

(1873) 03 PRI CK 0001

Privy Council

Case No: None

Rajah Leelanund Singh
Bahadoor and Others;
Thakoor Munoorunjun
Singh and Another

APPELLANT

Vs

Thakoor Munoorunjun
Singh and another;
Rajah Leelanund Singh
Bahadoor and The
Government

RESPONDENT

Date of Decision: March 14, 1873

Citation: (1873) 1 IndApp 181

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

Barnes Peacock, J.

1. The Plaintiffs in this suit, Rajah Leelanund Singh and others, brought a suit to recover possession of talook Khukwara in the zemindary of Khuruckpore. The Plaintiffs were purchasers under a sale for arrears of revenue against Kadir Ali, the former zemindar of the zemindary; but their Lordships are of opinion that as auction purchasers they have no greater rights, so far as this case is concerned, than they would have had as original zemindars. Indeed, that point has been admitted by the learned Counsel who argued this case on behalf of the Appellants. The other Plaintiffs are merely lessees of the zemindars; and the case may be treated as a suit by the zemindars of Khuruckpore against the Defendants, to recover possession of the talook Khukwara.

2. The question is, whether they are entitled to recover possession of that talook. Their contention is that it was held as a ghatwali tenure, and that they have a right, when the ghatwali services are, dispensed with and not required, to take possession of the lands which were held subject to those services.

3. The earliest sunnud that we find is one granted by Captain Brown in the year 1776 to Bankoo Singh and Bhyro Singh, who were the ancestors of the present Defendants. By that grant the talook in question was granted at a rent of Rs. 245.12a. to Rankoo Singh and Bhyro Singh by Captain James Brown, who must be assumed now to have had power to make the grant. A subsequent sunnud of Kadir Ali, who was the ancestor of the zemindar against whom the zemindary was sold for arrears of revenue, was also made in the year 1779 at the same rent. That grant was a ghatwali grant, and it was made more than twelve years prior to the permanent settlement. The question is, whether the zemindar, by dispensing with the ghatwali services, has a right to recover possession of the lands? It was held in the case of the same Rajah, *Leelanund Singh v. The Government of Bengal* 6 Moore's Ind. Ap. Ca. 101, that the Government was not entitled to resume this talook as police lands. That was upon the ground that the talook had been assessed to revenue, and was a portion of the mal lands of the zemindary. But although the lands were not resumable, that is to say, although the Government could not re-assess the talook with revenue, it did not dispense with the services upon which the lands were held at the time of the permanent settlement. The lands therefore remained liable to the ghatwali services.

4. It is contended that the sunnuds, in effect, merely gave certain lands as wages to hired servants, and that the zemindar, whenever; he chose, provided the Government dispensed with the ghatwali services, might put an end to the tenure and take back the lands, which were allotted in lieu of wages. It appears to their Lordships that that contention is not a correct one; that these sunnuds were grants of the land subject to certain services, namely, the service of paying a small rent of Rs. 245.12a., and also of performing the ghatwali duties. They were not therefore the hiring of a servant, giving him certain land by way of wages, but grants of land upon the condition of certain services.

5. A similar case was argued in the High Court - *Kooldeep Narain Singh v. Mahadev Singh* 6 Suth. W.R. 199. It was there held that, "Where a ghatwali tenure was granted more than 100 years ago, under a valid sunnud from a person representing the then Government, and had been allowed during that period to change hands by descent or purchase without question, the zemindar was incompetent, of his mere motion, without the assent and against the will of the Government, to put an end to the ghatwali services, to deprive the ghatwals of their lands, and to treat them as trespassers."

6. It is unnecessary to go particularly into the reasons for that decision. They are very fully pointed out in the decision itself, and that decision was, on the 18th of July, 1871, affirmed upon appeal by the Judicial Committee, who also gave their reasons for affirming the decision 14 Moore's Ind. Ap. Ca. 247; 11 Beng. L.R. 71.

