PRIVY COUNCIL

Mir Subhan Ali

Vs.

Imami Begum

Privy Council Appeal No.102 of 1923
(Lord Blanesburgh, Sir John Edge and Mr. Ameer Ali JJ.)

25.05.1925

JUDGMENT

LORD BLANESBURGHB J.

1. The suit out of which these appeals arise was brought by the plaintiffs for partition and separate possession of their shares in an inam estate or Jagir in Berar, and for payment of their due proportions of the income for the three-years immediately preceding the institution of the suit in February, 1916. The estate now comprises the whole of the two villages of Barmi and Dhotra, and three fields in the village of Ganuhpur in the Murtizapur Taluq of the Akola district. The original appellant, Mir Subban Ali, the present certificate holder and in sole possession of the Inam was the principal defendant. The trial took place before the Additional District Judge at Akola. He, by his decree, dated the 2nd April, 1918, allowed the plaintiffs' claims in full. On appeal, the Court of the Judicial Commissioner, Central Provinces, Berar Jurisdiction, by a decree of the 5th April, 1921, dismissed the suit so far as it was one for partition and separate possession of the Inam, but approved the judgment of the Court below in respect of the plaintiffs' claim to income. With the decree of the Judicial Commissioners both parties are dissatisfied, and in the present appeal and cross-appeal now consolidated the plain tiffs, who wore cross-appellants, ask that the decree of the Additional District Judge should be restored, while the defendant, Mir Subhan Ali, the original appellant, asks that the plaintiffs entire claim should be rejected and their suit dismissed.

2. The fundamental question at issue is one of construction, namely, whether the beneficial interest in the Inam granted to a common ancestor of the parties and continued by the British Government in 1866 passes under the terms of the grant then

made to all the heirs of the grantees according to Shia Mahamadan law or whether that interest devolves upon male descendants only. There is, however, a further question, namely, how far the rights of the parties, whatever otherwise on construction they might have been held to be, are now regulated by a decree said to be binding upon the defendant, Mir Subhan Ali, and made by the Judicial Commissioners in a suit brought by the plaintiffs against, inter alia, the father and predecessor-in-estate of that defendant.

3. The facts of the case are not free from complexity, but they have been set forth at length and with perfect accuracy in the judgment of the Additional Judicial commissioners. Their Lordships accordingly will re-state them only so far as is necessary to explain the conclusions at which, on the whole matter, they have themselves arrived.

4. Lands now represented by the estate in question had, from the end of the eighteenth century, been held under sunnads from the Government of H. H. the Nizam by a succession of holders in direct male descent in a *Shia* Mohammedan family to which all the parties to these proceedings belong. The Extra Assistant Commissioner who, in 1864, inquired into the origin of the grant and the claims of the then holders reported that the grant was valid and that its enjoyment had been long and uninterrupted.

> "It is not hereditary according to the terms of the sunnads, but practically the grant has been enjoyed by four successive incumbents during the space of more than 70 years and has assumed that right in a liberal point of view. I think the grant should be confirmed and continued to the present claimant and his descendants male."

5. These proposals of the Extra-Assistant Commissioner were supported both by the Deputy Commissioner and by the Commissioner, and to give effect to them the Resident recommended that the estate should be continued to the present holder and his male descendants in perpetuity."

6. On the 3rd December, 1866, this re commendation of the Resident was sanctioned by the Government of India, and an Inam certificate was issued, stating that the grant - one for personal maintenance - was

> "to be continued rent-free in perpetuity to present holder and his male descendants." The "claimant" and "present holder" so referred to was one *Munawar Ali,* the father of the plaintiffs. To him the Inam certificate was issued, and the fundamental question between the parties already referred to

depends upon the true construction of these words in it.

7. and yet not quite so. For if, as has apparently been assumed in the copious stream of litigation which the grant has originated, an agnatic line of male descent is for one purpose or another thereby prescribed then on a strict interpretation the grant has long since determined, inasmuch as Munawar Ali died in July, 1896, leaving three daughters only - the plaintiffs land another - and no son.

