

Rifka Aaronson and others - - - - - *Appellants*

v.

Farid Najib Ghadieh and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF PALESTINE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27TH JULY, 1936.

Present at the Hearing :

LORD THANKERTON.

SIR JOHN WALLIS.

SIR GEORGE RANKIN.

[*Delivered by* LORD THANKERTON.]

This is an appeal by special leave from a judgment of the Supreme Court of Palestine in its appellate jurisdiction, dated the 12th January, 1933, dismissing an appeal from a judgment of the Land Court of Haifa, dated the 18th July, 1932, under which an appeal by the present appellants from an order of the Settlement Officer, dated the 26th June, 1931, was dismissed.

Under section 3 of the Palestine Land Settlement Ordinance, as amended, the High Commissioner for Palestine, on the 26th April, 1929, issued a settlement order, by which it was ordered that a settlement of the rights in land and registration thereof should be effected in the area included within the boundaries of *inter alia* the village of Hudeira in the Haifa Sub-District and of the lands of Attil and Zeita in the Tulkarem Sub-District. By another order of the same date Mr. Francis Goldworth Lowick was appointed Settlement Officer for the purposes of the above order. On the 14th May, 1929, the High Commissioner issued another order, which cancelled the first order and reissued it in an amended form. The amendments are not material to the present question.

On the 2nd May, 1929, a preliminary notice, in terms of section 5 of the Ordinance, was issued of the intended settlement and registration of rights in the village of Hudeira. The village of Hudeira thus became a village under settlement, and the lands comprised within its boundaries became subject to the jurisdiction of the Settlement Officer.

The present dispute relates to a large area of land, said to extend to between 5,000 and 6,000 donums, and known as Khor al Wasa'. At this time the appellants were registered in the Land Registry of Haifa as absolute owners of an area extending to between 5,000 and 6,000 donums, and forming part of Khor al Wasa', and were the holders of Kushans or title deeds issued to them by that Land Registry, which certified their registration as such. The entry in the register describes the area as being within the village of Hudeira.

On the 2nd December, 1929, and the 9th September, 1930, statutory notice was given that settlement and registration of rights was about to commence as to certain blocks of land in the village of Hudeira, including the blocks of which the appellants were the registered owners. The appellants then duly submitted memoranda of their claims to these blocks to the Settlement Officer.

Thereafter the Settlement Officer held a prolonged public enquiry, generally at Hudeira, on various dates from the 5th November, 1930, to the 16th June, 1931, and he delivered a considered judgment on the 26th June, 1931, from which it is convenient to take his description of the parties before him and their claims;

" This action has been brought to decide whether an area of land known as the Khor al Wasa' stated to consist of between 5,000 and 6,000 donums lies within the boundaries of Hudeira and is thus within the jurisdiction of the Settlement Officer, Jaffa Settlement Area, in virtue of a Settlement Notice published by him on 2nd May, 1929 (vide Official Gazette No. 235 of 16th May, 1929, p. 537) under Section 5 of the Land Settlement Ordinance, 1928, in respect of Hudeira village, the effect of which being that jurisdiction in actions concerning rights to land within the boundaries of the said village of Hudeira is conferred on the Settlement Officer according to the provisions of Section 6 of the said Ordinance.

" The plaintiffs are persons who claim that the area in question lies within the boundaries of the village of Zeita (Tukarem Sub-Dist.) and forms part of the Musha' lands of Raml Zeita. At a later stage, namely, on 19th May, 1931, 73 additional claimants who made a similar claim were entered as third parties. The third parties are Abdel Fattah es Samara and partners who subsequently withdrew their claim and representatives of Attil village (Tulkarem Sub-District) who claimed that a part of the area is included within the boundaries of their village.

" The defendants claim that the land in question is within the boundaries of Hudeira and is their property in virtue of registration in the Land Registry of Haifa."

In the view that their Lordships take, it is unnecessary to consider either the question of the boundaries of Hudeira or the question of title to the area in dispute on its merits, but it may be explained that the present appellants obtained a judgment of the Haifa Land Court in their favour in 1925, under which the entry in their favour in the Haifa Land Registry was directed to be made, while the respondents hold a judgment of the Nablus Land Court in their favour,

which they claim applies to the area in dispute. Further the questions of village boundaries and of title are inter-related to some extent for, if the area in dispute is village musha' of the village of Zeita or the village of Attil, it seems clear that it cannot be within the boundaries of the village of Hudeira.

