

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussumat Thukoorain Sookraj Kooer v. The Government of India and others, from the Court of the Financial Commissioner of Oude; delivered 3rd July, 1871.*

---

Present:—

SIR JAMES W. COLVILLE.

LORD JUSTICE JAMES.

LORD JUSTICE MELLISH.

---

SIR LAWRENCE PEEL.

THEIR Lordships do not desire to hear any reply in this case.

The Plaintiff, the Appellant, is the widow and heir of a deceased Oude nobleman, the representative of the cadet branch, as the Rajah of Bengha is the representative of the elder branch of a great Oude family. The Rajah was the Talookdar of a great Talook. The cadet branch had their separate ancestral estate, the Gowa estate, wholly distinct from and independent of the Talook of the elder branch. But many years ago, it was in the then state of things in Oude thought desirable that both estates should be, as to their relations with the Oude Government, united in one great Talookdaree, the head of the elder branch representing the whole, whether in submission or in resistance to the exactions of the Court of Lucknow; the younger branch continuing, however, in undisturbed and absolute possession as the proprietor of its own villages, and paying only its proper proportion of the jumma assessed on the whole. This was the state of things at the time of the annexation of Oude by the British power. While the British authorities were in course of making the settlement of their new acquisition, the husband of the Appellant was minded to apply for a distinct settlement with himself, there being no longer the motive, as

he thought, for covering himself with the name and protection of the Rajah. He apparently thought that under British law and British rule his estate would be as safe as the domain of the most powerful Talookdar.

The Rajah, however, wrote to dissuade him from this step in a letter in which, while desiring to retain the nominal Talookdaree of the whole, he acknowledges in the clearest terms the right of his relation, and pledges himself that the possession of the latter shall be respected and safe.

Before anything was done, the great outbreak in Oude took place. After it was subdued, the arrangements for a settlement were resumed. In the meantime the Plaintiff's husband had died; the Rajah hearing that the widow, the Plaintiff, was of the same mind as her husband, desirous of placing herself immediately under the British Sircar, wrote her a letter similar to the one he had formerly addressed to her husband.

The summary or provisional settlement was made with the Rajah; but before the Rajah had obtained his regular settlement, and the Sunnud which would have been his formal grant, he incurred the grave displeasure of the authorities. Some arms being found concealed by him, a decree went forth confiscating half his estate. The Rajah concealed from the Government official the real ownership of the Plaintiff's villages, and contrived that they should be taken to satisfy the decree of confiscation. The Plaintiff naturally remonstrated and petitioned, but in vain; she petitioned again, and again her petition like the first was unheeded. At length, however, she succeeded in obtaining a hearing. She was told to bring, and did bring, her suit for the restitution of her villages. The case was investigated with a care which cannot be too highly praised, and the Assistant Commissioner acting as Judge pronounced in the lady's favour, that she was entitled to have the villages settled with her as a subordinate tenure to the Talook. From this decision, an Appeal was presented to the Deputy Commissioner, who, thinking that there were some technical deficiencies in respect of some of the details, desired a still further and fuller investigation. The result was, that the Assistant Commissioner re-stated his former conclusion

and Judgment, but with a modification that the settlement was to be made with her directly, and not as a sub-proprietor; and the Deputy Commissioner, who had evidently taken great pains with the case, affirmed that decision.

The matter should have rested there. It appears, however, that the Plaintiff's villages had been included in a grant to an Oude loyalist, in reward for his loyal services to the State, and it was thought that it would be very embarrassing if the grantee were to be obliged to give up the subject of his grant to the rightful owner; and, accordingly, a further Appeal was made to the Chief Commissioner, who reversed the decrees of the subordinate officers, and the poor widow was thereby left stripped of her whole property. From this decree the present Appeal is brought.

It has been attempted to be justified on the legislation which existed in Oude on the effect of the new settlement, and on the well-known letters of the Governor General in Council, addressed to the land-owners of Oude; the one announcing the confiscation of existing tenures, and making a *tabula rasa*, the other the letter of grace and restoration. It is contended that the effect of the settlement with the Rajah under the second letter was to make him the absolute owner of the whole estate, including what had been the Plaintiff's village.

Their Lordships are satisfied that that legislation and that letter have no such effect. The object and meaning of that letter are well known and very clear. Soon after the annexation, it was suggested that the true and normal proprietorship of land in Oude was that ownership by village communities which had been discovered or established in the North-West Provinces, and that the alleged Talookdaree and Zemindaree rights were simply a recent usurpation due to the violence and fraud which had marked the last years of the Oude monarchy; that at all events many of the individual Talookdars and Zemindars had by violence and fraud or the corruption of the Government possessed themselves of other people's estates. The old question, moreover, was further mooted whether a Zemindar was really an hereditary landlord or only a Government functionary.

The Talookdars and Zemindars were threatened with an universal *quo warranto*.

It was to announce the abandonment of this policy and to quiet men's titles and possessions that the letter was written. It said, in substance, we acknowledge the Talookdaree tenure—we acknowledge that that tenure does confer an hereditary lordship descendible in fee simple, and we will not allow the existing titles to be disturbed by old dormant claims. At the same time we preserve, in like manner, all the rights of your subordinate Zemindars and Ryots, whose rights and the rights of persons entitled to Seer and Nanka you shall respect as we respect yours. For that purpose and to that extent an absolute title was given to the person who was settled with as Talookdar, with the fullest powers of alienation, and consequently of binding his right by contract, so that effect may be given to the rights of persons not claiming adversely to the registered title, but claiming, by agreement with him an old estate, consistently with that title. In English language, it gave the registered Talookdar the absolute legal title as against the State and against adverse claimants to the Talookdaree; but it did not relieve the Talookdar from any equitable rights to which he might have subjected himself with a view to the completion of the settlement by his own valid agreement. In this case the Plaintiff was the acknowledged *cestui que* trust of the registered Talookdar, who had bound himself expressly in writing that he would respect her rights if she permitted him to be alone so registered.

It would be a scandal to any legislation if it arbitrarily and without any assignable reason swept away such rights; and in this very painful case it is at all events agreeable to their Lordships to find that no such scandal attaches to the laws or regulations or Government Acts in force in Oude; and that the cruel wrong of which this lady has been the victim is due to the misapprehension of the law by the Commissioner.

It is almost superfluous to observe that the lady being clearly, as she was, the equitable owner, the decree of confiscation against her trustee could on no principle of law, equity, or good conscience, be made to affect her, and certainly not to justify a sentence which in effect made her the sufferer for his offence.

Their Lordships are therefore of opinion and will

recommend that the Judgment of the Financial Commissioner be reversed, and that the Judgment of the Deputy Commissioner affirming the decision of the Assistant Commissioner be affirmed.

The Appellant will have her costs of this Appeal, and also the costs of the proceedings in both the Courts below.

Their Lordships cannot but express a hope that by an act of prompt justice and a liberal estimate of what is due to this lady, the Government will relieve her from further litigation. She had two decisions in her favour carefully and correctly adjudged, which, as they were consistent with the plainest principles of justice, it should have been the effort of an Appellate Tribunal, unless the law controlled it, to maintain.

