

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Loknath
v. Bissessarnath, from the Court of the Judicial
Commissioner, Central Provinces ; delivered
8th July 1899.*

Present at the Hearing :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

SIR EDWARD FRY.

[*Delivered by Lord Hobhouse.*]

The parties to this Appeal are members of a joint Hindu family, and the dispute relates to the enjoyment of the family property. The Plaintiff below, now Respondent, is the head of the family and the proprietor of the Talook Tarenga. The Defendant, now Appellant, belongs to a junior line. He claims enjoyment of 11 villages forming part of the Talook. His right to the net profits of the villages has been maintained by the decree appealed from, but subject to payments of Government Jama which he contends that the Talookdar ought to bear.

It is not shown at what date this portion of the Central Provinces became British territory, nor when regular Courts were established with jurisdiction for Revenue or for Civil purposes. Counsel have informed their Lordships that the earliest laws they have found in these matters are those passed for Civil suits in 1865 and for Revenue in 1881 ; whereas some of the judicial

proceedings under consideration are prior to 1865. But it is clear that the officers placed in charge of the country taken over from the Mahrattas exercised authority to settle disputes in some legal modes which throughout this litigation have, doubtless rightly, been taken as valid and as governing the rights of the disputants. The controversy has been and is as to the construction and effect of the official proceedings.

In the year 1862 Badrinath the father of the Plaintiff was owner of the Talook, and the Defendant Loknath, his first cousin, claimed a moiety of it. Judgment was given by Major Dennys the Deputy Commissioner of Raipur on the 16th September 1862. He treated the estate as subject to the Hindoo common law, each branch being equally interested in its profits, and liable for its debts. He decreed that Badrinath should pay to Loknath half profits from the usufruct; adding "at the time of the regular settlement it will be competent for the Plaintiff to sue for a division of the estate" (Rec. p. 106). It appears that this decree was upheld on appeal by the Commissioner, whose decree, dated 16th October 1862, is not in the Record. (*See* p. 111.)

Loknath sought execution of his decree in the Court of an Assistant Commissioner, Bakhtawar Singh, and in the course of those proceedings the parties effected a compromise through the medium of arbitrators. That compromise was reduced to writing, signed by the parties and by the arbitrators on the 29th October 1864, and on the same day embodied in a decree of the Court. There are three versions of it in the Record. One (p. 22) is called a copy; of what is not explained. One (p. 106), is an official translation. One (p. 108) is contained in recitals to the decree. Their Lordships

agree with the first Court (the Civil Judge of Bilaspur) in holding (Rec. p. 138) that the real foundation of the Defendant's rights is this decree. It adds nothing to its recital of the award beyond stating the approval of the Judge and ordering (p. 109) "That the award filed " by the arbitrators and consented to by the " parties be filed with the Record. The parties " should act up to it."

It does not appear that any of the three versions differ from the others in any matter now under dispute. But the verbal differences are numerous, and as the decree owing to mutilations and some imperfection in transcription requires supplement from the award, their Lordships take the document in p. 106, which appears to be a translation of the award actually filed with the Record. It is as follows:—

"Compromise arrived at between Badrinath and Loknath
" on arbitration in the year 1864.

"We are Badrinath Tahuddar Defendant, and Loknath
" Plaintiff, residents of Tarenga District, Bilaspur.

"Whereas there existed a dispute between us on account of
" partition of villages in the Tahuddari of Tarenga Talluka
" and a decree being passed execution proceedings were
" instituted. Venkat Rao, Jawahir Singb Babu, Ghasi Sao
" and Viswanath Sakharam were appointed by us as arbitrators
" to settle the private dispute." The arbitrators gave us
" advice, made accounts of debts and villages to our satisfaction,
" and effected partition, having settled the matter thus:—The
" villages Amakoni and Tikari, rental Rs. 174, Godhi,
" Datrengi, Madhuban, Lamti and Datrenga, rental Rs. 275,
" Achanakpur, rental Rs. 7, Kesla with hamlet of Kuar Diwan
" rental Rs. 8, Buchipar rental Rs. 30, and Turma rental
" Rs. 12, in all eleven villages rental Rs. 506.8 out of the
" whole Tahud Ilaka are awarded to the Plaintiff Loknath.
" The Plaintiff is to possess and enjoy them. The Defendant
" has no power over these villages. The Plaintiff is at liberty
" to possess occupy and manage them just as he pleases.
" But the Defendant is to pay out of his own pocket the
" Government Revenue in respect of these villages. The
" Plaintiff has no concern with the payment of the Revenue
" and will not have to pay it. The Defendant shall have
" power over the rest of the villages n the Tahud. The
" Plaintiff shall have no power over them. Each is to
" held possession of his share. The Defendant shall be

“ responsible for the old and the present debts. He may pay
 “ it or not. As regards house furniture each is to have what
 “ he has at present. But the Defendant is to divide equally
 “ (with the Plaintiff) the buffaloes in his possession. The
 “ Defendant is to pay the Plaintiff Rs. 494 on account of
 “ profits for the years 1272 and 1273 (Fuslee). Thereafter
 “ from the year 1274 (Fuslee) the Defendant and his heirs
 “ shall have no claim except to his villages and *vice versa*.
 “ The Plaintiff and the Defendant are to enjoy waters, forests,
 “ lands, ponds, etc. lying in their respective shares. The
 “ Defendant shall be responsible to pay (Revenue) to Govern-
 “ ment. Plaintiff shall have no concern. On settlement
 “ being finally effected the Defendant shall be responsible for
 “ payment of the Revenue assessed. We the parties accept
 “ this decision of the arbitrators. We shall act up to the
 “ conditions above laid down.”

