

## **Sri Sri Brindaban Chandra Jiew by his Present Manager Raghunath Banerji Vs Karuna Nidhan Singha and Others**

**Court:** Calcutta High Court

**Date of Decision:** Jan. 15, 1918

**Citation:** AIR 1919 Cal 176 : 50 Ind. Cas. 84

**Hon'ble Judges:** Walmsley, J; N.R. Chatterjea, J

**Bench:** Division Bench

### **Judgement**

N.R. Chatterjea, J.

The suit out of which this appeal arises relates to a Chur called Chur Kristobati, which appears to have formed to the permanently settled estate of the same name and which belongs to Brindaban Chandra Jiew Thakur, the plaintiff-appellant in this case.

2. The Chur was resumed by Government and settled with the Thakur from the year 1848 to 1912 upon assessment of revenue made by

Government from time to time. The last of these settlements was for the period from April 1902 to 31st March 1912. There was a provision in the

Pattah to the effect that the settlement-holder, who was the Manager of the Thakur, and his legal representatives would have the right to take a

fresh settlement on the expiration of the previous term of settlement subject to the condition of payment of such Government revenue as might be

then assessed and that, should he fail to take settlement on condition of payment of such Government revenue as might be assessed at the time, he

would be entitled to receive his Malikana according to the prescribed rate. After the expiry of the last term, the Chur was settled with a person

other than the plaintiff, and the plaintiff has accordingly brought this suit for a declaration that he is entitled to a settlement of the Chur and that the

defendant No. 1 was not entitled to settlement or hold possession of the Chur. The plaintiff further prayed for an order that the settlement might be

made with him at the rent reserved at which he was all along ready and willing to take settlement. He also claimed possession and mesne profits.

3. The Court below dismissed the suit and the plaintiff has appealed to this Court.

4. It is contended on behalf of the appellant that the provisions of Section 3 of Regulation VII of 1822, read with Section 2 of Regulation IX of

1825, do not apply to alluvial lands which were contiguous accretions to estates and which under Regulation XI of 1825 became the property of

owners of the estate; and that the provisions of Regulation VII of 1822 apply only to lands at the absolute disposal of Government. It is further

contended that even if the provisions of Section 3 are applicable, there was no compliance with the provisions contained in the proviso to that

section and that, therefore, the lands could not be settled with a person other than the proprietor.

5. The term of the last settlement expired on the 31st March 1912. Before the expiry of the term, on the 24th October 1911, notices were issued

in the locality and also issued, among others, to the plaintiff informing him that a survey would commence in the beginning of December. The survey

was finished on the 10th April 1912, and on the 5th July 1912 the rates were approved by the Collector and on the same day the Collector made

the following order:

As there is a civil suit dragging on regarding the managership of the Debutter property, I am prepared to settle the Chur with an outsider. Issue

notice calling for application by 1st August." On the 3rd August 1912, the settlement was made for a period of 9 years with a third person named

Karuna Nidhan Singh, from whom a kabuliyat was taken subject to the sanction of Government. On the 25th November 1912, a telegram was

received from Government sanctioning the settlement of the Chur and on the 26th November, the Collector directed a Pattah to be issued, and

possession delivered, A notification under the provisions of Section 3 of Regulation VII of 1822 appeared in the Calcutta Gazette of the 2nd.

December 1912. It appears from the Settlement Rules that it is the practice to take a kabuliyat in anticipation of the orders of Government.

6. Before proceeding further, we may dispose of a ground upon which the decision of the Court below is partly based, namely, that no application

was made by the plaintiff to show his willingness to take a lease. But the plaintiff could not say whether he would enter into an engagement for the

payment of the revenue unless he knew what the amount of the revenue was that was going to be assessed. As stated above, the rates were

assessed on the 5th July. On that very day and by the very same order the Collector held that the Chur was to be settled with a third person. The

plaintiff, therefore, had no opportunity of signifying his willingness to take the settlement. That he was anxious to take the settlement, appears from

the fact that he applied to the Collector on the 17th August 1912 for cancelling the settlement with defendant No. 1; and that application having

been rejected on the 21st August, he appealed to the Commissioner. The appeal was dismissed on the 18th September 1912 and the plaintiff

moved the Board of Revenue in October 1912. The order of the Board declining to interfere was made on the 17th February 1913, before which

date, i.e., on the 2nd December 1912, the notification sanctioning the settlement with defendant No. 1 was published in the Calcutta Gazette.

7. It also appears that even after the expiry of the term of the previous lease, the plaintiff paid Government revenue for the June and September

kists of 1912 and the January kist of 1913. There is no doubt, therefore, that the plaintiff was willing and anxious to take a settlement of the Chur.

