PRIVY COUNCIL

Maharaja Ram Narayan Singh

Vs.

Ram Saran Lal and others

P.C.A. No. 113 of 1916
(Lords Buckmaster CJ. Dunedin and Sir John Edge. JJ)

3.12.1918

JUDGMENT

Sir John Edge J.

1.This is an appeal from a decree, dated the 16th June, 1914 of the High Court at Calcutta, which set aside a decree of the Subordinate Judge of Hazaribagh, dated the 12th August, 1910, and dismissed the suit.

2. The suit in which this appeal was brought was commenced by Maharaja Sri Sri Ram Narayan on the 4th February, 1909, for khas possession of Mouza Saiga in Raj Ramgarh in Chota Nagpur and for *mesne profits*. Mouza Salga had been granted as *jagir* in 1852 to Kanai Singh by Maharaja Sambhunath, ancestor of the plaintiff, who was the *zamindar*, then possessed of the *mouza*. The original plaintiff has died and the appellant is his legal representative.

3. The grant of the jagir as translated is as follows :

> "3rd Falgum Sudi 1908 Sambat.
> "Pottah of agreement granted by order of His Highness Maharaja Sri Sri Sambhu Nath Singh Bahadur is as follows.

4. The Jagir of Saiga, one village, in pergunnah Karanpura is granted to Kanai Singh, of which the jumma is Co"s Rs. 300. Out of that, the landlord"s 6 anna, share is Rs. 112-8 from which a remission of Rs. 75 is made, the balance of landlord"s share Rs. 37-8 shall be paid by you year by year. You, with your descendants, will continue to enjoy the same. The village is granted together with trees, wells, tinils, fish. This is granted by His Highness in the presence of Bakshi Joynandan Das, Bakshi Lachman Das, Mahta Bissambar Das, Bakshi Bhawani Ram, and Bakshi Bhagwan Das."

5. The vernacular word in the grant which has been translated as "descendants" is *putrapoutradi*; which, according to the plaintiff"s case, meant in the grant male descendants in the male line. Kanai Singh, died before suit, having had a son Sewbux, who predeceased him, and had died without issue, and one other son *Bansi Lal*, who survived him and died without issue before suit. The defendants are Ram Saran Lal, and his minor sons, and Shib Saran Lal, and his minor sons. The defendants are not descended from Kanai Singh, the grantee, they are descended in the male line from Pyary Lal, who was a brother of Kanai Singh. The plaintiff"s case was that on the death of Bansi Lal without male issue surviving him, *Mouza* Saiga reverted to him, ho being the legal representative of the grantor. The defendants put forward two different cases in defense to the suit, the first of which was that the jagir had been originally granted to Raghu Singh, who was the father of Pyary Lal and Kanai Singh, and that as they are the male descendants in the male line of Raghu Singh the *mouza* had not reverted and they are entitled to the possession of it under the grant alleged by them. The defendants failed to prove that the grant of the *jagir* had been made to Raghu Singh, and not, as the fact was, to his son Kanai Singh. It may be observed that in setting up that defense the defendants were obviously adopting the plaintiff"s construction of the vernacular word *putrapoutradi,* according to which it meant in the grant of a *jagir* in Raj Ramgarh, male descendants in the male line. Having failed to prove that the original grant was made to their ancestor Raghu Singh, the defendants then contended that the grant to Kanai Singh and his *putrapoutradi* created an estate of inheritance which descended to them as collaterals.

6. The Subordinate Judge considered that a grant of a jagir to a man and his *putrapoutradi* was a grant to him and his lineal male descendants, and that in Chota Nagpur the term *putrapoutradi* could not in a rant of a *jagir* possibly include col. lateral or female heirs. A great deal of evidence, documentary and oral, was given before the Subordinate Judge as to grants of *jagirs* which had been made in Raj Ramgarh, and that evidence satisfied the Subordinate Judge that all jagirs granted in Raj Ramgarh were resumable on failure of male heirs in the male line of the original grantees. The Subordinate Judge in his judgment said :-

> "I have before stated that in 31 Cal. 561 "Ahwal jagirs" which is a term of much broader significance than "*putrapoutradi jagir*" were held to be resumable on proof of a custom that jagirs generally were resumable on failure of male issue. Also looking to "Hunter" there cannot be any doubt that jagirs of all sorts, without any exception, were resumable. The language of the sanad is

ambiguous the word *putrapoutradi* does not clearly mean an absolute estate of inheritance, and *jagirs* generally arc proved, both by oral and documentary evidence, to be resumable. No instances of "*putrapoutradi*" jagir not being resumed and that females and collateral heirs are still holding them. It is for the defendants, therefore, to prove the exception in the case of *jagirs* containing word *putrapoutradi*. Nothing has been done in this connection. It is not established that Ramgarh Raj used to grant both two distinct sorts of jagirs - one resumable on failure of male issue, and another, absolute estate of inheritance not resumable, with word "*putrapoutradi*" containing in the *sanad*. On the contrary, the evidence is that all jagirs, by whatever name called, condition or no condition attached, were primarily life-tenures and which by efflux of time became permanent and resumable and liable to resumption only on failure of male heirs of the original grantee. In the face of the strong documentary evidence of the custom alleged by the plaintiff, it is needless to comment at length on the oral evidence that was also given to prove custom. The Raja"s old servants all deposed to the existence of the custom and they stated specific cases of the resumption of some jagir villages that were within their knowledge and time, in addition to the cases to which the judgments filed relate. The case reported in 31 Cal. 561 is also a case of Chota Nagpur and is a much stronger case than the present. Thus the custom being fully established, all the ambiguity in the word "*putrapoutradi*" is removed, and it must be taken to mean lineal male descendants only."