8. But, as might well be supposed, none of the parties contend for this result. Nor has it, in fact, eventuated. It had been brought to the notice of the Extra-assistant Commissioner in the course of his inquiry that *Amjad Ali,* the second son of the previous holder, *Muzhar Ali*, and a half-brother of *Munawar Ali,* was in receipt of half the income of the estate by a title which *Munawar Ali,* the "claimant" or "holder" made no effort to displace. In the original certificate his position was ignored, possibly, by inadvertence. In 1871, however, the omission was recog nised and rectified, and in that year Amjad Ali's name was, by Government, entered in the certificate as sharer in the estate with Munawar Ali. The effect, it has been assumed, is that the grant must be construed as if made to Munawar Ali and Amjad Ali and their male descendants in perpetuity, or as a more compendious statement leading in the state of his family to the same result, as if made at an earlier date to Muzhar Ali and his male descendants in perpetuity. The true meaning of these words or their equivalent, therefore, is the fundamental question in the suit.

9. Amjad Ali died in 1880 and his son, Khairat Ali, was, without objection, shown in his place on the certificate as a sharer along with Munawar Ali. The latter, as has already been said, died in 1896, in the lifetime of Khairat Ali. of the three daughters whom he left, two are the present plaintiffs. The third, Aziz Begum, married Khairat Ali as his second wife. As Munawar Ali left no son, Khairat Ali was entered as the sole certi ficate holder in respect of the whole estate. This was objected to by the present plain tiffs and by their mother, Mogli Begam, Munawar Ali's widow, who survived him. They appealed to the Commissioner against the order that Khairat Ali was to be sole certificate holder. Their claim was, that while the grant according to its terms was only to endure so long as the grantee's male line survived, the estate during the subsistence of the grant was to be enjoyed beneficially by all the heirs of the grantee, including females, according to Shia Mohammedan law. The commissioner refused to take this view of the grant, and he dismissed the ladies' appeal on the ground that women could not succeed to the Inam, which was to be continued to male descendants only. Khairat Ali died in 1914, and his eldest son by his first wife,

Subhan Ali, the present defendant, was, in due course, entered in the register as certificate holder. His appointment as such was once more opposed, as Khairat's had been, by Imami Begum, one of the present plaintiffs. Her opposition was again overruled. The Inam was to be continued to male descendants only.

10. The construction placed by the Revenue Courts upon the grant has therefore been uniform. But the plaintiffs in the present suit contend that it is erroneous and they rely both as a *res judicata* and on their merits upon decisions of the Civil Courts in which their own view of the grant has been accepted. Their Lordships may here so far anticipate as to announce that the plea of *res judicata* will not avail the plaintiffs to the full extent of their claims in these proceedings. This fundamental question of construction must therefore be decided. It is convenient to proceed at once to its consideration. Upon it their Lordships feel no doubt that the meaning attributed to the words in question by the Revenue Courts and by the learned Additional Judicial Commissioners in the present suit is correct. As it seemed to the Judicial Commissioners so it seems to them, impossible to hold that an order that an estate shall "be continued to the male descendants" of a certain per son means that it shall be continued to the male and female descendants of that person so long as there is no failure of male descendants. It was sought in argument before the Board to treat the estate conferred as being analogous to a base fee in English law. Such analogies are rarely helpful and very frequently they are misleading. But here the suggested analogy is non-existent. A base fee is a grant in terms general, its limitation in point of duration being due only to the fact that the grantor was possessed of no estate enabling him to extend the grant, however general its terms, for any period subsequent to the extinction of his own issue. But here there is no grant at all in general terms. The only grant is to the male descendants themselves - a very limited expression - and the word "to" can have no other than its ordinary meaning attributed to it. It cannot be treated as meaning "during the existence of" or "pending the failure of" and even if the word were capable of being so extended their Lordships would still have difficulty in seeing how, from the words, a general grant could anywhere be evolved in terms sufficiently wide to include female descendants within its scope.

11. The learned Trial Judge found such a grant by holding that the certificate here was governed by what are known as the Berar Inam Rules, and particularly by No. V of these rules, and that the grant must within that rule be treated as having been made in favour of "direct lineal heirs and undivided brothers" - an expression which would include females. Their Lordships agree with the Additional Judicial Commissioners in

thinking that the learned Additional District Judge erred in attributing to these rules an operation universal and unqualified. The rules, it is true, lay down the conditions which are usually to accompany an Inam grant, but they contain nothing to prevent Government from altering or modifying any of the conditions in the case of any particular grant. and where, as in the present case, the right of inheritance is by the certificate confined to a particular class of descendants which in its exclusion of all females from enjoyment is in terms unambiguous, there is no reason known to their Lordships why the grant in these terms should not have effect. As regards decisions upon the meaning of other grants cited in argument, their Lordships need only say that no authority was brought to their notice which leads them to qualify the effect which they attribute to the words of grant in the present case.