7. It may therefore be assumed upon the principle of those decisions, that the zemindar had no right to turn the tenants out of possession by dispensing with their services unless the Government had dispensed with those services, as between the Government and the zemindar. The only question then is, whether the fact of the Government's having

consented to dispense with those services as regards the zemindar, and the zemindar's having agreed with the Government to pay an additional revenue of Rs. 10,000 in consideration of the Government having absolved them from the services, makes such a distinction in this case that the zemindar, as between him and the ghatwals, is entitled to treat them as trespassers, and turn them out of possession. In the cases which have been cited it was stated that even if the Government had not dispensed with the services it appeared to their Lordships that the zemindar would have had no right to treat the ghatwali holders as trespassers, and their Lordship; see no distinction between those cases and the present. The lands were held upon a grant, subject to certain services, and as long as the holders of those grants were willing and able to perform the services the zemindar had no right to put an end to the tenure, whether the services were required or not.

8. Some documents were referred to from which it appeared that certain ghatwals had been dismissed by the zemindar, but it does not appear that that was merely because the zemindar did not require their services. They may have been dismissed for incompetence or because they did not properly perform the services to which their tenures were subject. In such a case they might be dismissed, but the zemindar has no right to put an end to the tenure so long as the holders of the tenure were willing and able to perform the services.

9. The words "mokurruree istemraree" are used, and although it may be doubtful whether they mean permanent during the life of the person to whom they were granted or permanent as regards hereditary descent, their Lordships are of opinion that, coupling those words with the usage, the tenures were hereditary.

10. Under these circumstances, it appears to their Lordships that the decision of the High Court was correct, and they will humbly advise Her Majesty to affirm the decision, with costs.

11. In this case the Plaintiff seeks to recover possession of certain lands, and not merely to enhance the rent of those lands. It appears to their Lordships that there is no distinction between this case and the case which has just been determined, except that in this case the sunnud was not granted prior to the date of the permanent settlement, whereas in the former case it was granted prior to that settlement.

12. In this case the sunnud which was produced was dated in 1794, and was subsequent to the date of the permanent settlement. But it appears to their Lordships, looking to the terms of the sunnud, that it was not an original sunnud, but that it treated the lands included in it as old ghatwali lands. It is unnecessary, however, to determine whether the tenure was created by that sunnud of 1794, or existed from an earlier date, for, whether it was created in 1794 or not, it appears to their Lordships that the Plaintiff is not entitled to maintain this suit, and to turn the Defendant out of possession. Upon the principle of the case just decided, the Plaintiff is not entitled to turn the Defendant out of possession upon