Shortly afterwards Loknath became dis-
 satisfied and appealed to Mr. Chisholm the
 Deputy Commissioner, who gave judgment on
 15th December 1864 (Rec. p. 23). He describes
 Loknath's proceeding as an Appeal to set aside
 the agreement, and to have a fresh inquiry into
 the share of profits to which he is equitably
 entitled. His decision is—

“ I see no reason for cancelling the agreement mutually
 “ entered into by the parties because at present no indisputable
 “ data exist on which a more satisfactory finding could be
 “ based. It may be true that special facts have been concealed
 “ by Defendant, and that the real rental of villages has not in
 “ all cases been stated, but if a fresh inquiry was ordered
 “ similar pleas might be brought forward. The best arrange-
 “ ment seems to me to uphold the agreement and to allow the
 “ parties the option at the regular settlement to claim a fresh
 “ adjudication based on the full information obtained from the
 “ detailed settlement proceedings.”

Accordingly he dismissed the Appeal.

The terms of the settlement came to be
 decided by the same Mr. Chisholm who was then
 settlement officer. Loknath renewed his claim
 to a half share of the Talook. Badrinath offered
 to allow to Loknath for the period of the new
 settlement the sum of Rs. 1,196 for maintenance
 in lieu of the 11 villages (Rec. p. 109). Mr. Chis-
 holm's decision was given on 31st October 1867.
 There are two versions of it in the Record; their
 Lordships follow the official translation in p. 110.

After giving an opinion that a Talookdari estate is not divisible according to the ordinary rule of heirship, he refers to the litigation of 1862 and 1864 up to the date of the compromise. He says the villages then came to Loknath as "mukasa," a word which according to Wilson's glossary imports a holding either rent free, or by the State of its own State property. He continues—

"After the filing of this agreement the execution proceedings closed on the 29th October 1864. But after the decision Loknath objected and being dissatisfied with the agreement, appealed to the Commissioner. The appeal was dismissed by that Court on 15th December 1864, and the parties held possession up to date under the terms of the agreement."

He goes on to show how Loknath has profited by the increased value of the land while Badrinath has borne the increased jama. He concludes thus:—

"In reality by virtue of and after the agreement he has not been a loser but a gainer to a great extent. Yet he claims a half share. Until the previous agreement is cancelled this claim of Loknath is in my opinion altogether groundless. Because what he gets according to his agreement is quite enough for his maintenance. Besides that I am not in favour of shares being apportioned in a tallukadari. As regards the previous orders of the Settlement Department about this dispute I made a reference to the Settlement Commissioner in order to have the matter of proprietorship cleared up, and in reply thereto a fresh decision was permitted. It is therefore desirable to decide the matter in accordance with previous possession and custom. That is to say all the tallukadari rights should remain with the tallukadar, and arrangements for maintenance of his brothers &c. may be made separately.

"It is therefore ordered that the entire tallukadari right of talluka Tarenga be awarded to the present holder Badrinath Tahuddar and clear provisions for the maintenance of brothers &c. be laid down in the administration paper of Tarenga. Loknath will continue to hold the villages that are in his possession without payment of revenue."

This is the decision on the controversy which in 1864 Mr. Chisholm postponed in order to obtain the fuller light of the settlement enquiry. In 1864 he intimates that Loknath, who was the party seeking to disturb the compromise, might succeed if he showed unfair

dealing by the Talookdar. In 1867 he holds that no such case has been shown. "What he gets according to his agreement is quite enough for his maintenance." He does not so much as discuss Badrinath's proposal to substitute an allowance for the term of settlement in lieu of the villages. He decides, he says, in accordance with possession and custom; giving the Talookdari as a whole to the Talookdar, but maintaining Loknath in his possession of the villages. That is to uphold the compromise as against both parties, though its effect in three years had been to increase Loknath's income and the Talookdar's payment of Jama.

Loknath was dissatisfied with the decision and appealed to the Commissioner, Mr. Balmain, who affirmed it on the 28th February 1868 (Rec. p. 41).

During this settlement inquiry an administration paper or wājib-ul-arz was compiled for the Talook. It is set out at length in the Record (pp. 57-62). It bears date 24th May 1867 and (apparently in anticipation of the settlement actually concluded) opens thus:—

" Special Administration Paper of the village of Tarenga
" Tehsil and District Bilaspur.