After dealing with the evidence and arguments in detail, the Settlement Officer stated his conclusions as follows:—

“ The Settlement Officer therefore concludes that the whole area of Khor al Wasa' lies outside the boundaries of the Hudeira-Infiat Kushans and is thus included within the kushan boundaries of Raml Zeita. It is clear that the judgments of the Nablus Land Court in 1923-1924 which applied to the Raml Zeita as registered in the kushan included the same land as was the subject of the judgment of the Haifa Land Court in favour of Abd el Fattah Mar'i Samara in 1925. Although the question of the correct boundaries of Raml Zeita was not an issue before the Nablus Land Court, it is clear from the petition of claim that the judgment related to the lands included in the Kushan of Raml Zeita.

“ The Settlement Officer is thus faced with the task of deciding which of these two conflicting judgments is the better judgment. The Settlement Officer finds that the land in dispute was situated within the jurisdiction of the Nablus Land Court, while the Haifa Land Court was induced to assume jurisdiction by deliberate misrepresentation by the parties before it.”

“ The Settlement Officer finds that the boundaries of Hudeira on the East and South are as shown in the Vilbushevitch map and as indicated by a blue line in the map illustrating this judgment and that accordingly the whole area of Khor al Wasa' in dispute in this action is included within the boundaries of Zeita and/or Attil Musha' lands.

“ He has thus no jurisdiction to consider the claims of the Defendants who have purchased parcels of land in Khor al Wasa' from Toba Rutman and Rifka Aronson. But as the lands of Khor al Wasa' are included in the Land Registry of Haifa as being a portion of Hudeira and as the registers of Hudeira are superseded as result of the issue of a Settlement Notice regarding Hudeira on 2nd May, 1929, he orders that the entries in respect of Khor al Wasa' in the said Land Registry of Haifa be separated from the entries in respect of the lands of Hudeira and be described as Khor al Wasa' and that an observation be made in respect of such entries that in accordance with the judgment of the Settlement Officer, Jaffa Area, in Case No. 92/30, these lands are held to be situated within the Musha' lands of Zeita and/or Attil and are recorded as such in the Land Registry of Tulkarem, and that a corresponding entry be recorded in the Land Registry of Tulkarem in respect of all entries relating to Raml Zeita and/or Attil, to the effect that a portion of this land known as Khor al Wasa' is also registered in the Haifa Land Registry.”

The present appellants appealed from that judgment, with the leave of the Settlement Officer, to the Land Court, Haifa. The competency of the appeal was challenged, but it was upheld by the Land Court on the 26th November, 1931, by a judgment as follows:—

“ The judgment of the Settlement Officer appears at first sight merely to decide the boundaries of Hudeira on the South and East but in arriving at this decision the Settlement Officer states

that he has come to the conclusion that Khor al Wasa' is within the Kushan boundaries of Raml Zeita and that the judgment in the Haifa Land Court was obtained by corrupt, deliberately misleading and improper methods. The appellants right to the land in dispute is affected undoubtedly by the two latter decisions and the Settlement Officer having given leave to appeal, we hold that an appeal lies under section 56 (1) of the Land Settlement Ordinance 1928, and we overrule the respondents' preliminary objection to the contrary."

Thereafter, the Land Court delivered judgment on the 18th July, 1932, dismissing the appeal. After some comment on the proceedings before the Settlement Officer, the judgment proceeds as follows:—

"In the end, the Settlement Officer found that the land in dispute was not within the boundaries of Hudeira and that he had no power to deal with claims in respect of the same, since his jurisdiction was limited to Hudeira.

"On the face of it, this seemed to be a decision which prejudiced nobody and we had considerable difficulty at first in convincing ourselves that any appeal lay from it. No indication is given in the Land Settlement Ordinance as to what are to be considered the boundaries of a village and so long as the rights of individuals are not affected it does not seem to us to matter very much how the Settlement Officer decides the question. If his decision is inconvenient, machinery exists by means of which it can be amended, administratively, after Land Settlement has been completed.

