

THE INDIAN LAW REPORTS

PUNJAB SERIES

APPELLATE CIVIL

Before Eric Weston, C.J. and Kapur, J.

BAKHSI RAM AND OTHERS,—*Plaintiffs-Appellants*

v.

THE PUNJAB PROVINCE AND OTHERS,—*Respondents*

Regular Second Appeal No. 669 of 1944.

1950

Sept. 11th

Trees—Ownership—Trees of spontaneous growth on waste lands in Kangra District—Waste land assessed to land revenue and in possession of the proprietors—Such trees whether belong to the proprietor in possession of the waste lands or to Government—Punjab Land Revenue Act (XVII of 1887)—Section 42.

Held, that in the Kangra District the trees of spontaneous growth standing on waste lands belong to Government even though that land is assessed to land revenue and is in possession of the proprietors.

Second Appeal from the decree of Sh. S. S. Dulat, District Judge, Hoshiarpur, dated the 7th day of December, 1943, reversing that of Sh. Mani Ram Khanna, Senior Sub-Judge, Kangra, at Dharamsala, dated the 14th August, 1943, and dismissing the plaintiffs' suit with costs throughout.

D. K. MAHAJAN and D. N. AWASTHY, for Appellants.

A. N. GROVER and DALJIT SINGH, for Respondents.

JUDGMENT

KAPUR, J.—This appeal is brought against a judgment and decree of the learned District Kapur, J.

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Judge, Hoshiarpur, varying the decree of the learned Senior Sub-Judge, Kangra. The point in controversy is the right of the plaintiffs and the Punjab State with regard to *Chil* trees growing in waste land.

The plaintiffs claim that the *chils* of spontaneous growth in the fields mentioned in the plaint situate in village Tika Kaseti Dakhli Ghaur belong to them and that the entry in the revenue records to the effect that they belong to the State of the Punjab is not correct. They ask for a declaration for their ownership and also pray that the State of the Punjab be restrained from interfering with the rights of the plaintiffs in regard to the trees in any manner whatsoever.

The State controverted the allegations and raised a number of pleas, the most important of which now in controversy is that the trees in all the fields in dispute were the property of the State.

A large number of issues were stated by the learned Senior Sub-Judge, but they are not all necessary for the point now before us. The relevant issues are:—

- (3) Is the suit within time ?
- (4) Are the plaintiffs estopped from bringing the suit ?
- (5) Are the trees of spontaneous growth in the *khasra* numbers in dispute the property of the plaintiffs ?

The learned Judge held that the suit was within time, that there was no estoppel and that the evidence led was not of much value. Both parties

agreed before him that the trees on land brought into the rating in 1868 belonged to the people and those that were outside the rating (*kharaj-bachh*) were the property of the State. Relying on the evidence of the Moharrir Patwari and Exhibits P.W. 5/1 and 2, the excerpts, certain *khasra* numbers were found to be within the first category and the others in the second and, therefore, the learned Judge gave a declaration with regard to those trees which were standing in the *khasra* numbers which were brought within the rating of 1868. The suit was decreed with regard to the trees standing on the former category and dismissed with regard to those standing on the latter category.

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Both parties took an appeal to the learned District Judge, who after going through the record and considering the *wajib-ul-arzes* held that all trees growing on the lands in dispute were the property of the State and, therefore, dismissed the plaintiffs' suit. It appears that neither of the two sides before the learned Judge relied on the admissions which had been made in the Court of the trial Judge, and we must take it that both sides did not rely on those statements.

In appeal before us it was submitted that the plaintiffs have the same rights in the land in dispute as they have in their proprietary holdings, and if trees of spontaneous growth in those areas which are proprietary lands of the proprietors belong to them the trees growing in the areas in dispute must also belong to them and that according to the various settlement reports same rights were given to the proprietors in regard to waste land assessed to land revenue as they had in other Khewat lands, which is really another way of saying the same thing as in the first point. It was

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conceded before the learned District Judge and has not been controverted before us that whatever rights the proprietors of the village have in regard to the trees in dispute are those which were granted by the then Punjab Government.

