

Soham Singh Jangpangi And Ors. vs Kunwar Tikendra Bahadur on 2 November, 1954

Equivalent citations: AIR1955ALL65, AIR 1955 ALLAHABAD 65

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a plaintiffs' appeal against a decree passed by the learned Additional Civil Judge of Almora dismissing the plaintiffs' suit for a declaration that "Mauza Bangpani, Patti Malla Askot, is a Pakka Khaikari village of the plaintiffs and that they have been wrongly recorded as Kachcha Khaikars in the revenue papers during the settlement of 1940-41 by the mistake of the Settlement Officer."
2. The facts, so far as they could be ascertained from the papers on the record, are that there was a village Juma which was the Asal Mauza. Jalajibli was the Lagga of this village and there were in it three Thoks, Bangpani, Bans Bagar and Mori Bagar. All this property had been given by the British Government to the Rajwarhs of Askot as their zamindari.
3. On 7-4-1865, the Rajwarhs of Askot executed a Tasallinama in favour of one Dhanu, the ancestor of the plaintiffs, to cultivate the irrigated land in Bangpani on the following terms:

"As you reside within our 'ilaqa', and as regards bringing under cultivation the waste land along the bank of Gori Ganga, you should first bring under cultivation the 'sera (irrigated land) of Bangpani You should pay the revenue and 'malikana' dues according to the rates prescribed in the recent settlement, and remain there in the capacity of a Khaikar. Without raising any objection, you should supply us, the Zamindars of Taluqa Askot, whether good or bad or rich, coolie, godam, etc. You should bring tenants from other 'ilaqas and cultivate that land, i. e., Bangpani, Bans Bagar and Mori Bagar. You should not instigate the cultivators of our 'ilaqa'. Besides this, you should extend the cultivation from the upper side to the lower side. You shall cultivate the land as mentioned by us. You shall abide by the conditions laid down above. If you go in any way against the above mentioned conditions and behave dishonestly in any way towards us, it shall be dispossessed without raising any objection from the above mentioned land lying within Askot."

4. In the Muntakhib of the 1867, during Beckett's Settlement, Thok Bangpani was recorded as 'Wiran' but there are some indications in it that at one time it was divided into plots. In the Khasra of that year it was entered as 'Mud-dati Wiran'.

5. On 12-8-1871, Dhanu applied for the reduction of the rent assessed which he claimed was excessive. There is another Tasallmama of 1873 With respect to some other land by which Dhanu Was given permission to cultivate it. It is not disputed that the present plaintiffs are in possession of the entire cultivated area in village Bang-pani and after Dhanu's death no claim to that area was laid by the Raj warhs of Askot. The entire cultivated land, therefore, continued to be in possession of Dhanu and after his death his legal heirs. What exactly is the area of the land, whether this Thok Eangpani has got any unculti-vated or unmeasured land, on these points we have no information. It is also admitted that the Rajwarhs of Askot have no khudkasht land in this Thok.

6. To summarise, therefore, the facts in favour of the plaintiffs are that:

(1) they are in possession of the entire cultivated area in Thok Bangpani and the hisse-dars have no khudkasht land in that Thok; and (2) the hissedars did not spend any money to cut down the forest and reclaim the land and all that was done by plaintiffs' predecessor-in-interest.

As against it, however, we have the facts: (1) that Thok Bangpani belonged to the Raj-warhs of Askot who were the Hissedars and had once been brought under cultivation and divided into plots;

(2) that it had become Wiran or Muddati Wiran;

(3) that the hissedars had allowed plaintiffs' predecessor-in-interest to bring the irrigated land into cultivation;

(4) that there is no evidence to prove that the plaintiffs are in possession of anything more than the irrigated area which was given to them under the Tasallinama of 1865.

(5) that under the Tasallinama of 1865 the rights given to Dhanu were tenancy rights and not proprietary rights; and (6) that there is no evidence on the record to prove whether there is any common land or unmeasured land in Thok Bangpani, and it so, to whom it belongs.

7. The rights that the plaintiffs can, therefore, claim are traceable to the document of 1865 and as that document creates merely tenancy rights the plaintiffs cannot claim that they have got anything more than the right to cultivate the Irrigated land which was given to them in 1865.

8. Learned counsel for the appellants, Sri Ghatak, has urged that if a 'Hissedar', which word means in Kumaun and Garhwal 'a co-sharer to the zamindari rights' has no Khudkasht land to the village and the entire cultivated area is in the possession of the Khaikars, they must be held to be Pakka Khaikars.

