

(1877) 09 CAL CK 0007

Calcutta High Court

Case No: None

Leelanund Singh
Bahadoor

APPELLANT

Vs

Thakoor Munrunjun
Singh and Another

RESPONDENT

Date of Decision: Sept. 12, 1877

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 2, 7

Citation: (1878) ILR (Cal) 251

Hon'ble Judges: Richard Garth, C.J; Mcdonell, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

This suit is brought by the plaintiff, the zemindar of the mehals of Khurukpore, to recover from the defendants certain arrears of rent in respect of Taluk Kukwara, appertaining to the Khurukpore mehals; and also to have his right declared to an enhanced rent at the annual rate of Rs. 11,240 from the beginning of 1282 F.S., or any other rate which the Court may think just as an equivalent for the ghatwali services which the defendants and their predecessors in title have been used to render, but which now, through the agency of Government, have been discontinued.

2. This is probably the last scene in a long series of litigation which has been going on between these parties for upwards of thirty years past. The defendants and their ancestors have, from the year 1785, and probably from a still earlier period, been in possession of Taluk Kukwara under a ghatwali tenure. The origin and nature of these tenures are explained very clearly in the judgment delivered by Lord Kingsdown in the case of Raja Leelanund Singh v. The Bengal Government 6 Moore's I.A. 109 which was a suit brought by the Government of Bengal, in the year 1838, to resume possession of, and to assess to revenue, certain ghatwali lands

within the present plaintiff's zemindary of Khurukpore; and which suit, after having been litigated for many years in this country, was finally dismissed by their Lordships in the Privy Council in the year 1855. And it is very necessary for our present purpose to bear in mind what was the true origin and nature of these tenures. They were created by the Mahomedan Government in early times, as a means of providing a police and military force to watch and guard the mountain passes from the invasions of the lawless tribes who inhabited the hill districts. Large grants of land were made in those days by the Government, often to persons of high rank, at a low rent, or at no rent at all, upon condition that they should provide and maintain a sufficient military force, to protect the inhabitants of the plains from these lawless incursions; and the grantees on their part subdivided and regranted the lands to other tenants (much in the same way as military tenures were created in England in the feudal age), each of whom, besides paying generally a small rent, held their lands in consideration of these military services, and provided (each according to the extent of his holding) a specified number of armed men to fulfil the requirements of the Government.

3. This was the state of things at the time when the East India Company by Beg. LXXII of 1791 effected the decennial settlement of Bengal, Behar, and Orissa. By this settlement the amount of land revenue payable by the superior grantees to the Government, which has therefore been more or less uncertain, was fixed at a certain rate or jama for a period often years. This jama was to be ascertained by the Collector upon equitable principles, to be approved by the Board of Revenue; certain allowances, called malikana and kurehay, were made to the zemindars for their maintenance and disbursement, and one of the conditions of this new holding was, that the zemindars should be responsible, as theretofore, for the peace and protection of the district.

4. At this time the zemindari of Khurukpore was in the hands of Kaja Kadir Ali. A large proportion of the lands of this zemindari was held upon ghatwali tenure; and, amongst others, Taluk Kukwara was held upon that tenure by the predecessor in title of the present defendant.

5. The earliest grant which we find of this taluk is dated the 24th of Jeit 1795, and will be found in page 243 of the paper book. It purports to have been made by Captain James Browne (who appears to have held at that time an office under Government) to Ranku Singh and Bhyro Singh, from the commencement of the year 1184 Fasli, at a rent of Rs. 245-12-15, upon certain conditions mentioned in the grant; and, amongst others, that the jagirdars or grantees should cause the roads within their village to be closely watched, and when summoned to the presence (of the superior zemindar) should attend the presence with their body of men; and there is a special provision, that if any murders, dacoities, affrays, &c., should be discovered, or if the jagirdars should give bad advice, or cause injury to the interests of Government, they should forfeit their office and be dispossessed of their lands.