"However, upon closer examination, it will be observed that the judgment of the Settlement Officer consists of two parts, firstly, a finding as to the boundaries of Hudeira made under section 12 of the Land Settlement Ordinance, 1928, and, secondly, a decision that Khor al Wasa' does not lie within the boundaries of Hudeira as recorded in the original Kushans of Hudeira.

"The latter decision seriously affects the rights of the Appellants, the more so since the Settlement Officer has ordered that the entries in respect of Khor al Wasa' in the Haifa Land Registry shall be separated from the Hudeira entries and an observation made in respect of the former that in accordance with the judgment of the Settlement Officer, Jaffa Area, in Case No. 92/30, these lands were held to be situated within the Musha' lands Zeita and/or Attil.

"With regard to the first decision, as has been mentioned before, the Land Settlement Ordinance nowhere lays down what the boundaries of a village are to be deemed to be nor does it say what factors should be taken into consideration in coming to a decision on the subject. In this case, the Settlement Officer has excluded Khor al Wasa' from Hudeira because, as he found it, it was not included in the Original Kushans of Hudeira. We do not propose to overrule him on this point because his decision does not affect the right or title of any individual who is a party to this action; on the other hand, if we had to make the decision ourselves, we think that we should have paid regard more to the present state of affairs rather than to that of many years ago. To-day Khor al Wasa' is to all intents and purposes a part of Hudeira and is likely to remain so whatever may be the outcome of the dispute as to title; further since the year 1925, it has been treated by the Government as being part of Hudeira and consequently within the Haifa Sub-District and not within the Sub-District of Tulkarem. For these reasons it seems to us that it

would have been more convenient to have kept it within Hudeira for the purposes of Land Settlement, and so we should have decided, had the question any practical value for the parties to this action.

“With regard to the second decision, namely, that Khor al Wasa’ does not lie within the boundaries recorded in the original Kushans of Hudeira, there is ample evidence in the careful and competent investigation made by the Settlement Officer to confirm this finding and we uphold the same accordingly.

“The Appellants, on the question of title, have still another string to their bow because they have acquired the rights of the Government in Khor al Wasa’ which the Government claims, was declared Mahlul during the Turkish regime. This question has still to be determined.

“In the result, the appeal fails and is dismissed: no order is made as to costs.

“Judgment delivered in the presence of the parties and subject to a right of appeal upon a point of law.”

An appeal by the present appellants to the Supreme Court of Palestine was dismissed by a judgment of that Court on the 12th January, 1933. After referring to the decision of the Settlement Officer, the judgment proceeds as follows:—

“From what source the Settlement Officer derived authority to give such directions, does not appear; but that is not a matter with which we have at present to deal.

“The question that first presents itself is whether the Settlement Officer’s Decision is appealable or not. The only provisions as to appeal contained in the Land Settlement Ordinances are those of sections 56, 57 and 58 of the Land Settlement Ordinance 1928, as amended by section 16 of the Land Settlement Ordinance 1930: the first paragraph of section 56 (1) as amended is as follows:—

“No appeal shall lie from the decision of a Settlement Officer as to any right to land save with the leave of such officer or of the President of a Land Court.”

“Section 57 defines the powers of the Land Court with regard to an appeal. Section 58 contains provisions with regard to an appeal from a ‘decision recorded’ in the Schedule of Rights or the Partition Schedule.

“Unless therefore the decision of the Settlement Officer now in question is ‘the decision of a Settlement Officer as to any right in land’, or is a decision recorded in the Schedule of Rights or the Partition Schedule, there is no provision for any appeal to be made from it. Clearly this is not a decision entered in a Schedule of Rights or Partition Schedule; the question that remains is, is it a decision as to any right in land.

“This question was argued before the Land Court which held that the decision was subject to appeal on the ground that the decision that Khor al Wasa’ does not lie within the boundaries of Hudeira as recorded in the original Kushan of Hudeira ‘seriously affects the rights of the Appellants, the more so since the Settlement Officer has ordered that the entries in respect of Khor al Wasa’ in the Haifa Land Registry shall be separated from the Hudeira entries and an observation made in respect of the former that in accordance with the judgment of the Settlement Officer, Jaffa Area, in Case No. 92/30, these lands were held to be situated with the Musha’ lands of Zeita and/or Attil.’

