

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussummat Bilasmoni Dasi and others v. Rajah Sheo Pershad Singh, from the High Court of Judicature at Fort William, in Bengal, delivered 21st January 1882.

Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

This is an appeal from a decree of the High Court at Calcutta, whereby the decree of the Subordinate Judge of Bhaugulpore was reversed, and the Respondent, the Plaintiff in the suit, was awarded possession of Mouzah Bhalwana with mesne profits thereof from the 22nd of August 1876, together with interest and costs.

Mouzah Bhalwana is situate within and forms part of Pergunnah Gedhour, the Respondent's ancestral zemindari. On the 21st of February 1798 a potta was granted by the Government to Rajah Gopal Singh and Rajah Bharat Singh, therein described as zemindars of Pergunnah Gedhour, in which it is stated that the annual consolidated jumma of the said pergunnah, inclusive of the ganjats, markets, bazars, all sayers and motahariffas, and also of rent-free lands held under sunnuds and without sunnuds, had, together with the fee of kanoongoes, been fixed and assessed permanently at sicca Rs. 15,001 from 1205 Fasli. In the register of Pergunnah Gedhour for the

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year 1205 Fasli, the gross proceeds of Mouzah Bhalwana are entered as Rs. 6. 3. 10, and the sudder jumma as Rs. 4. 1. 5, and it is not disputed that at that time it was almost wholly in jungle and unprofitable. It appears from the thakbust map which was prepared in 1846 that the entire area of the mouzah is 7,500 bighas, of which 3,000 were then under cultivation.

On the 28th Kartick 1206 Fasli, corresponding with the 21st of November 1798, Rajah Gopal Singh granted to Roghunath Singh, the father of the Appellant, Ram Lall Singh, a patta in the terms following :—

“ I have acquainted myself with the contents of this.

“ The stipulation of potta granted, on receipt of kubulyut, to Roghunath Singh, mokurruri ijardar of Mouzah Bhalwana, appertaining to Pergunnah Gedhour, in the Sircar and province of Behar, on behalf of Rajah Gopal Singh, is to the effect and purport following :—

“ Whereas the mokurruri ijara potta of the said mouzah is granted from 1206 F. S., at a consolidated jumma specified below, inclusive of *malikana*, subject to no objection, or excuses on the score of calamities of weather, together with fisheries and fruit trees; with the exception of *abhari* and toddy *gunjes*, bazars, *kauts*, all sayar, *mothurfa* (taxes levied on professions), lakheraj lands, covered by sunnuds and not covered by sunnuds, *rosam* of *rosumdars*, daily allowances of *rozanadars*, and *chandas* of *chandadars*; the above-named person should, with ease of mind, make cultivation and improvement, pay the above amount year after year, crop season after crop season, instalment after instalment, as per kistbundi, in full, into the treasury of this Sircar (Rajah), raise no objection whatever on the score of drought, inundation, hail storms, deaths and desertions, but himself bear the losses arising therefrom. In addition to the above jumma, whatever profits may be derived from salutary improvement in cultivation by him shall belong to the mokurruridar, the Sircar having nothing to do with the same. In case of non-payment of instalments agreeably to the kistbundi, month after month, the mutsuddis of the Sircar shall have authority to realize the arrears by sale of the goods and chattels of the above named, to send sazawal or attaching officer to the said village, and make and receive the collections. The expenses of entertaining sazawal, tehsildar, and others shall be borne by the above named. He should keep the tenants of the said village satisfied and contented by his good treatment, and make collections from the tenants according to order of Government, agreeably to pottas