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The learned Advocate for the appellants took us through the report of Mr. Lyall of the year 1889, which is really a record of settlement of the year 1868 and later settlement reports of other officers. Originally the ownership of all land vested in the Raja. The settlement report of Mr. Lyall shows that the proprietary rights as to arable land were given to the land-holders or the *khewatdars* and co-proprietors became (in proportion to the amount of land revenue paid by them) the proprietors of the waste lands, but the State is the proprietor of forest or wild-growing trees in waste lands.

Paragraph 30 at page 30 of the report says—

“In the forest, therefore,—that is, in waste land more or less covered with wild trees or bush,—the State and the landholders have separate properties, neither of which are free, for the property of the State in the trees is subject to the right of the landholders and other residents of the village (and perhaps of other villages) to obtain the necessary quantities of wood for fuel, and timber for farm implements and building purposes; and the property of the landholders in the soil is subject to the right of the State to preserve the trees. Moreover, the State, in transferring the property in the soil of the wastes to the owners of fields, necessarily did so with

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A reference was then made to para 175 at page 134 where the following seems to be of importance—

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“But there is another kind of waste land requiring notice, which consists of hay-fields, hedge-rows, plots of waste within enclosures, etc. Such appropriated waste found in the exclusive occupation and possession of individual landholders has been recorded in the new maps and Settlement papers, with common consent, as their private property. In order to more effectually check and test such appropriations of waste, and with the object also of equalizing the distribution of the revenue, I gave notice that when the new rating (*bachh*) was made, all such appropriated waste would be brought into it, and not the cultivated lands only. One of the greatest deficiencies in the old papers was the absence of any record with regard to rights in these lands, which are the subject of more disputes than any other class. By a literal interpretation of the only declaration of rights in waste lands which those papers contained, they were common property of the *mauza*, and this in some cases led to a denial of justice.”

At page 152 are given the rules for demarcation and management of forests. Rule 10 at page 154 is in the following words—

“Hitherto all *chil* trees, even when growing in fields or hedgerows, have been held

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to be royal trees, and no clear understanding has existed as to the property in trees growing in waste lands of a private or appropriated nature (*banjar maqbuza*). Government will henceforth relinquish its claim to trees of all kinds in private lands, cultivated or uncultivated. The Settlement Officer will cause uncultivated private lands to be discriminated in the new Settlement papers from other waste lands, in which the zamindar's ownership is not absolute."

This rule and paragraph 191 at page 146 were strongly relied upon by the appellants' counsel in support of his submission that trees growing in waste lands subject to the rating belong to the proprietors. The relevant portion of paragraph 191 is at page 146, and may well be stated *in extenso*—

"Again, in clauses 33 and 34, it is declared, under the authority of the letter of the Secretary to Government, Punjab, No. 347, dated 6th January, 1887, that the State has relinquished its claim to royal trees in cultivated land, or in land entered in the new records as private waste."

A note shows that private waste includes the small plots held by almost every landholder described in para 136, and now included in the rating, and secondly the blocks of waste land bought of village communities by Europeans prior to revision of Settlement.

The report then continues—

“The letter quoted can hardly be held to be a valid authority for this rule, as the concession was contained in a letter issuing rules for the demarcation and better management of forests, and the demarcation has not yet been effected, or the rules introduced, for reasons which I shall explain presently under the head of forest questions. I hope, however, that the concession made in the clauses will now be approved independently, for all the entries in these administration papers, with regard to the joint rights of the State and the village communities in forest lands, hang together: if one is cut out, the others should be treated in the same way.”

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Reliance was next placed on Anderson's report on Forest Settlement in the Kangra Valley of the year 1897. At page 5 in paragraph 21 it is stated—

“In 1868 Government relinquished its claim to royal trees on cultivated lands and also on lands recorded as private waste. The waste on which the property in the trees was given to the people was ‘*garhu kharetar*’, or hay-field lying near a man's house or among his fields. It was considered that he had almost as strong a claim to this land as to his fields, and it was accordingly declared his exclusive property and assessed to two annas a *ghumao*.”