“ This view is supported by the Appellants who allege that their case depends upon a finding that the land in question forms part of the lands of Hudeira.

“ But even if such be the case there is a clear distinction between a decision which affects rights in land and a decision as to any right in land.

“ Every relevant finding of fact made by a Settlement Officer is a decision affecting rights in land, in that it may be the basis of a decision as to those rights. It does not follow that any such decision can be the subject of an appeal apart from the decision as to rights in land based thereon.

“ The decision that the lands of Khor al Wasa' are within the Musha' lands of Zeita or of Attil, while it may affect rights in land by forming the basis of a decision as to such rights, is not in itself a decision as to such rights.

“ Again, the directions given by the Settlement Officer as to the entries to be made in the old registers, are not decisions as to rights in land.

“ The same persons as before remain registered as owners of the same rights in the same plots of land after such entries are made.

“ There is thus, at present, no decision before the Court against which an Appeal can lie, and the Appellants' application must be dismissed.”

The present appeal is by special leave; the respondents have not appeared and the appeal was heard *ex parte* by their Lordships. Special leave was granted on the undertaking that the Settlement Officer's decision as to the boundaries should not be questioned in the appeal, as it was an administrative question, and that the appeal should be confined to a challenge of his decision in so far as it affected the title of the appellants.

Their Lordships are clearly of opinion that the Settlement Officer's decision was a decision as to rights to land in so far as it held that the lands of Khor al Wasa' are musha' lands, a finding that necessarily excluded the title relied on by the appellants. This appears to be the ground on which the Land Court upheld the competency of the appeal to their Court. Their Lordships have difficulty in appreciating the fine distinction drawn by the Supreme Court in holding the appeal incompetent.

In the next place, their Lordships are clearly of opinion that the judgment of the Settlement Officer was outside his jurisdiction, and *ultra vires*, in so far as it dealt with questions of rights to land outside the village of Hudeira, which was under settlement, and that, accordingly, the finding that the area of Khor al Wasa', which he held to be outwith the boundaries of Hudeira, was musha' land, along with the consequential directions as to entries in the Land Registries of Haifa and Tulkarem, was *ultra vires* of the Settlement Officer. It is remarkable that the Settlement Officer made these findings in spite of the correct view expressed by him as to the extent of his jurisdiction. The

Land Court would appear to have accepted this view also, but they equally failed to give effect to it. The Supreme Court only considered the competency of the appeal.

In defining the boundaries of the village of Hudeira, the Settlement Officer was entitled to find that the area of Khor al Wasa' was not in Hudeira, but within the boundaries of Zeita and/or Attil; that was a purely administrative finding. But, in the opinion of their Lordships, the judgment of the Settlement Officer of the 26th June, 1931, ought to be varied by excluding from the findings any finding that the area of Khor al Wasa' is musha' land, and also the orders as to entries in the Land Registries of Haifa and Tulkarem.

Counsel for the appellants asked that the case should be sent back to the Land Court in order that the Land Court should proceed to hear the appeal to them on the question of the boundaries of Hudeira, but the judgment of the Land Court makes clear that they were not prepared to interfere with the decision of the Settlement Officer on this point, and their Lordships are of opinion that the case should not be sent back.

It is right that their Lordships should make clear that their decision is confined to the question of the jurisdiction of the Settlement Officer in settling the village of Hudeira; it does not involve any expression of opinion on the merits of the appellants' claim to part of Khor al Wasa'. The matter will be entirely open to the Settlement Officer, when the villages of Zeita and Attil are under settlement.

Their Lordships will accordingly humbly advise His Majesty that the appeal should be allowed, that the judgment of the Land Court of Haifa, dated the 18th July, 1932, and the judgment of the Supreme Court of Palestine, dated the 12th January, 1933, should be set aside, and that the judgment of the Settlement Officer, dated the 26th June, 1931, should be varied by excluding from the findings any finding that the area of Khor al Wasa' is musha' land, and also the orders as to entries in the Land Registries of Haifa and Tulkarem. The appellants will have the costs of this appeal and their costs in the Land Court and the Supreme Court from the respondents.

In the Privy Council

RIFKA AARONSON AND OTHERS

vs.

FARID NAJIB GHADIEH AND OTHERS

DELIVERED BY LORD THANKERTON

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