the ground that he has dispensed with the services. He is not entitled as a purchaser at a sale for arrears of revenue to turn the Defendant out of possession upon the ground that the grant under which the Defendant claimed was created subsequently to the time of the permanent settlement. At the date of the purchase at the sale for arrears of revenue Act XI of 1822 was the law which governed such sales; but that regulation had been repealed before this suit was commenced, and, unless the regulation of 1793 is still in existence, there is no law which would entitle the Plaintiff to avail himself of the fact of his being a purchaser at an auction sale. Their Lordships had some doubt in the case which has been cited of *Ranee Surnomoyee v. Maharajah Sutteeschunder Roy* 10 Moore's Ind. Ap. Ca. 123, whether the regulation of 1793 was in existence or not; but they held that, assuming it to be still in force, it did not authorize a purchaser at a sale for arrears of Government revenue to treat the pottahs mentioned in Section 5 of that regulation as absolutely void for the purpose of turning the holder out of possession, but that the purchaser was only entitled to enhance the rent. That section enacted : "Whenever the whole or a portion of the lands of any zemindar, independent talookdar, or other actual proprietor of land shall be disposed of at a public sale for the discharge of arrears of the public assessment, all engagements which such proprietor shall have contracted with dependent talookdars, whose talooks may be situated in the lands sold, as also all leases to under-farmers and pottahs to ryots for the cultivation of the whole or any part of such lands (with the exception of the engagements, pottahs, and leases specified in Sections 7 and 8) shall stand cancelled from the day of sale, and the purchaser or purchasers of the lands shall be at liberty to collect from such dependent talookdars, and from the ryots or cultivators of the lands let in farm, and the lands not farmed whatever the former proprietor would have been entitled to demand according to the established usages and rights of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed." In the case to which I have just referred their Lordships held that the meaning of the words "shall stand cancelled from the day of sale," was not that they should be absolutely cancelled for the purpose of enabling the purchaser to recover possession of the lands, but that they were to stand cancelled from the day of sale so far as to enable the purchaser to exercise the power given of enhancing the rent to the pergunnah rates. Therefore, assuming that the ghatwali tenure in question was created subsequently to the date of the permanent settlement, namely, in the year 1794, their Lordships are of opinion that the Plaintiff would not as an auction purchaser be entitled to turn the Defendant out of possession, but that his only right, if any, would be to enhance the rent. The decision in the case of *Ranee Surnomoyee v. Sutteeschunder Roy* 10 Moore's Ind. Ap. Ca. 123 was upheld in the case of the *Maharajah Suttosurrun Ghosal v. Moheshchunder Mitter and Ors.* 12 Moore's Ind. Ap. Ca. 263.

13. Their Lordships are of opinion that in any view of this case, the Plaintiff is not entitled to maintain this suit and to turn the Defendant out of possession. Their Lordships express no opinion as to whether the Plaintiff would be entitled to enhance the rent. Whether the circumstances of the case would enable him to enhance the rent, or whether a suit to

enhance would be barred by the Statute of Limitations, are questions which are not at present before their Lordships, and as to which they wish to express no opinion.

14. Under these circumstances their Lordships will humbly recommend Her Majesty to affirm the decision of the High Court, and to dismiss the appeal, with costs.

15. In this case Thakoor Munorunjun Singh and Tekaet Lokenauth Singh are the Appellants, and Rajah Leelanund Singh and the Government are the Respondents. The appeal is from a judgment of the High Court, acting as Special Commissioners, dated the 25th of August, 1868.

16. The case, as stated by the Judges in delivering their decision, arises out of the proceedings of Government to resume certain ghatwalee lands in Khuruckpore.

17. They say. - "On the appeal of Rajah Leelanund Singh and the Government, Her Majesty, in a council held on the 25th of July, 1855, held that the ghatwalee lands in the zemindary of Khuruck-pore were not liable to resumption and reassessment under the provisions of Clause 4, Section 8, regulation 1 of 1793, which related to simple police establishments, and they set aside the resumption and gave a decree for mesne profits in favour of the Rajah, Appellant. The mesne profits which Government had to refund consisted of the rent or revenue paid by the ghatwals, whose lands were resumed, and with whom a settlement had been made at half jumma, which settlement was in force so long as the resumption decrees were not set aside. On the strength of the decrees which he had obtained in the Privy Council in July, 1855, Rajah Leelanund Singh applied for a review of judgment in all the other cases in which ghatwalee lands in the zemindary of Khuruckpore had been resumed; and the review was admitted and a decree passed in 1860 by three Judges of the late Sudder Court, sitting as special commissioners, who reversed the order for resumption, but declined to determine the question as to mesne profits which had been realised by Government," From that judgment an appeal was presented by Rajah Leelanund Singh to Her Majesty in Council, and on the 4th of February, 1864. the Judicial Committee held that, "The Judges who made the decree of 1860 ought not, in their Lordships view of the matter, to have been silent as to the title to the money, but ought to have declared and acted on it, if able to do so, from the materials and parties before them, and if not so able to have directed an inquiry to ascertain the person or persons entitled." Upon that the case was remitted to the High Court, and the decision now under appeal was passed by the learned Judges. They held that, according to the theory of the ghatwalee tenures, the lands were assigned to the ghatwalees for maintenance in return for and in payment of police duties performed by them. The profits of the ghatwalee lands, they said, might therefore be said to represent the wages which, if paid in money, would have been paid to the ghatwals for their services; and they proceeded to say that it appeared to them that the ghatwals had, on the half rates which they pocketed during the existence of the settlement, been amply compensated for any loss which they had sustained ("though they did not appear to have sustained any") during the period when, owing to particular circumstances, they did not and could not

