**(1914) 06 CAL CK 0035**

**Calcutta High Court**

**Case No:** Appeals From Original Decrees Nos. 219 and 241 of 1910

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| The Nowaghur Coal Co., Ld. | APPELLANT |
| Vs | |
| Sashi Bhusan Ray | RESPONDENT |

**Date of Decision:** June 16, 1914

**Final Decision:** Allowed

**Judgement**

1. The Plaintiff brought this suit to have the maurasi rent-free brahmottar title of his lessors, Defendants Nos. 3 to 18, to the Mauza Gobindpur established; and to have it declared that he has a right to mines in the mauza, and that the first Defendant has no such right. His case is that at some time before the Permanent Settlement the mauza in question was in the zamindary of Raja Jaga Mohun Singh, the ancestor of Defendant No. 2, who granted it as brahmottar to the ancestor of the Chakravarti Defendants (Nos. 3 to 18) by a pottah, dated the 26th May 1784, and on that being lost, by a second pottah, dated the 10th December 1790. On the 14th of June and the 1st December 1907, the Plaintiffs took a settlement of the under-ground rights of the whole mauza from the Chakravartis, and commenced to exercise them by sinking a pit. In the following March the principal Defendants opposed their doing so, and proceedings under sec. 145, Cr. P. C, were instituted which led to the Defendants being declared to be in possession. Hence this action. The Defendants generally deny the Plaintiff''s title, and set up one of their own. This "is that on the 25th January 1893, the second Defendant made a settlement of the mining rights in the mauza to one Purna Chandra Dawn, who assigned them to the Katras-Jherriah Company, who abandoned them in 1896. From that time till 1899, the Court of Wards, who had taken over the estate of Defendant No. 2, tried to secure a lessee of the mineral rights, and eventually settled them with the first Defendants on the 3rd October 1899, who say that they have since then been in possession. They also plead that the Plaintiff is barred by limitation as they say that he was not in possession of the mines or minerals for more than twelve years before suit. The Defendants raised a further point during the hearing that the Plaintiff''s lease of 1907 conveys nothing to him, as the Chakravartis had let the same property to Dr.

Saise in 1896, and that lease was still outstanding.

2. The suit was decreed by the Subordinate Judge of Manbhum, and both the Defendants have appealed against his decree. They have appealed separately; but the two appeals have been heard together, and we need not distinguish between them.

3. The points raised before us by the Appellants are as follows :--

(1) There is no evidence of a permanent lakheraj brahmottar grant made in favour of the Plaintiff''s ancestor;

(2) If there was any such grant it comprised only cultivated, and not waste, or danga land;

(3) Such a grant whether made before or after the date of the Permanent Settlement could not pass any mining rights;

(4) The suit is barred by limitation as the Defendant and his lessees had been in possession of the mines in the land for more than 12 years;

(5) The suit must fail because there was a lease to Saise prior to that of the Plaintiff, which was actually subsisting at the time of the institution of the suit.

4. The evidence of a permanent lakheraj brahmottar grant in favour of the Plaintiff''s ancestors rests in the first place on the patta put forward by the Plaintiff. This is dated the 27th Aughran 1197 the 10th December 1790, and contains a gift from the ancestor of Defendant No. 2 to Lakshan Chakravarti of Mauza Gobindpur as brahmottar. It also recites that the grantor had granted a pottah to Bhagwat Chakravarti on the 15th Jeyt 1192 = the 26th May 1784, but that as it was lost, he granted a second pottah. The lower Court has disbelieved the authenticity of this document, and we are not prepared to accept it as authentic. The reasons for accepting it are that it is produced from proper custody; reference was made to it in the settlement proceedings in 1871, in registration proceedings in 1877, and in the proceedings under sec. 145, Cr. P. Code, in 1908; that we have mentioned. The reasons for disbelieving it given by the lower Court are that the writing and paper do not appear to be so old as they purport to be, it was not produced either in the proceedings under sec. 145 or when this suit was brought. The Plaintiff denied having seen it in his deposition in this suit, though he said the contrary in the criminal proceedings; the Judge disbelieves the evidence of Shashi Bhusan Chakravarti who speaks to its custody and eventual discovery for reasons with which we agree, and he gives good reasons for doubting the indorsements on the back of the document purporting to show that it was produced in the proceedings in 1871 and 1877. The Defendant is not concerned to deny that there may have been a grant in 1784; but he suggests that as the terms of that grant were not such as would support the case now made by the Plaintiff, he has forged Ex. 2 to take the place of the grant alleged to have been lost. For ourselves we can only say that the grant of

1790 has not been sufficiently well proved for us to be able to treat it'' as authentic.