12. So far, therefore, the claim of the plain tiffs, whether for partition or for a share of the profits of the estate, is not establish ed. But the bearing and effect upon these claims of decrees in previous suits brought by the plaintiffs in the Civil Court remain to be considered. These are four in number. It will, however, suffice to deal in any detail with one of them only - namely, the Civil Suit No. 137 of 1904, filed in the Court of the Civil Judge of Amraoti by the present plain tiffs against Khairat Ali and his three children by Aziz Begam. The claim there made was for a share of profits of the estate for 1903-04 and for "a declaration that as heirs of Munawar and his widow, Moghli Begam, they got a half-share in the Jagir, and that they are entitled to the use of fruit and fodder from the villages."

13. The judgment awarded the plaintiffs a decree for the share of the profits claimed, and declared that "the plaintiffs have 109-144 of half-share of the Jagir villages in dispute." This decree was affirmed in appeal and second appeal.

> "The entry", says the Additional Judicial Commissioner in his judgment on the second appeal, "regulates the duration of the grant but not the enjoyment of it as between the heirs of the grantee, and the inheritance devolves under the ordinary law in force, in the family. No authorities to the contrary have been cited."

14. In the later suits this view was also taken. In the second and third the plain tiffs' share of profits for the years 1904-05-to 1909-10 was claimed and awarded against Khairat Ali : in the fourth and last suit, brought against all the children and widow of Khairat Ali after his death in 1914, the claim was for a share of the income of 1911-12, and a decree for such share was made against the defendants to the extent of the assets of Khairat Ali in their hands.

15. Now it was not disputed by the defen dant before the Board that the decision in Civil Suit No. 137 of 1904 was binding as between the parties to it and their representatives-in-interest to the extent that the plaintiffs are entitled during life to their defined share of annual income, but it was contended that the defendant, Subhan Ali, does not claim through Khairat Ali, so that the decree is not binding upon him. Their Lordships concur with the learned Additional Judicial Commissioners in rejecting this contention. The succession of the defendant to the Inam did not involve a re-grant by the Government. It was merely a continuance of the grant to him in accordance with its originally declared terms. He holds the estate burdened with the obligation of recognising the rights of the plaintiffs to the share of income declared by the decree in the suit of 1904.

16. But no further. In that suit partition was not asked for, and their Lordships prefer in these appeals to deal with the question of partition as one which was not there decided because it was not raised. There are grounds on which a decree of partition might have been refused to the plaintiffs even by a Court which interpreted the grant as did the Additional Judicial Commissioners in that suit. In their judgment accordingly there can be no question of *res judicata* in the plain tiffs' favour so far as their claim to partition is concerned, and on the view which their Lordships take of the grant, that claim cannot, as has already been stated, be maintained.

17. Their Lordships in the circumstances can feel no surprise that Khairat Ali resisted all claims of the plaintiffs to a share of the income of the estate and was unwilling to accept for subsequent years the principle of the decree in the suit of 1904. But it is right that that position should now, without further question, be accepted, and that the plaintiffs should not have imposed upon them the burden of instituting successive suits to establish a claim which, as between the parties, is no longer open to discussion. Their Lordships accordingly think that there should be added to the decree appealed from a declaration that by virtue of the decree in the Civil Suit No. 137 of 1904, each of the plaintiff is during her life and as against the defendant and his successor-in-interest in the property in dispute entitled to 109/288 of half-share of the income thereof, and liberty should be reserved after each year to apply to have the amount of such income determined by further proceedings in the suit and declared in a further decree.

18. With that addition to the decree, inserted to spare the parties unnecessary expense, their Lordships are of opinion that the decree appealed from should be affirmed and both appeals dismissed.

19. Their Lordships will humbly advise His Majesty accordingly. There will be no order as to the costs of these appeals except that in accordance with the Order in Council of the 30th May, 1924, granting to the plaintiffs special leave to cross-appeal, the costs of the defendant of that application must be paid by those cross-appellants.

Appeal dismissed.