of nukdi and *bhowli* lands to be granted to them, and never demand any sum in excess. He should not in any way commit oppression upon tenants, so that they may be able to stand to their engagements, and he should not oust them until the determination of their leases. He should grant receipts to the tenants upon payment of rent, instalment after instalment. He should not give a single span of land in the said village without asking permission, and without consent of the huzoor, nor resume any previously granted without the orders of the huzoor. Should the said lakheraj lands be hereafter resumed under orders of the huzoor, and the huzoor be pleased to make a settlement of the rent thereof with the ticca mokurruridars, then the above named shall pay the rent thereof according to the settlement to be made by the huzoor. He should not suffer a single span of the land on the limits and boundaries to pass and to be included in the boundary of others. Should it so happen, he should of his own accord inform the Sircar of it, have the matter settled with the aid of the Sircar, and maintain and preserve the boundaries and limits of the said mouzah. He should not allow thieves and padders to settle within the estate leased to him. God forbid! should anybody's property be robbed and plundered, he should trace out the thieves and robbers with the property, and produce them before the thanadar or the district authority. Should the thanadar apprehend the robbers and apply to him for aid, he shall forthwith afford assistance to him. He should bring without fail to the notice of the huzoor whatever property may be found belonging to dead persons, or that is deserted or lying buried under ground, without heirs to claim it. He should act in strict conformity with the orders already passed or to be hereafter passed by the huzoor for regulating settlement of rent with tenants and malguzars of all classes, and should never raise any excuse or objection whatsoever. He should not demur or put forward any excuse in this, and should act up to the above.

"Rent for four years to be paid without any objection or excuse.

Rs. 24.		Rs.
For 1206 Fusli	- -	- 6
" 1207 "	- -	- 6
" 1208 "	- -	- 6
" 1209 "	- -	- 6
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"Uniform rent from 1210 Fusli to be paid year after year, crop season after crop season, without any objection or excuse, sicca Rs. 25 current in the province.

"One half of which is Rs. 12. 8.

"Dated 28th Kartick 1206 Fusli."

Roghunath Singh executed a corresponding kubalyut bearing the same date.

The other Appellants are the representatives of the Defendants in the suit who derived their title from Roghunath Singh and denied the Plaintiff's title; and no question is raised in this appeal as to their derivative title, nor as to Rajah Bharat Singh not having joined in the potta.

On the death of Rajah Gopal Singh, in or about October 1812, his son Rajah Jeswant Singh declined to receive the rent of Mouzah Bhalwana, alleging that his father had taken possession thereof at the end of the year 1219 Fasli under Regulation VII. of 1799, and that a fresh potta had been granted to Roghunath Singh for 11 years from 1220 Fasli, at the yearly rent of Rs. 51. Thereupon summary proceedings were taken by Roghunath Singh to compel the Rajah to receive his rent at the old rate, the result of which was that Jeswant Singh was referred to a regular suit if he desired to substantiate his allegation.

On the 13th of February 1821, Rajah Nawab Singh, the younger brother and successor of Jeswant Singh, who had died in the previous year, brought a suit in the Court of the Registrar of Monghyr against Roghunath Singh and his surety to recover the rents then due for Mouzah Bhalwana under the alleged lease for 11 years. In his answer, Roghunath Singh asserted that he held under the potta of 1798, and denied the 11 years lease. And the District Judge, by a decree, made on the 9th of January 1826, on appeal from the decision of the Registrar, directed that Roghunath Singh should remain in possession in accordance with the potta of 1798, and pay the rent therein reserved.

In 1869 the Respondent succeeded to the zemindary, and on the 24th of July 1875 Roghunath Singh died. This suit was brought on the 22nd of August 1876, and the only question

in the appeal before their Lordship's is, whether the potta is a lease for life or in perpetuity.

Their Lordships were referred by the learned Counsel for the Respondent to several cases in the late Sudder Court, in which it was ruled that a lease at a fixed rent without more did not import perpetuity, and that to create a perpetual lease the addition of the words "from generation to generation," or other words importing perpetuity, were necessary.

