

Bankey Behari Lal vs Lala Babu, Raja Babu And Anr. on 14 September, 1954

Equivalent citations: AIR1955ALL1, AIR 1955 ALLAHABAD 1

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. In this case we had to devote considerable time in ascertaining the facts. The lower appellate Court purported to record certain findings, which normally, would be findings of fact but those findings were challenged on the ground that they were not based on evidence but on facts stated in certain judgment that were filed by the plaintiff.

2. It seems to have been assumed in several judgments that in the days of Emperor Babar the land revenues of a half share of village Lakhanpur and of village Mohammadpur Biyar were assigned to some ancestor of the plaintiff and the defendants, Raja Babu and Moti Lal, in lieu of his past services as a Hakim. There is nothing on the record to bear out this claim, and as a matter of fact, it appears from the District Gazetteer of the United Provinces, Vol. 15, relating to Budaun, that Budaun came under the Muslim domination for the first time when it was conquered by the nephew of Mahmud of Ghazni, when he invaded Rohilkhand. It is not necessary to go into the ancient history in detail which is based mostly on tradition. But from the Gazetteer it appears that Budaun was under the domination of Khilji Sultans, and then Saiyid Sultans and then Lodi Sultans, and it was not till the reign of Emperor Akbar that the Moghuls seem to have had anything to do with this district.

3. The British first came into occupation of Budaun when it was ceded to them under a treaty with the Nawab Wazir of Oudh on 14-11-1801, on which date the treaty was signed. There is nothing to show what the position in that year with respect to these two villages was, and it was not till the year 1853 that, it is said, the British Government ratified the grant in favour of Hakim Dalpat Rai, who was a descendant of the original grantee. The document dated 30-7-1853 by itself proves very little. A report was made to the Secretary, Sadar Board of Revenue, N. W. P., Agra about the grants in various districts including Budaun, and after enquiry 54 perpetual grants were recognised and 10 were struck off the register. It may be that 10 biswas of village Lakhanpur and village Mohammadpur Biyar were recognised as grants in perpetuity.

4. In the settlement reports of Budaun District of the year 1873 at page 55 it is given that in per-gana Budaun there were 43 entire Muafi villages, the details of which are given in a statement No. 4 at

page 440 and villages Lakhanpur and Mohammadpur Biyar are mentioned against Nos. 18 and 20 as revenue-free grants. At page 56 of this report there is a note to the effect that there were certain villages in which revenue had been granted in perpetuity, and for the purposes of calculating the amounts of this revenue the Muafidars were asked to submit return of their incomes, and land-revenue was calculated at 55 per cent of the income. Whether these two villages were of that nature or not is not clear at all. But since they are included under a different head of rent-free grants, probably they were not.

5. The learned Judge has relied on the fact that in one of these villages there were certain other persons who were Zemindars and who wei in possession up to the year 1208 Fasli, which probably is a mistake for 1228 Fasli, and it in from that that he has deduced that the plaintiff ancestors must have been grantees of land (sic) venue. As we have already said, if the plaint. (sic) wanted to prove the fact that a grant had beer made to his ancestors of land revenue alone and that they were not ordinary 'Muafidars', he should have produced proper material before the Court, I and facts mentioned in various judgments could not be used as evidence to prove his contention.

6. Assuming, however, that the plaintiff's (sic) cestors were grantees of land revenue, though does not appear from the records available the any land revenue was ever assessed since 1801 which the property for the first time came into the possession of the British Government, the question has been raised whether it comes under Section 11, Pensions Act (23 of 1871). The plaintiff and his predecessors have all along been entered in village papers as 'Muafidars'. They owned the Zemin-dari rights, but since when it is not clear. The lower Court has said that they acquired the Zamindari rights in 1208 Fasli, but there appears to be no evidence on the record to prove that fact.

7. The plaintiff and his co-sharers have by various transactions transferred their rights in both these villages to the defendants or their predecessor-in-interest. They executed the sale deeds dated 18-7-1917, 27-1-1921 and 30-4-1930, in which they claimed that they were 'Muafidars' and were transferring their entire 'Muafi' rights to the vendees. The plaintiff brought the suit out of which this appeal has arisen for recovery of land revenue for the years 1345 Fasli to 1348 Pasli. He first went to the Revenue Court with, a prayer that revenue be assessed. But the Revenue Court refused to assess land revenue at the instance of the plaintiff on the ground that these were 'Muafi' villages. Failing to get the land revenue determined by the Revenue Court the plaintiff worked out the land revenue at a certain percentage of the cess payable and claimed a sum of Rs. 555-10-0 as the plaintiff's one third share of the land revenue for the years 1345 to 1348 Fasli. The defendant raised a number of pleas. It is not necessary to give those pleas in detail.

