something has occurred subsequently between the brothers to deprive him of that right.

Now it is said that there was an agreement made at the time of the settlement of this taluk before the Settlement Officer which destroyed the Plaintiff's right altogether, or, if it did not destroy his right, altered the terms upon which he was entitled to get a substituted estate. The settlement proceedings are, unfortunately, not set out at length in the Record. So much as appears of them is to be found at page 10. It would seem that at the time of the settlement the present Plaintiff put forward a claim—this was before the redemption of the Sawansa estate—to have Sawansa settled with him as an under-proprietor. This claim is not upon the Record, and what we have is a petition of the Rajah, which recites it. His petition is: “That the claim brought in your  
“ Court by Babu Bhyron Bux Singh to under-  
“ proprietary right of taluka Sawansa is just.  
“ The estate has all along been in his possession,  
“ under a zemindary grant made by Rajah  
“ Shamshare Bahadur Singh, Petitioner's father,  
“ as well as under the grant made by Petitioner  
“ himself; the Petitioner, therefore, prays that  
“ the name of Babu Bhyron Bux be recorded  
“ as under-proprietor of Sawansa estate included  
“ in taluka Behlolpur, parganah Partabgarh,  
“ without any condition, to which I have no  
“ objection, and I admit the claim in every way,  
“ but the estate should remain included in taluka  
“ Behlolpur.”

Now, although we have not the claim, it may be presumed from the Rajah's petition that the

Plaintiff based it upon the grants to which reference has been made, and therefore that the claim was to have this estate upon payment to the Rajah of, at most, a rent of Rs. 2,001; and if the Record had shown no more than this petition, there would be nothing to show an intention to alter the Plaintiff's right to have an estate substituted in the event of Sawansa being taken away, or the terms on which he was to hold either Sawansa or the substituted estate.

But it is said that what follows, although it may not displace the Plaintiff's right to have an estate substituted, does interfere with his right to have it upon the old terms, that is, upon the terms of paying the rent of Rs. 2,001. It is contended that it creates an arrangement by which he was to hold the Sawansa estate upon the terms of paying Government revenue and a malikana of 5 per cent. to the Rajah. The whole of that contention is based upon the order of the Settlement Officer, which is in these terms: "Rajah Bijai Bahadur Singh personally filed this to-day,"—that is, referring to his petition,—"and admitted its contents. As Baboo Bhyron Bux is to be recorded under proprietor of the Sawansa estate without condition, it is desirable, for the security of the talooka, that his liability to pay the talooka dari allowance at the rate of 5 per cent. besides the jumma, which may be fixed, should be noted; and as the Rajah and Baboo Bhyron Bux assent to this: Ordered, that the name of Baboo Bhyron Bux be entered as under proprietor of all the villages in talooka Sawansa." That is a note of the Settlement Officer. It, no doubt, is stated to have been assented to by the Rajah and by Bhyron Bux, but it would be unreasonable to come to the conclusion from this unexplained note of the Settlement Officer, which he has inserted in his

order, that the brothers intended so materially to change the arrangements which had existed up to that moment, and which were recognised in the petition filed by the Rajah,—so materially that the Plaintiff, instead of paying a rent of Rs. 2,001, would have to pay a rent, including the Government revenue and the malikana, of Rs. 3,650. It may be that this note was only intended for the purposes of the Government; but however that may be, there is nothing which is so clear and free from ambiguity that it can be relied on to establish that the brothers intended to alter the rights as they existed between themselves at the time when the settlement was made, and when the petition of the Rajah was filed assenting to the Plaintiff's claim in all its terms.

Their Lordships would have been glad to know what was actually done, and what was the rent really paid by the Plaintiff after the settlement was made, but the Record is entirely silent upon these things. That this question could not have been overlooked in the Courts below is plain, for an issue was framed in order to raise the question whether these settlement proceedings did alter the arrangement as it existed between the brothers. That issue is the fifth: "Were the conditions of the pottah  
 " of 15th Katik, 1269 Fusli, or of the pottah of  
 " 5th Par Buddi, 1255 Fusli, affected by the  
 " settlement decree of the 22nd March 1862  
 " to the detriment of the Plaintiff's present  
 " claim." The officiating Deputy Commissioner, without giving any reasons, records a verdict for the Plaintiff on that issue. But the attention of the Commissioner was expressly directed to this question, and in his judgment their Lordships find this paragraph: "The decree of the Settlement Court does not, I think, affect the merits  
 " of the claim. That decree goes no further than

“ to record the status of the Plaintiff.” Their Lordships apprehend the meaning of that to be the status of the Plaintiff as an under-proprietor, and are disposed to think that if the effect of the order had been that for which Mr. Arathoon contends, these Judges—the Assistant Commissioner and the Commissioner—would have known that that was so. They are much better acquainted with what is meant by the orders of the Settlement Officers than their Lordships can be, and they had the means of satisfying themselves as to what this order really meant by reference to the proceedings or by directing inquiries. Their Lordships think that credit must be given to the Judges below who had their attention called to the issue and to the decree which is referred to in it, that they did not form their opinion without due investigation and consideration.

On the whole, therefore, their Lordships think that it would be exceedingly dangerous for them to act upon the speculation that this note embodied in the order of the Settlement Officer was intended to override the former arrangement of these parties. They will therefore humbly advise Her Majesty that the judgments appealed from should be affirmed, and this Appeal dismissed.