

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the two consolidated
Appeals of Imambandi Begum v. Kamleswari
Pershad, from the High Court of Judicature
at Fort William in Bengal; delivered 9th
June 1894.*

Present :

LORD HOBHOUSE.

LORD ASHBOURNE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

By a lease dated the 1st of March 1866 made by Tasudduck Hossein Khan, one of the two brothers of Mussummat Fatima Begum, *alias* Nawab Bahu Begum, deceased, who it is stated in the lease died leaving a share of 6 annas 12 dams of another share of 15 annas 6 dams of certain mouzahs therein named, and a share of 4 annas out of another share of 15 annas 6 dams in other mouzahs also named, one half of which devolved on Tasudduck Hossein, and the other half on his brother, Mirza Mahomed Taki Khan, Tasudduck Hossein granted in mokurruri (perpetual) lease his half-share, viz., 3 annas 6 dams of the shares of Bahu Begum in the mouzahs, with the exception of those which are said to have been sold during her life-time in execution of a decree, on receipt of Rs. 4,630 as nuzrana (premium), and at a fixed annual rent of Rs. 2,912. 11. 9 (out of which Rs. 2,828. 11. 9 were to be paid as Government revenue of the

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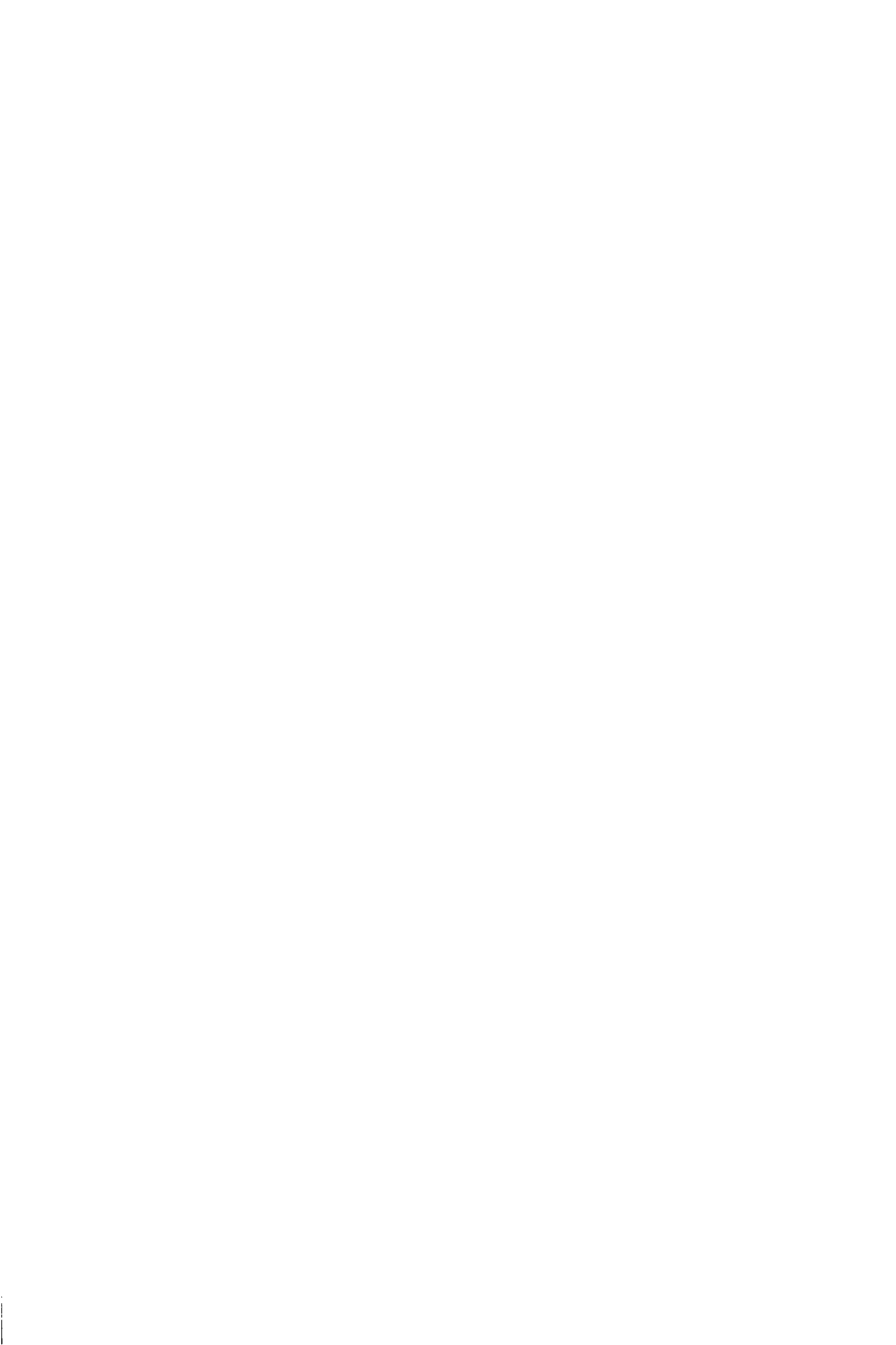