8. The plaintiff's contention was that even if they had transferred their rights in the two villages to Pahladi Lal, predecessor-in-interest of the defendants, Pahladi Lal, who had thus become the owner of the Zamindari rights, was liable to pay land revenue to the plaintiff as grant of land revenue, was 'pension', and under Section 12 of the Pensions Act its transfer was void. The contention was accepted by the lower Courts, and the defendant has appealed to this Court. The case went up before a learned single Judge who referred it to a Division Bench. The Division Bench on account of certain rulings which appeared to be conflicting, referred the case to a larger Bench and it has come up before us today for decision.

9. The preamble to the Pensions Act provides that it is an Act to consolidate and amend the law relating to "Pensions and grants by Government of money or land-revenue". The expression "grant of money or land-revenue" has been deemed as including anything payable on the part (sic) the Government in respect of any right, privilege, perquisite or office. The word "pension" has not been defined in the Act, but the meaning signified to it in the -- 'Secretary of State v. Chemchand Jeychand', 4 Bom 432 (A) has been accepted by all the High Courts. The word "pension" has been held to mean a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite or office, but on account of past service or particular merits or as communication to dethroned princes, their families and dependants. In Section 4 onwards in the Pensions Act word "pension" has been used in contradic-tion to the words "grant of money or land-revenue". In every section dealing with pension grant of money or land-revenue all the three words have been used in the Act. Sections 4, 5, Section 8 and 10 will make that abundantly clear. Section 9 deals with grant of land-revenue and the word "pension" is omitted from that section. In Section 11, which is the relevant section, the expression "grant of money or land-revenue" is omitted and the section provides that: "No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance shall be liable to seizure, attachment, etc."

It would be, therefore, clear that Section 11 is narrower and deals only with pensions while the other sections deal with pension or grant by Government of money or land-revenue. Section 12 provides that:

"All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in Section 11, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void."

Section 12, therefore, deals only with the pension, pay or allowance mentioned in Section 11, and not with grants by Government of money or land-revenue, nor with such pensions which may not come under Section 11. A comparison of Sections 8 and 9 makes it clear that grant of land-revenue is different from pension. While a right is given to bring a suit for the recovery of land-revenue no such right is given with respect to pension.

10. The trend of authorities of this Court seem to favour the view that we are inclined to take. The earliest decision of this Court is -- -'Bal. Krishna Bhau v. Govind Bao', 1902 All WN 161 B). Stanley C. J. and Banerji J. observed:

"In that Act a distinction is clearly made between a pension and a grant by Government of money or land revenue. Section 11 of that Act exempts Pensions from liability to seizure, attachment, or sequestration by process of any Court at the instance of a creditor. That section does not relate to grants made by Government of money or land-revenue."

The next case in order of date is -- 'Harnam Das Faiyazi Begam', AIR 1922 All 22 (C). That as a case entirely different from the case before and the learned Judges did not hold that the grant of land-revenue was a pension. They held on the facts of that case that Rs. 60/- payable to the plaintiff from the treasury was a pension. It is not necessary to give the facts in any detail. All that we need mention is that income of certain villages had been assigned for the maintenance of the tomb of a saint Salim Chisti in Patehpur Sikri and for the maintenance of his descendants. The British Government, after it took over the management of that part of the country, recognised the endowment and by 1846 the Government decided that the income of the villages would be realized by the Government as land-revenue, and the Government would undertake the repair and the maintenance of the tomb, "and a specified amount was set aside to be applied in the maintenance of the saint's descendants regarding whom it was declared that they were pensioners of the Government entitled to draw their pensions in perpetuity from the treasury."

The amount so drawn by the plaintiff Faiyazi Begam was held to be a pension. The Government undertook the liability to pay the amount as pension from the treasury and the descendants of saint Salim, Chisti had no right to realize the amount as land-revenue under Section 9 of the Pensions Act. In other words, that was a case where the original grant of land revenue was converted into a pension by the orders of the Government.

