

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Beerchunder Jobraj v. Ramcoomar Dhur and others, from the High Court of Judicature at Fort William in Bengal; delivered

21st February, 1870.

Present :

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THIS is an Appeal from a Decree of the High Court of Judicature of Calcutta, which affirmed a Decree of the Collector of Zillah Tipperah. The Plaintiff on the part of the Appellant, the Maharajah, was for the recovery of six years' arrears of rent, amounting to 77,854 rupees and a fraction; the Decree awarded him 12,000 rupees; treating a Petition and letter, to which reference will be presently made as a resettlement of the rent. The Plaintiff, which is dated the 20th December, 1861, was founded on a Decree in an enhancement suit, which is dated in 1848, and which, according to the terms of it, "ordered that the suit be decreed, and the annual rent of 10,185 rupees 10 annas the Defendants do pay, and the Defendants be responsible for the costs of the suits." Summary execution of this Decree, except as to costs, was refused, but as to costs it was granted; and under that execution for costs the Talook of the Defendants (who are now represented by the Respondents) was attached and lotted for sale. The Appellant then instituted a regular suit to reverse the order refusing execution as to rent; this suit was dismissed. The Appellant

appealed to the Sudder, and the case was remanded for trial. On re-trial the case was given against the Appellant; he again appealed to the Sudder, and that Court, with reference only to the construction of the Decree of 1848, ruled that the meaning of it was to give the Appellant an enhanced rent for 10,185 rupees 10 annas for 1838. The date of this last Decree was the 23rd of August, 1860. In the meantime, that is, before and up to 1856, a kroke sezawul was appointed by the Appellant for the purpose of collecting rents; then there followed the Petition and letter on which the Decree complained of was founded. Shortly afterwards the Appellant proceeded against the Talookdar for non-payment of rent according to the agreement contained in the Petition and letter on which order was passed for the sale of the Talook. The Talookdar appealed, stating that there was no mention in the agreement for payment by instalments, and the Order was reversed. At the close of the year the Appellant, instead of taking the 2,000 rupees which the Talookdar had lodged in Court as his first yearly payment of rent on the footing of the Petition and letter, took further proceedings for the sale of the Talook and obtained an Order accordingly; the Talookdar appealed, and the Court reversed that Order by an Order dated the 3rd of July, 1863, which, so far as it is material, is in these terms:—

“ On perusal of the whole of the papers of the case, it appears that this case has arisen from an attempt to give effect to a private arrangement made between the parties for the adjustment of the sum due to the Maharajah, that is, the decree-holder. By this arrangement 2,000 rupees were to be paid annually to the Rajah out of the proceeds of the debtor's talook, and if not paid, the talook was to be sold in execution. But at the same time, a remarkable portion of the arrangement was that the collections were to be made by the Rajah's own tuhsildar. If the onus of collections, and remitting 2,000 rupees a-year had been thrown solely on the talookdars, non-fulfilment by them of the terms accepted by them would have been rigidly enforced; but here the presumed default is with the decree-holder's gomastah (agent), and therefore it seems to be not just to visit the debtors with a responsibility which, it may be said, the Rajah took upon himself. It seems to me, therefore, to be the more proper course, under such circumstances, that when in any one year the payment falls short, the debtors should have notice of the deficiency, and should be required within a limited time to make it good; and if the instrumentality of the tuhsildar should be dispensed with, and the debtors would undertake to pay up annually the sum of 2,000

rupees, their failure to do so would render the talook liable to be sold. I set aside the Principal Sudder Ameen's order, who will be guided by these remarks. The costs of this Appeal will be borne by the parties respectively."

Pending these latter proceedings the Appellant had instituted the suit in which the Decrees from which he now appeals were made.

It was argued on the part of the Appellant: 1st, that there had been default on the part of the Respondent; 2ndly, that the effect of the Petition and letter was *res judicata*; 3rdly and principally, that the construction and effect of the Petition and letter was that the Defendant thereby agreed to pay 2,000 rupees annually, irrespective of, and over and above, the rent of 10,000 and odd rupees which it was said was the annual rent.

The facts stated are sufficient to show that there was no default on the part of the Talookdar. The Petition and letter were not taken into consideration or dealt with by the Court in any way antecedently to the time when the Appellant proceeded on the footing of them, and obtained the Decrees for sale of the talook, which were reversed; and though their effect was pleaded as one of the defences in the suit which resulted in the Decree of the 23rd of August, 1860, there was no adjudication in that suit upon that issue. Therefore it remains to consider that which formed the principal ground of argument; viz., the construction and effect of the Petition and letter.