5. The question then arises whether the Plaintiff can make out a title in the Chakravartis, his grantors, apart from the discredited, patta, and again we agree with the Judge who finds that the Chakravartis held the mauza under a rent-free; brahmottar grant, and not as a service tenure. We see no reason, however, for holding that the grant was made either before or after the Permanent Settlement. The evidence afforded by the mulki papers of 1843 (Ex. 1) where the Raja returns Bhagwat Chakravarti as holding under a brahmottar pottah of 1784, the jamabundi of 1854 (Ex. B2) where the manager of the Court of Wards shows Gobindpur as rent-free, the return of 1861 (Exs. 14, 13) where the Raja describes Gobindpur as brahmottar, the claim by the Chakravartis in 1871 (Ex. 5). to hold the mauza in rent-free brahmottar with its recognition by Mr. Rowlett (Exs. 5 and 12), the admission in the Road-cess return of 1872 (Ex. 19) that Gobindpur was brahmottar, even though it was made by a manager on behalf of the minor, largely outweigh any inference that can be drawn from the receipts (Exs. B 30 to B 39) in which the Chakravartis are described as "Jimmas,'"' while the application for the registration of the mauza. as rent-free brahmottar and its rejection (Ex. 7) do not, at least, tell against the Defendants'' contention, since it is not attempted to show that the land is free from payment of revenue, which it would have been for the application to have succeeded.

6. This brings us to the second point in the Appellant''s case, which is that the lands granted to the ancestors of the Plaintiff''s grantors were only the cultivated lands in the mauza, and did not include the waste lands.

7. From Ex. B 70 [the General (Tauzi) Register of revenue-paying lands in Manbhum], it appears that the area of Gobindpur, as it is now known, is 76 acres, which is about 220 bighas. Was the whole of this granted, in whatever manner, to the Chakravartis? The answer to this question depends in part on documents that we have already considered. Thus in the mulki papers of 1843 the area of the land referred to is stated to be approximately 54 bighas. The " Remarks column " is provided to show how many bighas of the said mauza are patit lands, how many bighas cultivated, whether inhabited or without habitation;" and it does show that " in this mauza there are 24 bighas of cultivated land, 30 bighas of danga land not inhabited." It also gives boundaries which, on the evidence of both parties, in the opinion of the lower Court, are the boundaries of the entire mauza, and the correctness of this finding has not been disputed before us.

8. In 1861 the thakbust map was being prepared. The Raja made a return (Ex..13) "that the mauza is brahmottar," saying nothing of any distinction between the waste and the cultivated land. A deposition by Ram Kanai Chakravarti (Ex. 17) seems to show that measurement was made of the asli mauza and no other tola was included, and that the entire mauza was given to Bhagwat Chakravarti, the grantee in 1784. In settling the thakbust boundaries it seems (Ex. 18) that the matter was left

entirely to. the Chakravartis, and that the Raja contented himself with making the return, (Ex. 13), which we have already referred to. The thakbust map itself (Ex. 16) indicates the extent of, the mauza as only 9 bighas 10 cottahs, and the boundaries do not seem to have any relation to those given in the mulki papers. This. does not fit in with the case made by either party, and leads to the conclusion that the map is not to be relied on and measurement of the whole mauza was made by Ram Krishna Mistri (Ex, 12) in 1871, when he found that it contained 59 bighas in all. We agree, however, with the Subordinate Judge that, for the reasons he has given, there may have been waste lands outside the mauza. The Road-cess return of 1872 (Ex. 19) made by the tahsildar of the Court of Wards in 1872 (Ex. 19), and subsequent returns made by the Chakravartis, are all made without any reference to the existence of waste lands, which if the law contained in Act IX of 1880 (B. C.) had been complied with would have been an indication that no waste lands existed in the mauza. We find it difficult, however, to attach much weight to this argument in face of the reasons for not doing so advanced by the Subordinate Judge and the evidence to which he refers.