The next case, -- 'Lalla Babu v. Lal Bahadur', AIR 1925 All 565(D) cited by the learned counsel is not very helpful. The only point that the learned Judges seem to have decided is that a grant of immovable property is not to be treated as a pension within the meaning of the Pensions Act and that where the land-revenue has been granted the mere fact that the grantee has also acquired the Zamindari interest does not merge the two interests. There is no discussion in the judgment whether the word "pension" in Section 11 includes a grant of land-revenue. In the next case -- 'Bhoopal Rai v. Shiam Sundar Lal', AIR 1929 All 781 (E), there was a difference of opinion between Sen J. and Ashworth J. Sen J. was of the opinion that the grant of land-revenue was not a pension. He observed that:

"A grant of land-revenue as such cannot be comprised in the term 'pension'. A grant of Government revenue can in no case be created as a political pension which is a pension granted on political considerations for reasons of State. A right to share in the Government revenue granted in perpetuity by the sovereign power cannot be described either as a pension or as a political pension. Such a grant may be a hereditary grant as in the present case and partakes of the nature and character of a Jagir. Its liability to resumption would be dependent upon the terms under which it was created and upon the will of the sovereign power..... The assignment of such a grant is not prohibited by Section 12, Pensions Act. The rule of expediency prohibiting the transfer of pension which is founded upon the idea of ensuring the enjoyment of the pension by the pensioners in com-fort cannot be invoked in the case

of an assignment of Government revenue which is not shown to partake the nature and character of a pension."

The point again arose in 1930 in -- 'Lakhmi Chand v. Madho Rao', AIR 1930 All 681 (F). The question for consideration was whether the 'Muafi' in suit was transferable and the learned Judges seem to assume that the word "pension" included a grant of money or land-revenue by the Government. They purported to follow the decision in -- 'Harnam Das v. Faiyazi Begam (C)' without taking notice of the fact that in that case a grant of land-revenue had under the orders of the Government been altered into a fixed pension payable year after year from the treasury, the Government itself undertaking to realize the revenue of the villages in which the 'Muafi' rights had been - granted. The next two cases support the view that we have taken and they are -- 'Mumtaz Husain v. Brahmanand', AIR 1936 All 298 (G) and -- 'Mt. Kulsoomun Nissa v. Noor Mohammad', AIR 1936 All C66 (H). In -- 'Mumtaz Husain's case (G)', the learned Judges (Thom J. and Smith J.) pointed out that:

"Certain sections of the Act clearly recognise the difference between pensions, and grants of money, or grants of land-revenue. (Vide Sections 4 and 8). The phraseology of Sections 11 and 3, 2, however, is narrower, and in our opinion must be presumed to be designedly so."

After discussing certain cases that were cited before them they held that grant of land-revenue was not a pension within the meaning of Sections 11 and 12, Pensions Act. In -- 'Mt. Kulsoomun Nissa's case (H)' Sulaiman C. J. and Bennet J. followed the decision in -- 'Lakhmi Chand's case (F)' and -- 'Mumtaz Husain's case (G)' cited above and held that the grant of land revenue was not a pension within the meaning of Sections 11 and 12 of the Act.

11. Learned counsel for the respondents relied on a decision in -- 'Hiba Ahmad v. Mt. Ram Piari', AIR 1937 All 533 (I). In that case reliance was not placed on the Pensions Act, but it was said to be a grant covered by the Crown Grants Act (15 of 1895). In that case the grant was held to be for maintenance of the grantee's family from generation to generation, and it was held that the right was, therefore, restrictive in its enjoyment to the family and it was for its maintenance. It was said that the grant was not intended to be capable of transfer. Reliance has not been placed in this case on the Crown Grants Act in this Court or in the lower Court; nor can reliance be placed on it in view of the nature of the claim. The plaintiff was not challenging the transfers made by him and his co-sharers. He recognised the validity of the transfers but urged that being an assignee of land-revenue, he was entitled to recover land-revenue from the defendant. Before this claim can be made the plaintiff will have to prove that land-revenue was payable by the defendant to the Government and he being the assignee thereof was entitled to claim it instead. Very little evidence has been given in this case as regards the nature of the grant, but even if the Crown Grants Act was applicable, plaintiff's suit must fail as the transfers would in that case be invalid and the plaintiff would not be entitled to claim land-revenue from the transferee.

The only other case referred to us is the (sic) Bench case in -- 'Saadat Husain v. Ram Kishna Das', AIR 1940 All 373 (PB) (J). We do (sic) think that the case is really in point, but (sic) significant that

it was held in that case that the materials placed before the Court the grant was nothing more nor less than a 'Muafidar', (sic) is to say, that plaintiff was a Zemindar who (sic) not liable to pay land-revenue and his (sic) rights were transferable like any other right property and that the grant of a 'muafi' (sic) could not be construed to mean a grant (sic) pension.

12. We are, therefore, of the opinion that (sic) and 12, Pensions Act, do not apply to the (sic) of land-revenue and even if, therefore, the (sic) tiff was a grantee of land-revenue, he cannot (sic) that the transfers to which he was a party a invalid and he was entitled, in spite of (sic) transfers, to claim the money as arrears of (sic) revenue.

13. The result, therefore, is that this appeal allowed. The decrees passed by the lower Court are set aside and the plaintiff's suit is dismissee with costs.