On the other hand, it was held by the High Court at Calcutta, in a case of ghatwallee tenure, where the words "mokurruri istemrari" were used, that the holding was perpetual (3 W.R. 84 and 5 W.R. 101). But this Committee, on an appeal from that decision, held that these words might mean either permanent during the life of the person to whom the grant was made, or permanent as regards hereditary descent (13 Bengal Law Reports, 133).

In the present case the word "istemrari" is not used. The instrument is called "the mokurruri ijara potta," and their Lordships, in the case of the Bengal Government *v.* Nawab Jafir Hossein Khan (5 Moore, I. A., 498), stated their opinion to be that though "mokurruri" might import perpetuity, that was not the necessary meaning of the word.

The question then is, whether the intention of the parties is shown by the other terms of the instrument, the circumstances under which it was made, or the subsequent conduct of the parties, with sufficient certainty to enable the Courts in the absence of words importing perpetuity to pronounce that the grant was perpetual? The Subordinate Judge held that the potta was intended to be hereditary, because it appeared that the mouzah was covered with jungle when the mokurruri was granted, and that it had since been brought under cultivation

through the exertions and labour of the original mokurruridar and his representatives, and therefore it might, "consistently with the principles of equity, be presumed that the lessor and lessee must have thought at the time that the lease in question should be granted in perpetuity, because it is void of reason to suppose that the lessee should have taken the lease for his life, and brought it under cultivation at heavy expense and through great exertion." As to the subsequent conduct of the parties, he said that if the representatives of Gopal Singh had considered the lease as one for life, they would have never adopted such steps as were incompatible with their position and dignity to cancel such life interest as was thought by themselves to last only for a few days, and Roghunath Singh himself would not have described the mokurruri as a permanent one." Their Lordships are unable to see the force of this observation; but it appears from it that the Subordinate Judge did not fail to consider everything that he thought might show the intention of the parties. It is therefore to be remarked that he did not refer to any of the provisions in the potta or of the words used to express them. Apparently he thought they did not show any intention that the potta was to be perpetual.

The High Court agreed with the Subordinate Judge that the lease was granted with a view to the improvement of the mouzah, but thought that this did not show it was intended to be hereditary, and referred to some of the provisions which they said seemed necessarily to imply that a substantial interest in the property remained in the Rajah, and were quite inconsistent with his having permanently parted with that interest. Their Lordships do not concur in all the views taken by the High Court of these provisions, but on the other hand they do not find in them

sufficient to show an intention that the lease should be permanent. They are consistent with either intention.

A case in the High Court at Calcutta, printed in the Record (page 113) was referred to by the learned Counsel for the Appellants, in which Mr. Justice Mitter said,—“We do not find it usual that tenants taking upon themselves the trouble and outlay for clearing and reclaiming jungle lands are contented with anything short of hereditary interest in them.” But the judgments of the learned Judge and the Lower Court are expressly stated to be founded upon the fair construction of the terms of the grants, and the surrounding circumstances attendant on the execution of them, as well as the conduct of the Plaintiff in connection with that and similar other tenures in his zemindari. The learned Judge only refers to what is usual as a circumstance which supports his view.

Their Lordships would repeat what was said by this Committee in *Baboo Dhunput Singh v. Gooman Singh*, 11 Moore, I. A., 165, where it was proved that the hereditary character of the potta had been recognized by the successive zemindars. “If, on the one hand, it is improbable that the grantee should undertake such an obligation without some fixity of tenure and some assured and permanent interest in the lands, it is, on the other hand, equally improbable that the grantor should part for ever with all his interest in the improveable value of the lands.”

As the Appellant is unable to point to any words in the potta importing perpetuity, it appears to their Lordships, upon a consideration of the object of the potta and its language and provisions, as well as the surrounding circumstances, that the intention to grant a perpetual

lease does not sufficiently appear, and they are therefore unable to say that the decision of the High Court is not the right one. They will, therefore, humbly advise Her Majesty to dismiss the appeal, and the costs thereof will be paid by the Appellants.