9. On the other side it is urged by Sri Pant that Pakka Khaikari cannot be created by a grant or by a Hissedar giving to the grantee the right to merely cultivate the irrigated land in a village. Learned counsel has urged that a Pakka Khaikari is a term used in Kumaun and Garhwal in a special sense and means the body of persons who brought waste land under cultivation by cutting down the forest and reclaiming the land for their own benefit and thus became in a sense the proprietors of the land which was more or less unclaimed property and were later deprived of their proprietary rights by the Indian Rulers or by the British Government ignoring their claims and settling the land with others who thus became the overlords and the actual occupiers of the village were reduced to the position of a sort of under-proprietors. For all intents and purposes, they were the owners of the village including the common land and the waste land, their only liability being to pay the land revenue and a certain percentage as Malikana dues to the Hissedar. The liability of the entire body was joint and several and, on the death of one without any legal heir, his land reverted to the other Pakka Khaikars of the village and did not revert to the Hissedar. The main difference, therefore, it is claimed is that while a Kachcha Khaikar is a tenant, a Pakka Khaikar is in a sense a proprietor.

10. Learned counsel for the appellants has relied on the observations in Stowell's Manual of; Land Tenures of the Kumaun Division, 1954 Edition, page 62, where dealing with the main classes of Khaikars the learned author has said--"..... first class of Khaikars, therefore, consists of the old occupant cultivators in villages where the hissedars hold no khudkasht land; all villages held entirely by khaikars belong to this class since no instance is on record of an entire village of Khaikars having any other origin".

It is urged by learned counsel that Stowell's book, in the absence of anything to the contrary, is considered to be authoritative and, if the village is held entirely by khaikars, it must be deemed to be a Pakka Khaikari village. Stress is laid on the observations of Mr. Stowell that no instance is on record of an entire village of Khaikars having any other origin."

11. On the other hand, learned counsel for the respondent has referred us to a decision of the Board of Revenue in -- 'Mahendra Singh v.

Dhundu', 1950 RD (BR) 76 (A) where, though the entire cultivated area was in possession of the Khaikars, it was held that it did not follow therefrom that it was a Pakka Khaikari village and the decision of the Commissioner in the Settlement proceedings of 1941 was set aside.

12. Dealing with the main class of Khaikars, Stowell has divided them into two main groups, Pakka Khaikars and other Khaikars. About Pakka Khaikars he says that they are "those Khaikars who present the original cultivating proprietors of the land, and who were deprived of their independent right by grants or assignments of the proprietary right under native rule, or were by fraud or force reduced to the status of Khaikars by usurping thokdars, muafidars or padhans in the early days of British rule".

At page 95 of his book dealing with the unmeasured land the learned author has said: "They (Pakka Khaikars) have right over unmeasured land and gaon sanjait in their village to the same extent as the hissedars have in khudkasht villages. The hissedar has no right to cultivate unmeasured land in

the village." According to Stowell, therefore, a Pakka Khaikar is a sort of ex-proprietor and his right is in reality an under-proprietary right.

13. The law in the Kumaun and Garhwal was for a long number of years administered through executive officers and wherever in a Pakka Khaikari village a Hissedar had managed to get a foothold by acquiring some khudkasht land they held that the village had lost its Pakka Khaikari status and had become a Kachcha Khaikari. Dealing with this Stowell has said: "But of this class of Khaikars (i. e. Pakka Khaikars) the only ones that have succeeded in preserving a distinct existence with recognised status and rights superior to those of the inferior classes of Khaikars are those whose villages remained in the cultivating possession of the Khaikars alone, the hissedars not having succeeded in obtaining khudkasht cultivating possession in them."

Subsequently it was recognised that it was unjust to the rest of the body of Pakka Khaikars that, if by some means a hissedar had managed to secure a footing in the village, through one of the Pakka Khaikars, the rights of the other Khaikars should thus be affected. In later years, therefore, it was held that "If a hissedar had in any way effected an entry and got khudkasht possession, his having done so should not on principle affect the right of the remaining Khaikars."

In such cases, it was suggested, a further question as to when and under what circumstances a hissedar got possession or the khudkasht land should be considered and the hissedar so obtaining land (sic)ld be placed on precisely the same footing as regards his rights and privileges as any other Khaikar and that the land so cultivated should not be considered to be his khudkasht nor should it affect the under-proprietary right of the other Khaikars. (See the decision of Mr. J. R. Reid, Commissioner, dated 9-1-1839, in -- 'Dehi Dutt v. Prem Singh'). It has also been held and is now well settled that in a Pakka Khaikari village "the Khaikars alone have a right to arrange for the cultivation, pasturage, etc., including the succession to land lapsing owing to the death, hairless, of Khaikars, the breaking up of waste, etc., while the hissedars have no right beyond the collection of revenue, cesses and padhanchari."