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Reliance was then placed on a statement contained in the same Settlement Report dealing with the Dehra Record of Rights at page 1 where it was said—

- “2. (a) Trees on fields assessed to the land revenue belong to the proprietors of the fields.
- (b) Trees on *kharetars*, which were assessed at two annas per *ghumao* at the Revised Settlement, belong to the proprietors of the *kharetars* except in the cases where Government retained its ownership in such trees.
- (c) All brushwood and trees growing on unassessed waste land belong to Government, whether the land belongs to only one proprietor or to several, whether it is common to a family, to a *tika*, or to a village. Also all brushwood and trees growing on assessed *kharetars* belong to Government in those special cases where Government retained a right to them. But, though the brushwood and trees belong to Government, the people are entitled to *bartan*.

The settlement now made refers only to waste land, the brushwood and trees on which belong to Government, and not to fields, and those assessed *kharetars* the brushwood and trees on which belong to the owners of the fields and *kharetars*.”

But a perusal of paragraph 3 shows that the “right-holders” did not have very many or any

very great rights in the fields, and they only had the right to take articles of forest produce which varies from grass, fuel, leaves, bark of creepers to wild honey but does not include tapping of trees for resin.

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Paragraph 4(1) says—

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“The proprietors and agricultural tenants of cultivated land to which is appendant a share in the soil of the demarcated and undemarcated forest and waste may exercise within the areas in which they are shareholders all or any of the rights detailed in paragraph 3,”

and in paragraphs 2 and 3 are given as I have quoted above, their rights which seem to be of a very limited nature. In paragraph (5) it is stated—

“All rights are appendant to cultivated land assessed to the revenue, and may be acquired and alienated only with such land, except only the rights admitted in paragraph 4(2) to those who are owners only of the waste land and not of any cultivated assessed land.”

A combined effect of this report makes it very doubtful that trees which were growing in assessed waste lands could belong to the holders of those waste lands. That there was a certain amount of doubt in regard to the ownership of trees in the various waste lands is clear from the Middleton's Settlement Report of the year 1913. At page 25 paragraph 34 of the report says as follows—

“Previous to the settlement of 1868 all trees on waste land and the more valuable trees on cultivated land belonged

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to Government, at that settlement Government relinquished its rights in trees on cultivated land and on certain classes of waste. Various sections of the 1868 administration papers and Mr. Lyall's Settlement Report (paragraph 191), contain definitions of the classes of land on which Government owned all trees of spontaneous growth as well as those planted by or on behalf of Government. The definitions are, however, vague and depend largely on certain methods of record, whilst an examination of the individual records of right shows that the forms of entries actually made were not invariably compatible with those which Mr. Lyall stated he had adopted. Since 1868 no general enquiry had been made into rights in trees though various transactions had taken place affecting those rights in particular cases; many of these transactions had never been brought on to the revenue records and were difficult if not impossible to trace."

The paragraph then goes on to say that the interpretation of the entries in the records of 1868 required a very intimate knowledge of the subject which could hardly be attained by district officers and there were possibilities of errors arising in identifying the land on the 1868 map with the current records, a position which was almost intolerable, "the uncertainty as to ownership of trees prejudiced forest administration and caused much dissatisfaction amongst the landowners," and these difficulties were most acute in the Dehra

and Hamirpur Tehsils, because the questions involved were complicated and the definitions given by Mr. Lyall were found to be open to such differences that a final decision as to the principles was not reached until 1916. Reference is then made to a letter of the Punjab Government No. 322-Forests, dated 4th November, 1916, which was to the effect—

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“All trees on waste land which was recorded at Lyall’s settlement as *dakhil bachh* waste and *maqbuza* whether by more or less than two owners should now vest in the owners of the land, except in the case of *dakhil bachh* areas which were included by Mr. Anderson in demarcated protected forests.”