was absolutely dispossessed and of the other part that Ram Pershad had denied her mokurruri right. The facts of the case were very complicated, the question being what were the shares of Bahu Begum and the other Defendants in the mouzahs. Judgment was given by the Subordinate Judge on the 15th August 1880. One of the issues settled was whether the grantors of the mokurruris to the Plaintiff or the Plaintiff herself held possession of the disputed shares within twelve years before the institution of the suit or had been out of possession for upwards of twelve years. The finding of the Subordinate Judge upon this issue was against the Plaintiff, and he dismissed the suit. Imambandi appealed to the High Court. One of the Judges of that Court found that within twelve years next before the institution of the suit the Plaintiff herself and her lessors were in possession of the disputed property. The other Judge said that Bahu Begum and after her her brothers were certainly in possession as late as April 1866. The first lease is dated the 1st March 1866 and the second lease the 6th April 1866. The suit was commenced on the 28th February 1878, just within the twelve years allowed by the law of limitation. Their Lordships think that it must be taken as a fact that Imambandi did not enter into possession under the mokurruris. The High Court found that the share of Taki and Tasudduck Hossein which they derived from Bahu Begum was at best one quarter of her husband's estate of 6 annas 12 dams, from which 1 anna sold by Bahu Begum should be deducted, leaving 13 dams in respect of some of the villages; that the share was further reduced in respect of some villages by a decree for 7 dams in favour of another person, and there remained a share of $11\frac{1}{2}$ dams in those



had been decreed possession, her claim to mesne profits for a longer period being barred by the law of limitation. Kamleswari Pershad in his written statement claimed to set off against the Plaintiff's claim the whole rent reserved by the mokurruri leases for the three years, his claim to rent beyond that period being also barred. And on the 30th July 1888 he brought a suit against Imambandi in which he claimed payment of the full amount of the rent so reserved. Imambandi by her written statement offered to pay such an amount of the rent reserved as was proportionate to the share of which she had obtained possession. The suits were heard together and on the 20th May 1889 the Additional Subordinate Judge gave judgment in them. Upon the issue as to set off he found that Imambandi was entitled to an apportionment of rent, the annual amount of which he fixed at Rs. 1,227. 12. 2 $\frac{1}{3}$, and deducting that amount for three years with interest from the mesne profits allowed, he gave a decree in favour of Imambandi for Rs. 10,126. 7 with interest. In the suit by the Respondent he awarded an annual rent of Rs. 1,243. 1. 10. The difference between that and the amount fixed in the other suit is not explained.

Kamleswari Pershad appealed in both suits to the High Court which gave judgment on the 9th June 1891. On all the points raised except the question of apportionment the two Judges agreed with the Lower Court. On that point they differed, the senior Judge being in favour of apportionment and the junior against it. The matter was accordingly referred to the Chief Justice to be decided according to Section 575 of the Civil Procedure Code. The Chief Justice agreed with the junior Judge. Imambandi's suit was dismissed with costs, and in the suit of Kamleswari Pershad it was declared that Imambandi should pay the full sum of



“ fourth share in the disputed properties; but
“ that assertion is not supported by any evidence.
“ On the other hand, we find that Bahu Begum,
“ the wife of Abdur Rahman, was considered in
“ documents the sole owner of the properties;
“ and after the death of Bahu Begum, her two
“ brothers obtained two certificates . . . for
“ collecting her debts under Act XXVII. of
“ 1860. . . . Therefore it is probable that the
“ plaintiff was under a mistake of fact regarding
“ the right of Bahu Begum.” This is in the
part of the judgment upon the issue whether the
Defendant was entitled to any and what set-off.
Their Lordships do not regard the question of
the lessors’ knowledge as being put in issue by the
question of the amount of the set-off. If it was,
there is a finding upon it which stands affirmed
by the High Court. But they think that, no
issue upon that question having been tried by
the Subordinate Judge, it ought not to be allowed
to be raised in this appeal. In the grounds of
appeal to the High Court in the Respondent’s
suit it is said that the Court below ought to
have held that the mokurruri leases were of
a speculative character, and that Imambandi
was fully aware at the time of the execution
thereof that her lessors’ title was under litigation.
It might possibly be an answer to the claim for
apportionment of the rents that the leases were
taken as a speculation, and that Imambandi in-
tended to take the risk of the result of the litiga-
tion, but such a case would require to be very
clearly proved, and upon the evidence before the
Subordinate Judge it would have been plainly
wrong to have found that the leases were specu-
lative. Their Lordships are of opinion that the
rent was rightly apportioned by his decree, and
that the appeals to the High Court ought to have
been dismissed. They will humbly advise Her