9. In the proceedings in 1871, when the Chakravartis applied to have their brahmottar released from rent, it does not appear that either they or Mr. Rowleft, the manager for the Court of Wards, recognised the mauza as containing more "than the 59 bighas mentioned in the measurement papers of that year. In the application for registration made by the Chakravartis in 1877 (Ex. 7) we find that it is stated that the area of lands, which include Gobindpur, has not been found out by measurement; but that a measurement by munis, that is, by a unit of cultivated land, is given--a fact which supports the view taken by the Judge of the Road-cess papers.

10. In 1904, we have a curious petition from Akshoy Kumar Chakravarti (Ex. B) in which he complains that the Katras Jherriah Coal Co. called, the Bird Coal Co. is " unjustly possessing the surface lands of Gobindpur and another mauza under a right derived from the Raja''s estate "; as a result of which an order was made (Ex. B 26) by the Court of Wards disallowing the claim made to the waste lands of Gobindpur. The order itself was based on the Road-cess returns, and is of no importance; but as the Katras-Jherriah Co. were in possession of the land merely for mining purposes, the limitation of the complaint in the petition to surface rights is certainly curious.

11. In the land acquisition proceedings in 1905, there seems to be no doubt that the manager for the Raja received all the compensation for waste land that was acquired, while the Chakravartis obtained compensation only as cultivators. The Raja''s rights to the waste land seems thus to have passed uncontested--a conclusion; highly adverse to the full claim made by, the Plaintiff. The Judge however points out that the acquisition proceedings were, based on a mistake'', as the Chakravartis, were supposed to have a kheraji and not as they in fact had a lakheraj

brahmottar, that the Chakravartis may not have known that the danga lands. were being ascribed to the Raja., and that the amounts in question were not large enough to make litigations profitable. This conclusion depends in part on the evidence of Shashi Bhusan Chakravarti, whom elsewhere the Judge has not been inclined to trust and in view of the fact that he was a party to the proceedings and in fact received compensation under them it is difficult to believe that he did not know that it was also paid to the Raja as he swears it was. not.

12. This concludes all the evidence on which we must decide this part of the case and we feel that any decision we come to must be open to considerable doubt; and necessarily so, because it is probable that for, many years both the Chakravartis and the Raja regarded the lands as of no value, and both sides may well have exercised rights over them without attracting the notice of the other. On the whole, however, we feel disposed to attach more importance to the earlier than to the later documents before us : and while we regard the mulki papers as ambiguous as. to the point before us, we attach a good deal of importance to the Raja''s return of 1861, and to the fact that the Raja did not care to take any part in settling the thak map, which he probably would have done, had the mauza been divided between the Chakravartis and himself. On the other hand, we should not like to depend much on the Road-cess papers, and though the land acquisition proceedings have to be carefully considered, we cannot consider that they outweigh the conclusion we draw from the earlier proceedings. Under these circumstances we hold, though with considerable doubt, that the waste lands were included in the brahmottar granted to the Chakravartis.

13. We have next to deal with the most important point in the case, which, on the findings that we have come to is as follows : Did a grant of a rent-free brahmottar of the whole of a mauza. made before the Permanent Settlement pass any mining rights? From this point of view we consider that the case is covered by the decision in Hari Narain Singh Deo v. Sriram Chakravarti L. R. 37 IndAp 136 : s. c. I. L, R. 37 Cal 723; 14 C.W. N. 746 (1910). In that case the Subordinate Judge and the High Court both held that the Defendants had a permanent tenure at a fixed rental in the Plaintiff''s zamindary; there was nothing to show how the tenure originated, or that anything had or had not been settled about mineral rights at that time. The first Court held that the minerals did not pass to the grantee, party, it appears, because of the low rent that was reserved. This Court set aside that finding holding that this zamindar had divested himself of every thing except the nominal proprietorship And turned his right practically into a perpetual annuity of the amount of the rental. This decision was reversed in the Privy Council. The finding as to the nature of the tenure created is not overruled and seems to be accepted; the inference drawn by the Subordinate Judge from the smallness of the jama is noticed, and it was held that on the title of the zamindar being established, he must be presumed to be the owner of the underground rights thereto appertaining, in the absence of evidence that he ever parted with them. We are unable to distinguish that case from the present. It