14. From the mere fact, therefore, that the whole of the cultivated area in Thok Bangpani is in the possession of the plaintiffs, it cannot be assumed that they were the original cultivating proprietors of the land who were deprived of their proprietary rights by reason of the grant of the zamindari to the Rajwarhs of Askot. The origin of the possession of the plaintiffs and their predecessor is known. It was in the year 1865 that Dhanu was given the right to cultivate the irrigated land in the village which was a 'muddati wiran'. No rights were conferred on Dhanu to the uncultivated land in the village and it cannot be said that he was given any under-proprietary rights under the Tasallinama of 1885.

15. Learned counsel for the appellants has placed great reliance on a decision of Mr. Stiffe, Commissioner, in -- 'Chait Ram v. Banuwa', (Selected Revenue Decisions of Kumaun by Gairola, page 103). Mr. Stiffe in his judgment has dealt with the origin of Pakka Khaikars and says:

"there are only two ways in which these Pakka Khaikari villages have originated one in the case of grant made over the heads of the original cultivators, in which case the

Pukka Khaikar corresponds almost exactly to the under-proprietor of Oudh The second case seems to me to be illustrated in the village now in suit. I take it that in the old days the position was much like the position in the Tarai and Bhabar Estates at the present moment. Government looked for the most solvent and influential man in the neighbourhood, settled certain villages with him and encouraged him to acquire tenants. The hissedar, thus created, probably had several villages and already had his home in a settled village. He found tenants for the other villages and arranged with them, or it was arranged for him by Government that they should pay him certain dues and cultivate and manage the village. It was not, therefore, the hissedar who risked his money or expended his labour on reclaiming waste land but it was the body of tenants." There is, however, nothing to support the view of Mr. Stiffe. According to Mr. Stiffe, if there was an absentee landlord who had no cultivatory land in the village and he had spent no money or labour in reclaiming the land, clearing the forest and habilitating the village and had left it all to be done by tenants then such tenants would become Pakka khaikars, but, as we have already said, there does not seem to be any authority for the proposition that such persons who were brought on to the land as tenants became ex-proprietors, if that is what constitutes a Pakka khaikari. In the glossary of terms used in the hills, at page 8 of the Manual, Khaikars are divided into two classes:

"(1) An under-proprietor whose rights as the original occupant cultivator have been usurped by or granted to some other person at some former period. This is the "pakka khaikar."

(2) An occupancy tenant (who or whose predecessor never had any higher right). This is the "kachcha khaikar."

Though a pakka khaikari village may, in course of time, become a kachcha khaikari village by reason of the pakka khaikars losing their pakka khaikari rights, a kachcha khaikar can, in no case become a pakka khaikar, nor can a kachcha khaikari village be converted into a pakka khaikari village. How other khaikari rights, i.e., other than pakka khaikari rights, can be acquired is dealt with at page 63 of Stowell's book, the fourth clause of which is as follows: "At settlement a tenant-at-will or other person may be recorded as a khaikar at the request of the hissedar, usually under some previous agreement between the parties, it is common, in fact, for instruments purporting to confer khaikari rights to defer the entry of such rights till the date of the next settlement." This definition exactly meets the case of Dhanu in whose favour the tasallinama of 1865 was executed. Sal Assi Settlement, or Traill's Settlement, was in the year 1823 in which the boundaries of different villages were fixed but no measurements were made. The proceedings of the Beckett's settlement concluded in the year 1872 and during those proceedings the khasra of 1867 and the 'muntakhib' of 1867 were prepared to which reference has already been made. The entries in the settlement papers about the khaikari rights conferred on Dhanu were under a "previous agreement between the parties."

16. Two other papers have been relied upon. One is an entry of 1872 in which Dhanu was recorded as Ghar Padhan but this entry was scored out and, therefore, no inference can be drawn from it that

Dhanu had correctly been recorded as such. The other paper is of 1883 in which a list was prepared of villages in which the entire cultivated land was held by khaikars and in which hissedars had no khudkasht land. Bangpani was included in it. According to the decisions of the Commissioners, then prevailing, if there was a hissedar in' a village it could not be a pakka khaikari village but, where the history of the village was known and it was known how Dhanu and his descendants came to have possession of the cultivated area in the village, it is not possible to hold that the mere inclusion in the list was any proof in favour of the plaintiffs that they were pakka khaikars. The list gives only the facts as found on the spot and it does not say whether the villages given in the list were pakka khaikari villages or kachcha khaikari villages.

17. Having considered this matter carefully, from such material as is on the record, we must hold that the plaintiffs have failed to prove that they were pakka khaikars and that Thok Bangpani is a pakka khaikari village. The suit was rightly dismissed by the lower Court and this appeal must fail and is dismissed with costs.