6. Then follows a list of twenty-two mouzas contained in the taluk.

7. The next document relating to the same tenure is a grant dated the 27th of January 1780 by Kaja Kadir Ali (the then zemindar of Khurukpore) to the same jagirdars, Bhyro Singh and Ranku Singh, confirming them in the tenure, requiring them by good treatment to keep the tenants of the land, contented, and to watch and look after the that and chowkies, so that no thieves or murderers should remain in the neighbourhood. They are enjoined to seize therein and prosecute cattle-stealers under penalty of being themselves responsible, and that they should attend the presence when summoned. At the foot of this document we find a detailed statement, showing the number of armed men to be provided by the grantees of the tenure, and the share of rent payable by each. They were to provide 172 burkundazes and archers with sirdars, and of the rent

Bhyro Singh was to contribute ...	...	...	178	3	5
and Ronku Singh	...	...	67	9	10
Total ...			245	12	15

8. These being the grants or sanads under which the defendants and their predecessors in title held the lands in question, there can be no doubt that, at the time of the Permanent Settlement the Taluk Kukwara formed a part of the Khurukpore zemindari, and we consider that the holders of that taluk were "dependent talookdars" of that zemindari within the meaning of Reg. VIII of 1793.

9. Many years after this, attempts were made by the Bengal Government to resume possession of these ghatwali lands, and to re-assess them to revenue as against the zemindar; but the Privy Council, in the above-mentioned case of Rajah Leelanund Singh v. The Government of Bengal 6 Moore's I.A. 169 decided that the Government had no right to do so.

10. It then appears that, in the year 1863, a proposal was made by the Government to compound with the zemindars for the discontinuance of the ghatwali services on payment by the zemindars to Government of an annual sum in lieu of those services; and as an inducement to the zemindars to entertain this proposal, it was held out to them that, upon their making such a composition, they might either resume possession of the ghatwali lands or enhance the rents of the ghatwal talookdars.

11. In the letter, dated the 12th of January 1863, from Mr. Lushington, the Secretary to the Government of Bengal, to the Commissioner of the Bhagulpore Division, after directing the Commissioner to see that the services of the Ghatwals should be strictly enforced, it is said in paragraph 6: But it must be admitted that the ghatwals, like the pykes of Midnapore, are of little value as police or auxiliaries to the police; and if therefore the zemindar is willing to compound for their service by a fixed

annual payment, the Lieutenant-Governor would be prepared to release the ghatwals from the obligation they are under to the State, and to replace them by a more reliable agency, and one more immediately and directly under the control of the Government. The zemindar would then be at liberty to proceed against the ghatwals, either for the resumption of their lands or the enhancement of their rents, without any hindrance on the part of the Government. But unless he undertakes to furnish the Government with the means of providing an adequate police force in lieu of the ghatwals, he cannot be allowed to appropriate their lands or to take from them in the shape of increased rent, the funds which are needed for the preservation of the peace and for the prevention of crime."

12. It is probable that the Government did not sufficiently consider how far this inducement held out to the zemindar could legally be carried out; but upon the faith of this letter, negotiations were entered into between the Rajah Leelanund Singh, the zemindar of Khurukpore, and the Government, by which the Government, by a document, dated the 9th of November 1863, waved their claim to police services through the Pergannas Saheri within the Khurukpore estates, on condition of the zemindar paying to Government a fixed annual permanent rent of Rs. 10,000, and the arrangement is stated to have been made upon the basis of paragraph 6 of the above letter from Mr. Lushington.