This letter was very strongly relied on by the appellants as giving to them ownership of the trees on the lands in dispute, but it appears that it was necessary to give effect to this letter by holding an enquiry by a special officer with intimate knowledge of settlement proceedings and revenue records, and, therefore, Mr. J. F. Mitchell was placed on special duty to give effect to these orders and in doing so he adopted the following procedure which is given at page 26 of the same Report—

“In every *tika* a tree file was prepared showing every note regarding trees that could be found in the 1868 record and a list of field numbers which under that record were thought to be under Government trees; these lists were personally checked by Mr. Mitchell who examined the 1868 record with a view to finding whether the entries therein supported

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the entries in the lists and no others; he then deleted small detached areas from the list which he was empowered to do by discretionary powers vested in him by Government. The areas concerned were then traced both through the subsequent maps and subsequent records and identified with field numbers of the current record, the list of current field numbers was then checked by Mr. Mitchell and effect was given to all ascertainable transactions which had affected rights in trees since 1868. This double check was a complicated process involving the interpretation of ambiguous entries and a prolonged search for notes in various parts of the 1868 and subsequent records, on it depended the whole validity of the conclusion and it could not have been conducted without a prolonged and painfully acquired knowledge of the intricacies of the subject. The result of the enquiry was brought on to a mutation declaring the current field numbers subject to Government's right in trees. These mutations were announced by Mr. Mitchell (in Dehra Tahsil by the District Revenue Assistant to whom my thanks are due) and were subject to appeal before me."

The same statement is contained in the District Gazetteer of the Kangra District of the year 1924-25 which was compiled by Rai Bahadur Arjan Das and is given at page 321 of that Report.

It is with this background that the *wajib-ul-arzes* and the mutations have to be interpreted, but before I discuss the *wajib-ul-arzes* I would

like to say that in section 42 of the Land Revenue Act, are contained the presumptions as to ownership of forests, quarries and waste lands. The relevant portions of this section are as under:—

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“42 (1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste-land, spontaneous produce or other accessory interest in land belongs to the landowners, it shall be presumed to belong to the Crown.

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“(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Crown it shall be presumed to belong to the landowners.”

Then are contained the provisions as to how the presumption created by subsection (1) can be rebutted.

“42 (4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Crown.”

Ex. D. 7 is an extract from *Dastur-ul-Amal* relating to the village custom concerning the Government, the proprietors and other claimants of the land prepared at the Settlement of 1861 by Mr. C. B. Lyall relating to the village of the plaintiffs. Paragraph 4 relating to the rights of the Government and the *zamindars* in respect of forests says—

“In the previous regimes, the *banjar* (waste) unpossessed land with forests and trees

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standing thereon were considered to be the property of Government of the time. In the last Settlement the British Government gave ownership of the land to *Khewatdars*, but retained ownership in its own hands, in two respects—one regarding ownership of trees and the other regarding management in respect of grazing sheep and goats. * * * *
All the trees of spontaneous growth in the forest and *banjar* unpossessed land are considered to be the Government property subject to the right of user of the *zamindars* and others who use them. * * * *

Ex. D. 6 is the *wajib-ul-arz* for the year 1891-92. Paragraph 11 relates to rights of Government in *nazul* property or forests, unclaimed property, property not in possession, abandoned property, *ghair abad* land, stone quarries, *khandars*, ancient buildings, spontaneous growth of land and other benefits arising from land. It reads—

“In our village the trees of spontaneous growth and also those planted under the orders of the Government standing in the *banjar*, *ghair maqbuza* (unpossessed) owned by the *shamilat deh* and *shamilat teka* not assessed to revenue or enclosed jungle are the property of the Government. As regards fruit bearing and barren trees * * * * which have been planted in such land by the people for public benefit, shall be considered to belong to those persons whose names have been shown in the column of remarks in the *Jamabandi* against those numbers as possessed and planters

thereof * * * *. All the *nazul* property * * * * spontaneous growth and other additional rights pertaining to the land shall all belong to the Government. No distinction with respect thereto was made at the time of assessment in this Settlement with the exception of slate quarries of *Kanhayara Kharetri* or *Dharamsal*, etc. and *banjars* in possession of proprietors on which Government revenue has been proposed. The said quarry has been declared to be the property of the proprietors of the village.”