The rent of the talook previously to the enhancement suit had been somewhat less than 500 rupees a-year. The original suit sought an enhancement to the amount of 4,000 rupees a-year. By a supplemental suit an enhancement was sought to the amount of 10,000 rupees and upwards. The rent of 10,000 rupees and upwards was never paid, or, unless the Petition and letter can be held to have that effect, agreed to be paid. The enhancement Decree was confined to the year 1838, and was unusual in form. The ordinary course of an Enhancement suit is, that the landlord gives notice of an increase of rent; to this the tenant may agree; if he does not agree a suit for enhancement is instituted; the amount of rent is fixed, and then the tenant has the option of continuing at the increased

rent, or going out of possession. In this case the Appellant put a kroke sezawull into possession, and while the kroke sezawull was in possession the following Petition was presented to the Maharajah :—

“Petition of Sree Ramcoomar Dhur, inhabitant of Mercotta, purgunnah Noornuggur. It is submitted that in Chucklah Roshunabad, appertaining to purgunnah Noornuggur, is a talook in my own and my brother Joycoomar Dhur and others' possession, called after the name of Nundocoomar Chowdhooree. After a Decree was obtained by a Suit being instituted on behalf of Sirkar (your Honour) for fixing rent, a kroke tuhsildar or sezawull has been appointed for collecting arrears of rent of the said talook, and the said talook has been lotted for sale for realizing the costs of the Suit. Incarnation of virtue! there is no other means of paying off my debt, for costs of the Suit, and for current and arrear rent, and the appointment of sezawul, for collection entails heavy expenditure for collection, and owing to this the amount liquidated is very small. There is no profit to Sirkar (your Honour) by incurring expenses in this way; whereas I suffer much in supporting myself with food and clothing, and my debts are not being paid off. It is my prayer, that, if the execution of the Decree be stayed, and if the tuhsildar acts in accordance with my views, then by defraying a small sum for collection expenses, I can cause the sum of 2,000 rupees to be annually paid to Sirkar (your Honour) on general account, and besides that I can thereby manage to support myself. Therefore, it is prayed that my petition being granted and the sale of the said talook being prevented for the present, a letter be sent to the tuhsildar, to the effect that the said tuhsildar, by collecting the rental with my aid and advice, do annually pay to Sirkar (your Honour) the sum of Company's rupees 2,000, on the joint account of costs of the said Suit, and current and arrear rental of the said talook; and from the amount surplus collection deducting collection charges according to list, at Company's rupees 21 per mensem, whatever balance will be left will be paid to me on receipt. If, anyhow, I cannot cause the said rupees 2,000, exclusive of collection expenses, to be annually paid to Sirkar (your Honour), then I will not be able to raise any objection to the said talook being put up for sale for the balance of my debt, deducting the amount paid. I, being present with the tuhsildar, will jointly collect the rental of the said talook, and will endeavour, by all means, without any objection, to make payments in accordance with the aforesaid settlement. Finis. Year 1263 of Tipperah, date 16th Bhadro.

“P.S. In regard to the condition which has been written of the annual payment of rupees 2,000, if in any year any amount less than the above sum be paid, then, according to such writing, all such sums paid in every year will go to the payment of my debt for current and arrears of rent, and no portion of it will be put down to the payment of the costs of the Decree.”

The indorsement on this Petition by the Appellant's Mooktear was in these terms :—

“It is known that, owing to the Petitioner having adversely put obstacles in the way of collections, the expenses in the Mofussil become very great, and owing to that collection, and payment is not made, and the Petitioner having filed a lengthy Petition in the Execution Suit, obstructs the sale. Under such circumstances, if, by bringing the Petitioner under subjection and preventing the sale, and by giving a letter to the Petitioner for assisting in making collections in the Mofussil, a greater sum than before, that is to say, the sum of rupees 2,000 is annually paid to Sirkar (your Honour), then, instead of loss, it is a profit to Sirkar. Rather heavy expenses were incurred before by employing numerous men for the purpose of collection; now, if the Petitioner can, by personal exertions, make more payment with less expenditure, and if, besides the said sum paid and collection charges, there is a surplus collection, then to pay that sum to the Petitioner for his support is no loss to Sirkar (your Honour). Therefore, it is ordered that a separate proceeding be written in this matter, and the execution of the Decree being stayed for the present, the above intention be made known, by chittee, to the Petitioner and the tuhsildar. Finis. Year 1263 of Tipperah, dated 16th Bhadro.”