13. Upon the strength of this arrangement with the Government, several suits were instituted by the Rajah Leelanund Singh against the respective holders of ghatwali tenures within his zemindari, to recover possession of those tenures, on the ground that the services, in consideration of which they were held, were no longer required; and one of these suits was brought against the present defendants to resume possession of the Taluk Kukwara. In many of these suits, the persons against whom they were brought did not attempt to dispute the Rajah's claims; but all the suits which were disputed, including that brought against the present defendant, were decided against the Rajah by the Courts of this country; and upon appeal to the Privy Council, that decision was affirmed in the year 1873. In the case brought against the present defendants their Lordships say: "It is contended that the sanads (the ghatwali grants), in effect merely gave certain lands as wages to hired servants, and that the ticcadar, 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 this contention is not a correct one; that these sanads were grants of the lands subject to certain services, viz., the payment of the small rent of Rs. 215-12, and also of performing the ghatwali duties. They were not, therefore, the hiring of a servant giving him certain land in lieu of wages, but grants of land upon condition of certain services."

14. 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 having consented to dispense with those services as regards the zemindar, and the zemindar having agreed with the Government to pay an additional revenue of Rs. 10,000 in consideration of the Government having absolved him from the services, make 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 Lordships 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."

15. Their Lordships then go on to say in the next case, which was decided upon similar grounds : "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 Statutes of Limitation, are questions, which are not at present before their Lordships, and as to which they wish to express no opinion."

16. This suit (with others) was then brought by the plaintiff to recover arrears of rent due from the 22nd Falgoon 1267 F.S. to the close of 1281 F.S. at the former rate of rent; and also to have his right declared to an enhanced rent from the beginning of 1282 F.S.

17. The Subordinate Judge framed issues as to valuation, as to whether any portion of the claim was barred, as to whether the case was barred by Section 2 and Section 7 of the Civil Procedure Code, and, lastly, as to whether the defendants were liable to further assessment, and, if so, to what amount.

18. The Subordinate Judge, for the reasons given in his judgment, dismissed the suit.

19. We consider that the Subordinate Judge was right in finding that the suit had been properly valued, and in holding that the plaintiff's claim to arrears of the rent claimed was barred by limitation, except so much of it as related to the rent of the three years previous to the institution of the suit. But he was in error in supposing that the provisions of Sections 2 and 7 of the CPC applied to the present claim, and also in not giving the plaintiff a decree for so much of the rent in arrear as was not barred by limitation.

20. With regard to Section 2 of the Civil Procedure Code, there was no ground whatever for holding, that the subject-matter of the present suit was the same as in the former one. The claims in the two suits were wholly different, and their

Lordships in the Privy Council, in the former case, distinctly say in their judgment, that they express no opinion as to whether the plaintiff would be entitled to enhance the rent, or whether a suit to enhance would be barred by the Statute of Limitation. The claim, therefore, in the present suit was clearly not determined in the former one. Nor is there the slightest reason for saying that (under Section 7) this suit will not lie, because the plaintiff ought to have included his present claim in the former suit. The claims in the two suits are altogether diverse and inconsistent. It is hardly necessary, however, to notice this point, because it was very properly not argued by the respondents' Counsel.

21. As regards the omission to give the plaintiff a decree for the arrears of rent at the old rate for the last three years before suit, this appears to have been a mere oversight of the Subordinate Judge, for he distinctly states, that the plaintiff's claim to this rent is not barred by limitation; and the defendants in their written statement (paragraph 1) admit that the plaintiff is legally entitled to this rent, only pleading that the rent for one year, namely 1281 F. S., has been deposited in the Court of the Munsif of Bhagulpore.

22. Upon the main point in the case, viz., whether the plaintiff was entitled to enhance the defendants' rent, we quite agree with the Judge of the lower Court. The defendants, as far as we can see, are still perfectly ready and willing, as they always have been, to fulfil the obligations of their sanads as between them and the plaintiff, and it is not because the plaintiff has thought fit to compound the ghatwali services with the Government, without the defendants' consent, that the plaintiff has any right to change the terms of the defendants' tenure.

23. We find nothing in the sanads themselves, nor any law or custom applicable to those sanads, which would justify the plaintiff's claim for enhanced rent.

24. The first sanad granted by Captain Browne expressly provided, that the ministerial officers and zemindars of Taluk Kukwara should uphold the mokurari and istemrari jama of the said pergannas, and receive the jama year by year, and should not demand a fraction more.