perform their police duties. They said, "It has been suggested" to us that, the value of the services of the ghatwals might be computed by ascertaining the numerical strength of each post and assigning to the sirdar and each of the ghatwals a salary suitable to the position; but, on the view we have taken above, such computation appears to be unnecessary, for if we are correct in looking upon the whole profits of the ghatwalee lands as equivalent to the wages which the ghatwals would otherwise have received, it is apparent that when they did no service and retained one half of the profits for their own benefit they cannot claim the other half paid by them to Government in the shape of revenue." They said, "The whole of the money paid by the ghatwals to the Government in the shape of revenue should be paid over to the zemindar Rajah Leelanund Singh, partly as the quitrent due to him, and the remainder as compensation for the loss of the services of the ghatwals during the period the settlement with the ghatwals continued in force. The sums to be refunded will, as provided for by the decree of the Privy Council, carry interest to the date of liquidation."

18. Now, the status of the ghatwals has been determined in the cases which were before their Lordships yesterday, and it was then held that the ghatwals held the lands in question upon a tenure, by which they were liable to a certain rent and also to certain ghatwalee services, and that, notwithstanding the arrangement which had been come to between the zemindar and the Government, by which the Government had increased the revenue of the zemindary to the extent of Rs. 10,000 a year, in consideration of the dispensation by Government of the services, the ghatwals were still entitled to hold their lands upon the tenure upon which they had been granted, and were entitled to hold the land and to receive the rents and profits thereof, paying to the zemindar the rent reserved upon the tenure.

19. Now, applying that principle to the present case, it appears that when the Government received half of the profits of the land for revenue, and left only one half the profits of the land in the receipt of the ghatwals, the Government were receiving a portion of the profits of the land which ought to have gone to the ghatwals. They were receiving also a portion of the profits of the land which ought to have gone to the zemindar : in other words, the Governments were bound to return the one half of the profits of the land which they received as revenue, by paying to the zemindar the rent which was due to him under the tenure, and returning to the ghatwals the remainder of the money.

20. Under these circumstances, their Lordships are of opinion that the judgment and decree of the High Court should be varied, and they will humbly recommend to Her Majesty that the judgment and decree of the High Court, acting as Special Commissioners, be varied, and that it be decreed, - That out of the moneys received by the Government of Bengal in respect of the lands included in the tenure of the Appellants the zemindar do receive the amount of the money rent payable under the ghatwali tenure during the period in respect of which the moneys in the hands of the Government were received as revenue, that the remainder be paid to the Appellants, and that the case be remitted to the High Court as Special Commissioners, who are, if necessary, to determine

the amounts to be repaid to the parties respectively, according to the principle above laid down, the moneys so to be paid to carry interest as directed by the lower Court.

21. Looking to all the circumstances of the case, their Lordships will humbly recommend to Her Majesty that each party be directed to pay his own costs incurred in India subsequently to the Order of Her Majesty in Council of the 1st of March, 1864, that is the date of the Order in Council which was passed in pursuance of the decision of the Judicial Committee of February, 1864. It does not appear at present - for we have not the decree of the High Court before us - whether the High Court awarded any and what costs by that decree; but if any costs have been paid by either party under the decree now under appeal such costs are to be refunded, and each party will bear his own costs of this appeal. In regard to the Government, their Lordships think that the Government ought to bear its own costs of this appeal.