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As far as I can see neither of the two *wajib-ul-arzes* retains any right to the spontaneously growing trees on the kind of lands which are now in dispute by proprietors and these two documents cannot be of much assistance to the plaintiffs. Ex. D. 4 is the *wajib-ul-arz* of the settlement of 1912 and is of some importance. It says—

“In our village *banjar ghair maqbuza* is owned by the *shamilat* of the village or *Shamilat Tika*, and is not assessed to revenue or is enclosed jungle, as also the proprietary area, which was entered or should have been entered as not assessed to revenue in the Settlement papers of 1868, but was by mistake entered as owned by the *zamindars*, contain trees of spontaneous growth and also those planted under the orders of the Government * * * *. In the recent Settlement the measurements of such areas have been made under separate *khasra* numbers. In the remarks column of the record of rights a

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note has been given to the effect that the trees existing in those *khasra* numbers are owned by the Government. But as regards the fruit bearing trees such as * * * * the names of the possessors and the planters have been entered in the remarks column of *Jama-bandi* against those *khasra* numbers. They are considered to be owned by those persons whose names have been entered. * * * * .

According to Punjab Government letter No. 322-Forests, dated the 4th November, 1916, enquiries have been made as to the spontaneous trees of what *khasra* numbers are the property of the Government according to the previous Settlement. Exception has been given to *zamindars* with respect to some numbers out of the said *khasra* numbers under the letter mentioned-above as regards the *khasra* numbers in which spontaneous trees are allowed to remain the property of Government as before, entries have been got made by mutations, in a separate list, in each record of right, after decision of objection and appeal. In future, the Government shall not put in any claim with regard to trees which are not shown in the said lists, and do not stand in Government property and Government possessions.

Dated 29th January, 1918

L. MIDDLETON,
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Kangra."

Ex. D. 5 is an extract from the record-of-rights Bakhshi Ram relating to this village and is to the following and others effect—

“Trees of spontaneous growth in the field numbers given below have been declared to be the property of the Government. This area will be called Government Forest.”

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Then follow the khasra numbers which are the ones now in dispute.

This is supported by a mutation Exs.D. 2 and D. 3 and I would like to give the order of the Revenue Officer which is as follows:—

“To-day this mutation came up in a public assembly in the presence of Nihalu, Shankar, Chaudhri, Khazana, Gurditta and Gangu (these are some of the plaintiffs or their predecessors-in-interest and others). The orders to the effect that the trees of spontaneous growth in *khasra* numbers * * * * 38 plots in all, measuring 669 *kanals* and 18 *marlas* are the property of the Government, have been announced.”

Both the *wajib-ul-arz* of the year 1912 Ex. D. 4 and the Report of Mr. Middleton show that objections had been invited and had been adjudicated upon as also appeals had been heard by the Settlement Officer himself so that it cannot be said that the entries in Ex.D. 5 were wrongly or carelessly made or complaisantly agreed to by the plaintiffs.

The learned District Judge had after a consideration of the various documents which I have referred to came to the conclusion that the village proprietors had not established their claim to the trees in dispute and had never acquired any rights

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at any time, and it appears that it was admitted before him that as a result of the enquiry which I have mentioned above lists were prepared, mutations sanctioned and it was ordered that the trees standing on the lands now in dispute were declared not to be the property of the village proprietors but of the Government. As the result of this case might affect the rights of many proprietors of this or other villages, we have carefully gone into the Reports of the various Settlement Officers which were relied upon as also the *wajib-ul-arzes* which were produced. It appears that in the year 1917 it had been found difficult to interpret the various entries made at the time of the settlement of the year 1868 by Mr. Lyall and the identifying of the land on the maps of 1868 with those prepared at the time of the Settlement by Mr. Middleton, and a special officer was appointed. He made a double check which was "a complicated process involving the interpretation of ambiguous entries and a prolonged search for notes in various parts of the 1858 records; and it could not have been conducted without a prolonged and painfully acquired knowledge of the intricacies of the subject." (See page 321 of the Gazetteer of Kangra District, 1924-25). As a result of this enquiry mutations were entered with regard to the rights of Government in these various areas. As I have said before objections were invited and appeals heard, and it was after that that the mutations were entered and in my opinion the learned District Judge has rightly come to the conclusion that the plaintiffs have not shown that the entries made in the revenue records are in any way incorrect.

In the result, this appeal fails and is dismissed with costs throughout.

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C.J.

Eric Weston, C.J.—I agree.
[Editors' note—This decision has since been affirmed by the supreme court on appeal.]