8. Then the question is whether the provisions of the last paragraph of Section 3 of Regulation VII of 1822 were complied with. Section 3 runs as

follows:

With respect to the estates which are at present let to farm, a settlement thereof shall be made on the expiration of the existing leases for such a

period as the Governor-General in Council may direct. A preference shall be given to the Zemindars or other persons possessing a permanent

property in the Mahals, if willing to engage for the payment of the public revenue on reasonable terms: Provided also that in cases wherein such

Mahals may be let in farm, the term of the lease granted to the farmers shall not exceed 12 years. The above rules shall likewise be applicable to

estates now held khas. So in any case, wherein the Zemindars or other proprietors may refuse to continue their existing engagements, or to enter

into new engagements, on equitable terms, it shall be competent to the Revenue Authorities to let the lands in farm for such period, not exceeding

12 years, as the Governor-General in Council shall appoint, or to assume the direct management of them, and to retain them under khas

management during the period aforesaid or such shorter period as may be adjudged proper: Provided further that, if in any case it shall appear to

the Revenue Authorities that the continuance or admission of any Raja, Zemindar, Talukdar, or other person who may have engaged, or may claim

to engage, for any Mahal or Mahals, in or to the management of such Mahal or Mahals, would endanger the public tranquillity or otherwise be

seriously detrimental, it shall be their duty to report the circumstances to Government, and it shall be competent to the Governor-General in

Council, by an Order in Council, to cause such Mahal or Mahals to be held khas or let in farm, for such term as may appear expedient and proper,

not exceeding the period above specified.

9. The only grounds upon which the settlement appears to have been made with the defendant No. 1 (so far as it appears from the report of the

Settlement Officer) are that a civil suit is dragging on regarding the management of the Debutter property and, secondly, that although the present

survey shows that the condition of the Chur has improved considerably, it is capable of more rapid improvement by energetic management.

10. There was no report by the Settlement Officer or the Collector that the settlement with the plaintiff would endanger the public tranquillity or

otherwise be seriously detrimental. It is contended by the learned Senior Government Pleader that all the materials upon which the Government

proceeded in making the order u/s 3 are not before the Court. But the Collector in his reply to interrogatory No. 7 says distinctly that it was the

Collector of Hooghly who recommended the settlement of the Chur and in reply to interrogatory No. 8, he said that the recommendation was

based on the result of inquiries made locally by the Settlement Officer, Babu Mohendra Nath Gupta, and Assistant Settlement Officer, Babu

Jyotindra Nath Mukherjee, during the course of the survey and settlement proceedings of 1911-12. Babu Mohendra Nath Gupta was examined in

the present case. He stated that he considered that it would be seriously detrimental to settle the Chur with the plaintiff, and gave certain figures in

his deposition as to the area of the land cultivated during the last term of settlement as compared with those of the previous period. But these were

not embodied in his report, which appears to be the only material (according to the Collector) upon which the recommendation was made to the

Government.

11. It is contended by the learned Senior Government Pleader that it was for the Revenue Authorities and the Government to decide whether it

was or was not seriously detrimental and that it is not open to the Civil Court to go into the question.

12. Assuming his contention to be correct, it must be shown that the provisions of the Regulation were complied with. In order to deprive the

plaintiff of his right to a settlement to the Chur which was a contiguous accretion to his property, it is necessary that the provisions of the Regulation

should be strictly complied with. As we have said, we do not find any report that the settlement with the plaintiff would endanger public tranquillity

or would be seriously detrimental. That being so, we think that the settlement made with the defendant No. 1 is not valid.

13. It is contended on behalf of the defendant No. 1 that he is a bona fide lessee and that he ought not to be affected by any contract made by the

Government with the plaintiff for renewal of the lease. The Collector, however, was acting under the provisions of the Statute; and if the provisions

of the Statute were not properly complied with, the Government had no power to settle the Chur with the defendant No. 1.

14. In this view of the matter, it is unnecessary to consider whether the provisions of Regulation VII of 1822, read with those of Regulation IX of

1825, apply to Chur lands which are contiguous accretions to the estate of individuals under Clause 4 of Regulation XI of 1825. The decree of the

lower Court must be set aside and the suit decreed with costs. The settlement made with the defendant No. 1 is declared invalid and the plaintiff

will be entitled to obtain settlement from the Collector at the rent assessed by the latter, the settlement taking effect from the expiry of the last

settlement. He will be entitled to possession and mesne profits to be ascertained by the lower Court.

Walmsley, J.

15. I agree.