7. The case in 31 Cal. 561, to which the Subordinate Judge referred was that of *Perkash Lal v. Rameshwar Nath Singh*[1]. In that case a proprietor of a Chota Nagpur Raj in a deed of gift had granted to a Brahmin and his al aulada, *mouzah in pergunnah* Kanda, and it was held by the High Court at Calcutta that although the words al aulad etymologically includes female as well as male descendants, yet according to a custom which was proved to have prevailed at the time of the grant, and subsequently in that part of the country, the words al aulad must be interpreted to mean lineal male descendants only. The learned Judges who decided that case in the High Court at Calcutta in 1904 referred in their judgment to a case in which the Deputy Commissioner of Chota Nagpur had decided in 1845 that a grant to a man and his *putrapoutradi* did not convey an estate of inheritance, and that the grantor was entitled to resume the lands granted on the death without issue of the grantee. The reference in the Subordinate Judge"s judgment to "Hunter" was without doubt a reference to Sir William Hunter"s Statistical Account of the districts of Hazaribagh and Lohardaga,

which was printed in 1877. When he wrote that account he was Mr. W. W. Hunter, Director-General in India of Statistics, and at pages 121 and 122 of that work he gave a historical account of jagirs in Ramgarh. The Subordinate Judge gave to the plaintiff a decree for possession and for mesne-profits to be subsequently ascertained. From that decree the defendants appealed to the High Court at Calcutta.

8. The learned Judges of the High Court who heard the appeal as to the evidence said:

> "There is evidence which may be summarised by saying that it shows that *jagirs* granted by the Raj were terminable on the death of male heirs, though there is no case to show that this was so when the words "*putrapoutradi*" were used."

9. They rightly held that the grant of a *jagir* without any words to show that it was not for life only would be a grant only for the life of the grantee, but they considered that the addition of *putrapoutradi* extended the estate for life. They said :

> "The words literally translated are, as we understand, *putra* = son, *poutra* = grandson and *adi* - others, but the expression must of course, be construed in the first place, according to any construction that has been legally recognised."

10. As the Board had decided in *Ram Lal Mookerjee v. Secretary of State*[2] that the words putrapoutradikrame, which occurred in a devise in a Bengali will, though importing the male sex in their primary signification, apply also to the female heir of a female where by law the estate would descend to such heirs, and were apt words for conferring an estate of inheritance upon either male or female, the learned Judges of the High Court considered that the term putrapoutradi in this jagir grant must be construed as conveying an estate of inheritance which would descend to collaterals of the grantee. They also referred to another decision of the Board in *Lalit Mohun Singh v. Chukkun Lal*[3] which also was a case of a devise in a Bengali will and they allowed the appeal and dismissed the suit. From that decree of the High Court this appeal has been brought.

11. There can be no doubt that a jagir must be taken prime facie to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. That was so decided by the Board in *Gulabdas Jugjivandas v. Collector of Surat*[4] which was an appeal from the High Court at Bombay. But the terms which will make the grant of a jagir a grant of an estate of inheritance must, if they are to be considered alone, be terms which are not ambiguous, and must clearly show whether it was intended by the grantor that the right of inheritance should be general or should be

confined to a particular class of heirs. In *Dosibai v. Ishivardas*[5] there was no ambiguity in the terms of the grant. In that case the Governor of Bombay in Council by a sanad in English, which was not ambiguous, had granted to Ardeser Bahadur "and his heirs for ever as jagir"" four villages, and the Board held that "where there is a grant to a man and his heirs, and nothing to control the ordinary meaning of the words, the grantee takes an absolute interest." In this case, now before this Board, the term putrapoutradi standing by itself, and without any evidence to show whether in Raj Ramgarh collaterals or females succeeded to jagirs is ambiguous. But the evidence shows that in Raj Ramgarh those who have succeeded to jagirs have been always males in the male line of the grantee.

12. The case of *Ram Lal Mookerjee v. Secretary of Stale (Supra)* and *Gulabdas Jugjivandas v. Collector of Surat, (Supra)* were not cases of grants of jagirs; they were cases of the construction of vernacular words in devises in Bengali wills, and it was obvious that the testators in employing terms, which usually in Bengal were understood as apt to pass an estate of inheritance, did employ them to pass such an estate. It may well be that in a grant of a jagir in Bengal by a Bengali similar words in the grant would imply that an estate of inheritance had been granted to the grantee if there was nothing to show a contrary intention. But there is nothing here to prove or even to suggest that the term putrapoutradi has ever been understood in Chota Nagpur or in Raj Ramgarh as including heirs collateral and there is no evidence that any one of the many jagirs which have been granted in Raj Ramgarh has ever descended to a collateral heir of the grantee. So much impressed was the Subordinate Judge by evidence, documentary and oral, that he came to the conclusion that there is a custom in Raj Ramgarh that jagirs are resumable on a failure of heirs male in the male line of the grantee.

13. In their Lordships" opinion the Subordinate Judge was justified in making the decree which he made in this case, and it should not have been set aside. They will accordingly humbly advise His Majesty that the decree of the High Court should be set aside with costs, and that the decree of the Subordinate Judge should be restored. The respondents must pay the costs of this appeal.

Appeal allowed.

Cases Referred.

1. [1904] 31 Cal. 561
2. (1881) 7 Cal. 304 : 8 I.A.46 : 10 C.L.R. 349 : 5 Jur.327 : 4 Sar. 225 (P.C.)

3. (1897) 24 Cal. 834 : 24 I.A. 76 : 1 C.W.N. 387 : 7 Sar. 155 (P.C.)
4. (1878) 3 Bom. 186 : 6 I.A. 54 : 3 Sar. 889 (P.C.)
5. (1891) 15 Bom. 222 : 18 I.A.22 : 6 Sar. 10 : 15 Jur.154 (P.C.)