PRIVY COUNCIL

Mian Ghulam Basul Khan

Vs.

Secretary of State for India

Privy Council Appeal No.2 of 1924
(Lords Shaw, Carson J. Blanesburgh, Sir John Edge and Mr. Ameer Ali JJ.)

12.3.1925

JUDGMENT

LORD CARSON J.

1.The (plaintiff) appellant is a resident in the District of Ludhiana of the Punjab and is the owner of "culturable lands" in that district. In or about the year 1912 he bought certain other lands and applied for mutation of names. The Deputy Commissioner and, on appeal, the Financial Commissioner of the Punjab, on the 3rd May, 1913, refused the application on the ground that the alienation in question was against the policy of the Punjab Alienation of Lands Act No. 13 of 1900 - that Act by Section 3 enacts as follows :-

> "3. - (1) A person who desires to- make a permanent alienation of his land shall be at liberty to make such alienation where -
> (a) The alienor is not a member of an agricultural tribe; or
> (c)The alienor is a member of an agricultural tribe and the alienee is a member of the same tribe or of a tribe in the same group.
> "(2) Except in the oases provided for in Sub-Section (1), a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by a Deputy Commissioner.
> "(3) The Deputy Commissioner shall enquire into the circumstances of the alienation and shall have discretion to grant or refuse the sanction required by sub-section (2)."

2. The grounds of the decision both of the Deputy Commissioner and the Financial Commissioner were that the plaintiff was described in the Revenue Records as "Khayyat Mohal," that that tribe was not one of the notified agricultural tribes of the

Ludhiana District, nor was the Mohal tribe to which it corresponded. The plaintiff alleged that although described in the Revenue Record of the land belonging to him as "Mohal Khayyat" he was nevertheless a Rajput and a member of an agricultural tribe. It was admitted that if he was a Rajput he was entitled to become the alienee of the property, as Rajputs were an agricultural tribe and were so declared in the "Punjab Gazette" of the 21st April, 1904.

3. The plaintiff then instituted this suit in the Court of the District Judge of Ludhiana against the respondent and prayed for a declaratory decree to the effect that he was a Mohal Rajput and that all the entries in the Revenue papers showing his caste as "Mohal Khayyat" were incorrect. The parties went to trial on one issue only, namely, "Is the plain tiff a Rajput ?"

4. On the 24th June, 1915, the Subordinate Judge, after hearing a number of witnesses and examining a number of documents on both sides, delivered judgment and passed a decree in favour of the plaintiff. The respondent appealed to the High Court of Judicature at Lahore and on the 25th October, 1920, that Court set aside the decree of the Subordinate Judge and dismissed the plaintiff's suit. Hence the present appeal in which, admittedly, the only question for determination is whether the plaintiff is a Rajput.

5. The case made by the plaintiff, as the appellate Court states, was that although in the Revenue Records the plaintiff's family has been shown since 1852 as holding land and their caste been described as Khayyat Mohal the term Khayyat does not denote a tribe, but merely a profession, viz., tailoring, that his got (i. e., sub tribe) is Mohal and that his real tribe is Rajput and that there is no other tribe except that of Rajputs which contains a got of the name of Mohal. The Revenue Records of Mauza Shahna give his pedigree back as far as his great grandfather Nathu who by a pedigree propounded by the plaintiff was alleged to be one of the four sons of Khana who was himself descended in the 13th generation from Mohal. The appellate Court admitted that if Nathu was proved to be descended as alleged from Khana the plaintiff would have proved his right to be a member of the Rajput tribe. That Court, however, refused to rely upon the evidence produced as proving that the plaintiff traced his pedigree through his great grandfather Nathu to Khana and thence to Mohal. In the view that their Lordships take of the other evidence in the case proving that the plaintiff's got is Mohal and that thereby his tribe is Rajput their Lordships do not think it necessary to pronounce any opinion as to whether Nathu was descended from Khana. As the Court of Appeal finds.

"there seems to be little doubt that; Mohal is the name of a sub-division of the tribe of Rajputs, and so far as the evidence in this case shows there is no other tribe in the Punjab which has a got of the name of Mohal." and the same Court also states -

"The conclusion at which we arrive is that, so far as is known, there are no per sons in the Punjab who have any real right to be described as Mohals except Rajputs and some Jats, who rightly or wrongly claim that they are really of Rajput origin."

6. It is clear, therefore, that if the appel late Court had been of opinion that the plaintiff had a title to the use of the term Mohal that Court would have decided in favour of the appellant. Now the first thing to be observed is that in the course of the present litigation S. Bachan Singh, the respondent's pleader, stated on oath that it was conceded "that plaintiff is Mohal got of Khayyat tribe" (see statement of 27th July, 1914.

7. The appellate Court has found that the mere fact that various members of the family have worked at tailoring cannot be regarded as any proof that the plaintiff is not a Rajput, for, as stated in Ibbetson's Census Report, p. 333, which has been quoted by the learned Subordinate Judge, men of all castes follow the trade: or as the Subordinate Judge has stated, Khay yats do not make a tribal clan by them selves. It is proved beyond all doubt and so found by the Appellate Court that in the Revenue Records the plaintiff's family has been shown since 1852 as holding land, their caste being described as Khay yat Mohal - and there are in evidence ex tracts from the settlement records of this district for 1853 in which Ilahia and Gahia grand-uncle and grand-father of the plaintiff are put down as owners of 25 ghumaons of land in the village of Shahna, their quaum being mentioned in Kayyat (Mahommadan) and got as Mohal. Similar entries are to be found in relation to the settlement of 1882. It is admitted by the appellate Court that if these records truly described the plaintiff's family as Mohals it would prove the plaintiff's right in this action, but they attempt to dispose of this evidence by saying "there is no proof that whoever first caused this entry to be made had any real title to the use of the term Mohal." That is the only link apparently which the appellate Court has found to be absent from the evidence necessary to prove the plaintiff's case.

8. Their Lordships cannot share the view of the Appellate Court that evidence of this character, taken from public records for a series of years since 1852 and recorded in accordance with the requirements of the law, can in a pedigree case be disregarded for

the reason stated by the appel late Court. No evidence is given and no suggestion is made that such entries were false or that there was any existing reason why deliberately false entries should have been made. In such a case as the present, statements in public documents are receivable to prove the facts stated on the general grounds that they were made by the authorised agents of the public in the course of, official duty and respecting facts which were of public interest or required to be recorded for the benefit of the community (Taylor, Law of Evidence, 10th Ed., section 1591). In many cases, indeed, in nearly all cases, after a lapse of years it would be impossible to give evidence that the statements contained in such documents were in fact true, and it is for this reason that such an exception is made to the rule of hearsay evidence. Their Lord ships being of opinion that the plaintiff has proved that he is entitled to the description of Mohal, it follows from the facts found by the appellate Court, and already referred to, that the plaintiff is a Rajput and is entitled to the relief claimed in this action. Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed with costs here and in the Court below and that the decree of the Subordinate Judge should be restored.

Appeal dismissed.