

*Judgment of the Lords of the Judicial Committee
of the Privy Council, on the Appeal of
Dakshina Mohun Roy v. Saroda Mohun Roy
and another, from the High Court of Judicature
at Fort William in Bengal, delivered 15th
July 1893.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The question in this case is a very short one, and it is purely a question of law.

In March 1882 the Appellant obtained a Decree from the High Court establishing his title as against the Respondents to a revenue paying estate. In 1885 the Appellant obtained possession of the estate in execution of the Decree.

The Decree of the High Court was reversed by the judgment of the Privy Council in April 1886, and in the latter part of the same year the Respondents were re-placed in possession of the estate in dispute.

In the interval, while the Appellant was in possession, the Respondents actively interfered with the tenants upon the estate, and in consequence of their obstruction the Appellant received only a trifling sum on account of rents and profits. During the same period the Appellant was called upon to pay, and did in

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fact pay, large sums for Government Revenue and other charges, assessed upon the estate, and recoverable in the same manner as Government Revenue.

The Subordinate Judge held that as the estate was preserved for the benefit of the Respondents by the payments which the Appellant had made he was entitled to recover from the Respondents the difference between the amount so paid and the net amount of the rents and profits which he actually received, and for which alone owing to the conduct of the Respondents he was held accountable. That decision was reversed on Appeal. The learned Judges of the High Court held that the Appellant though in possession under the Decree of the Court was in "wrongful possession" and they laid it down as a proposition of law of universal application that "a person who is in wrongful possession is not entitled to recover sums paid on account of outgoings, although he may be able to use them for the purpose of reducing the mesne profits."

Even if the rule stated by the learned Judges admitted of no exception—a proposition which it would be difficult to maintain, having regard to the recent case of *The Peruvian Guano Company v. Dreyfus Brothers* in the House of Lords (1892 A.C. 166)—it seems to be a somewhat strong thing to hold that the Appellant when he paid the Government Revenue was in wrongful possession of the estate. He was in rightful possession at the time. He was in possession under the authority of the Highest Court in India. Not only was he in rightful possession and acting in good faith, but the Respondents were acting wrongfully in trying to deprive him of the fruits of his Decree otherwise than by due process of law.

The Government Revenue represents that portion of the produce of the land which from

time immemorial has been considered in eastern countries to belong as of right to the sovereign power in the State. In India payment in kind has long since been commuted for a money payment, which in some cases is fixed permanently and in others is liable to revision by periodical settlements. Sometimes the Government Revenue is spoken of as a quit-rent, sometimes as a land tax. But however it may be described, and however it may have been assessed, it is the first and paramount charge upon the land, and if default is made in payment the estate is sold in a summary way. The Government gives a clear title to the purchaser, and the land is lost for ever to the defaulting proprietor.

Now it seems to their Lordships to be common justice that when a proprietor in good faith pending litigation makes the necessary payments for the preservation of the estate in dispute, and the estate is afterwards adjudged to his opponent, he should be re-couped what he has so paid by the person who ultimately benefits by the payment, if he has failed through no fault of his own to reimburse himself out of the rents. Of course he is bound to account for mesne profits, for all rents and profits which he has received, or which without wilful default he might have received. But if owing to circumstances beyond his control, and still more if in consequence of some wrongful conduct on the part of his opponent, he has received less than what he has had to pay for the preservation of the estate, it would seem to be in accordance with justice equity and good conscience—there being no specific rule to the contrary—that he should recover the difference on the final adjustment of accounts. The claim is in the nature of salvage; and it is to be observed that the law relating to sales for arrears of Government revenue recognizes an equity to re-payment in the case of a person

who not being proprietor pays the Government revenue in good faith to protect a claim which afterwards turns out to be unfounded.

Their Lordships will therefore humbly advise Her Majesty that the Appeal ought to be allowed and the Decree of the High Court reversed and the Decree of the Subordinate Judge restored. The Respondents will pay the costs of the Appeal and the costs in the High Court.