25. And even if the rent reserved by the sanads were of such a nature as would be liable to enhancement, we consider that the first clause of Section 51 of Reg. VIII of 1793 expressly prohibits any enhancement under the circumstances of this case. One of the plaintiff's contentions is, that by Section 56 of the Contract Act, the engagement between the plaintiff and the defendants has become void; but it is clear, that this section cannot apply, because the contract was not broken in any way by the ghatwals; and any change in the extent of their obligations under it was owing to circumstances over which they had no control.

26. It was also argued, that these ghatwals are neither independent nor dependent talukdars, but mere ordinary lease-holders, liable to have their rents enhanced under the Rent Law. They certainly are not independent talukdars, because the

zemindar had a beneficial interest in the tenure, and these tenures were never registered as independent taluks. Moreover, they are not of the class of dependent talukdars referred to in Section 16 of Beng. Act VIII of 1869, because they do not possess a permanent transferable interest in the land, but it by no means follows that their status is that of ordinary lease-holders. The High Court (in their decision of the 17th June 1865, in the former suit) considered " that the defendants held a perpetual hereditary tenure at a fixed jama in money and service, and that except for misconduct on their part they could not be evicted ". The Privy Council on appeal said, "that though it may be doubtful whether the words mokurari istemrari used in the sanad mean permanent during the life of the person to whom they are granted, or permanent as regards hereditary descent, yet their Lordships were of opinion that, coupling those words with the admitted usage for a long series of years, the tenures were hereditary".

27. The defendants are thus found to be holders of an old hereditary tenure which was established long before the Government took possession of the country; and we are of opinion that they do come under the denomination of dependent talukdars as defined in Reg. VIII of 1793, and further that they are protected by the first clause of Section 51 of that Regulation, which is very comprehensive, and includes all talukdars not included in Section 5.

28. It is argued that Section 51 does not protect the defendants' tenure from enhancement, because there has been an abatement from the defendants' jama. But we hold that there has been no such abatement. The jama was that part of the rent which was to be paid in money, and in that jama there has been no abatement. There certainly were other conditions besides the jama, which formed part of the consideration for the grant; but these were no part of the jama, and any variation in the number of men to be provided and maintained in accordance with those conditions, could not, even if it had been made with the defendants' consent, be construed into an abatement of jama which would give the plaintiff a right to enhance.

29. We think, therefore, that neither by the general law, nor by any custom of the district, nor by any terms of the defendants' tenure, nor by any previous abatement of the defendants' jama, has the plaintiff any right to enhance the defendants' rent. He is, however, entitled to a decree for the rent due for the last three years at the old rate.

30. The lower Court's order is, therefore, modified, and the appeal decreed only to this extent, with costs in proportion both in this Court and in the lower Court.

31. No. 251. - The same results will follow in this appeal. The only difference between the case of this defendant and the defendant in the other case is, that the first sanad of the property in question here is dated in 1794, which was after the date of the Permanent Settlement. But in the case of Rajah Leelanund Singh v. Munrunjun

Singh, heard in the Privy Council on the 13th of March 1873, where it was decided that the present plaintiff has no right to eject the present defendant from this very property, their Lordships expressed an opinion that although the sanad of 1794 was an original one, it appeared to be a re-grant of old ghatwali land.

32. In accordance with that opinion, we find in this case, that these lands had been held on ghatwali tenure before the Permanent Settlement, and that, for the reasons given in the other case, the judgment of the Court below should be affirmed, except so much of it as relates to the arrears due for the last three years at the old rate. For this amount the plaintiff is entitled to a decree with interest from the date of suit to the date of realisation.

33. The lower Court's order is, therefore, modified and the appeal decreed to this extent, with costs in proportion, both in this Court and in the lower Court.

McDonell, J.

34. Our judgment in this case will govern Regular Appeal No. 59. The same order will be made in that case.