there seemed probable that the tenure was created after the Permanent Settlement. The present tenure may according to our view have been created either before or after that event. If however it was granted before the Permanent Settlement, the case for the Appellants is stronger than if it were granted afterwards, as the zamindar''s interest at the time of the grant must have been restricted to a ten years'' settlement, which may lead us to suppose that he would have been unlikely to deal with the minerals, even if he had power to do so. In the former case the jama reserved was low; here no jama at all is reserved. The area of the holding affected in Hari Narain''s case L. R. 37 IndAp 136 : s. c. I. L, R. 37 Cal 723; 14 C.W. N. 746 (1910) does not appear from the judgments, and in the present case the point does not help us, as we have held that the whole mauza was transferred. Had only small properties such as 54 bighas out of 200 been affected, it might have been argued that the zamindar would not have parted with his mineral rights on so small a scale, as we are admittedly deciding the case by imputing intentions to the parties, which in their ignorance of facts known to us they could never have formed : and it is this that makes the second point we have decided one of essential importance.

14. The rule laid down in Hari Narain Singh v. Sriram Chakravarti L. R. 37 I. A. 136 : s. c. I. L R. 37 Cal. 723; 14 C. W. N. 746 (1910) was afterwards followed in Durga Prasad Singh v. Braja Nath Bose 16 C. W. N. 482 : s. c. I. L. R. 39 Cal 696 (1912). reversing the decision in this Court [see Braja Nath v. Durga Prasad 12 C. W. N. 193 : s. c. I. L R 34 Cal. 753 (1907).], but nothing else was then decided that bears on this case. In Megh Lal Pandey v. Raj Kumar Thakur 11 C.W. N. 527: s. c. I. L. R. 34 Cal. 358 (1906)., it was held that the insertion of such general words as mai hak hakuk, with all rights in the original grantor, would pass the minerals, and it is suggested that it was this decision that led to similar words being inserted into the patta in this case (Ex. E). On our findings however the terms of that document are of no importance. The present case closely resembles Jyoti Prasad Singh v. Lachipur Coal Co. 16 C. W. N. 241; s. c. I. L. R. 38 Cal. 845 (1911)., where it was held that the zamindar retained a right to the minerals, as also the case of Kunja Behary Seal v. Raja Durga Prosad Singh Reg App. No. 197 of 1911, since reported 19 C. W. N. 203 (1914). where Fletcher, J., treats the decision in Hari Narain Singh''s case L. R. 37 I. A 136 : s. c I. L. R. 37 Cal, 723; 14 C. W. N. 743 (1910) as governing the relations of a zamindar and any one deriving a title from him whether as a tenure-holder or a raiyat--a construction in which we quite agree.

15. In the result we hold that the zamindar did not transfer any mining rights to the predecessors of the Chakravartis.

16. There remains only two points to be noticed on neither of which we need say much.

17. The first is that the suit is barred by limitation as the Defendant and his lessees had been in possession of the mines in the land for more than twelve years. As to

this we agree with the findings of the lower Court, though we think that on the facts of the case his finding is not strong enough, as the mining operations of the Katras-Jherriah Company before 1896 were obviously of the slightest possible kind.

18. The second remaining point is that the suit must fail, because there was a lease to Mr. Saise prior to that of the Plaintiff; and that it was subsisting at the time of the suit. This point was raised at the " very last stage " of the trial, the onus of proving the lease and its continuance up to the date of the trial was on the Defendants, and he has not discharged it. We therefore agree with the lower Court that the lease cannot stand in the Plaintiff''s way. The result is that both the appeals before us are decreed with costs.