And thereupon the following letter was written on the Appellant's behalf:—

“Letter addressed to Sree and Ramcoomar Dhur, inhabitant of Mircotta, purgunnah Noornuggur. This is the order, business as follows:—After a Decree was obtained by instituting a suit on behalf of Sirkar (his Honour), for fixing rent of the talook called Nundocoomur Chowdry, situate in the aforesaid purgunnah, and in the possession of yourself and your brother Joycoomar Dhur and others, a Khas Tuhsildar was appointed for the realization of arrears of rent of the said talook, and the said talook has been lotted for sale for the realization of the costs of the suit. On this you have petitioned that there is no other means of paying off your debt for costs of the suit and rental, and by collections being made by the sezawul great expense is incurred under the head of charges for collection; therefore a very small amount is paid in liquidation. There is no profit to Sirkar (his Honour) by incurring expenses in this way; whereas you are in difficulty in obtaining food and clothing, and your debt is not being cleared off. It is your prayer, that if the execution is stayed, and the tuhsildar acts in accordance with your views, then you can cause the sum of 2,000 rupees to be annually paid to Sirkar (his Honour), by managing with a small sum for collection charges, and besides that you can manage to support yourself from the surplus thereof. Therefore, having granted your petition, I am going to give a letter to the tuhsildar by preventing the sale of the said talook for the present. The said tuhsildar, by collecting rents with your aid and advice, will annually pay to Sirkar (his Honour) the sum of Company's rupees 2,000 on account of costs of the said suit and current and arrears of rent of the said talook; from the amount which will be collected over and above that sum, deducting charges for collection according to list at the rate of Company's rupees 21 per month, the balance that will be left will

be paid to you by receipt. If anyhow the said sum of rupee, 2,000 exclusive collection expenses is not annually paid to Sirkar (his Honour), then you will not be able to raise any objection to the said talook being put up for sale. You, being present with the tuhsildar, will make every exertion to collect the rental of the said talook with mutual assistance, and to see that payments are made according to the above-mentioned fixed arrangement. Finis. Year 1263 of Tipperah, dated 17th Bhadro.

“ Written by

“ SREE NUNDOKISSORE BISWAS.

“ P.S.—In regard to the condition which has been written of the annual payment of the sum of rupees 2,000, if in any year a lesser sum than the above is paid, then, according to this writing, all such sums in each year will go to the payment of your debt on account of current and arrear rental, and no portion of it being passed to the account of costs of the Decree, execution of the Decree will be issued for the realization of costs. Finis. 17th Bhadro, 1263 of Tipperah.

“ Written by

“ SREE NUNDOKISSORE BISWAS.”

The only evidence in support of the claim was the Enhancement Decree, there was no proof of payment of or of agreement to pay the 10,000 and odd rupees, or of any facts from which such agreement could be inferred; the Appellant had put his own Agent into the receipt of the rents; the footing on which the petition was presented and the answer returned to the Talookdar is plain from the endorsement of the Appellant's Mooktear: it was “ that 2,000 rupees a year could not be collected from the Talook ;” on the face of the petition and letter the 2,000 rupees is for “ current and arrear rent and costs,” with a proviso that in case of default the payment is to be attributed to the arrears of and current rent; the Appellant's Agent is to remain in the collection to collect with the Talookdar's assistance and to pay the surplus beyond the 2,000 rupees to the Talookdar: this excludes the supposition of the 2,000 being in addition to or exclusive of the 10,000 rupees rent, and is, in their Lordships' opinion, the true effect of the agreement as it is to be collected from the two written documents, regard being had to the position of the parties at their date. This view is confirmed by the proceedings which the Appellant himself took on the footing of the petition and letter, and the order of the 3rd of July, 1863. The agreement was an agreement for a resettlement of rent which would continue at least until a more formal and definite settlement

should be made. And it substituted the rent so fixed for that decreed in the enhancement suit. All that the Appellant was entitled to on his plaint was given him, and their Lordships will, therefore, humbly advise Her Majesty to dismiss this Appeal with costs.