" I am Badrinath son of Manohar Sao Bania Tahuddar
" Malguzar resident of Tarenga Tehsil and District Bilaspur.

" Whereas the new Settlement of this village under
" Act IX. of 1833 for twenty years commencing with the
" 1st July 1867 and ending with June 1887 corresponding
" with Sambat 1924 to Sambat 1943 on a uniform Revenue of
" Rs. 200 per annum has been effected with me before the
" Settlement Officer of the Bilaspur District, I hereby agree to
" act up to the following conditions until expiry of the period of
" Settlement and further revision."

Then comes Chapter I. headed "Acquisition of the Zamindari." It contains a blank form for the description of a village, and then continues:—

" This village has long since been in our family. Now at
" the present settlement inquiry in respect of rights to this
" village having been made, the proprietorship of the village

“ of Tarenga along with the rest of the Talluka was conferred
 “ upon me by order dated 31st October 1867 and the villages
 “ of Amakoni, Tikari, Turma, Buchipar, Achanakpur, Kesla,
 “ Datrenga, Datrengi, Madhuban, Lamti and Godhi were
 “ given in lieu of Malikana to the claimant Loknath free of
 “ revenue which was made payable by me. He shall hold
 “ possession thereof so long as the village remains in my
 “ family. My real brothers Baijuath and Kedarnath shall get
 “ Rs. 250 each in cash. With these exceptions nobody else
 “ shall have any concern with the Talluka. I am myself the
 “ owner of the whole Talluka.”

It has been contended at the bar that the passage just quoted is all subject to the opening statement by Badrinath, and is open to alteration at future settlements. That construction is inapplicable to a statement of the acquisition of the Zemindari and of the title of the Talookdar, which nobody, least of all Badrinath, would contend to be alterable on future settlements; and it is equally inapplicable to fixed interests of sub-proprietors. Nor can the expression “ as long as the village remains in my family ” be cut down to mean “ during the term of settlement.” Nor has the term “ Malikana ” anything to do with maintenance. It indicates ownership of some kind; and if the villages were assigned, as Loknath contends, by way of compromise of his larger claim of joint ownership, which at the date of the wājib-ul-arz had been affirmed by one set of officers and had not been rejected by Mr. Chisholm except as being barred by the compromise itself, the expression used “ in lieu of Malikana ” is well enough adapted to express that arrangement. The reference to future settlements is accounted for by the fact that the principal part of the document refers to details of value and management whose nature is alterable with time.

In December 1867 and in succeeding months formal Sunnuds were issued by the Chief Commissioner Sir Richard Temple, and counter-

signed by Mr. Chisholm as Settlement Officer, for the purpose of vesting in Badrinath the formal and legal title to the villages belonging to the Talook. The following is the sunnud relating to the village of Datrenga, one of the eleven :—

“ 113 District.

“ Under the authority of Government, and by virtue of this
 “ Sunnud, Proprietary Rights and ownership in Mouzah
 “ Datrenga Talluka Tarenga of the Bilaspur District are vested
 “ in Budreenath son of Manohar Sao Banee and his heirs and
 “ assigns, according to the boundaries defined at the regular
 “ settlement, subject to the payment of such Land Revenue
 “ and other cesses as may from time to time be assessed ac-
 “ cording to the terms of settlement and to the conditions
 “ specified in the Administration Paper and other settlement
 “ records.

“ (Signed) R. TEMPLE.”

In this way the statement of Loknath's rights in the wājib-ul-arz became part of the title by which the Plaintiff in the suit holds his Talook.

So matters continued during the settlement of 1869-1889. The only material dispute related to local cesses, as to which it was held in Badrinath's favour that they should be defrayed by Loknath. (*See Rec. p. 97.*)

On the occasion of the new settlement of 1889 it was found that the value of the land, and consequently the demand of the Government for Jama, had risen very largely. Using round numbers, the annual net profits of the Talook had increased from R. 5,700 to 22,000, the profits of Loknath's villages from R. 1,900 to 5,700, and the Jama from R. 930 to 3,800. The Talookdar contended in effect that he ought not to pay more Jama than the amount charged in 1869, and that Loknath was entitled to nothing from the 11 villages beyond a maintenance calculated at the rate of 1869, and stated by the Talookdar to be R. 1,581. After some differences of opinion among the Revenue officers the case was referred to the Governor General in Council, who pointed out that the question was one of

strict law, depending on the agreement of 1864. (Rec. pp. 96-97.) Thereupon the Talookdar instituted this suit, praying relief according to his view as just stated.

Though the Civil Judge held, as above stated, that the decree of October 1864 embodying the compromise is the basis of Loknath's rights, he went on to hold nevertheless that it was swept away by Mr. Chisholm's decision of October 1867, and that thenceforward Loknath had no right whatever except the ordinary right of a junior member of a joint family to maintenance, which might be enhanced or diminished from time to time. That he thought was a point for the Government to decide. He gave the Plaintiff a decree for a declaration that the Defendant's possession is in lieu of maintenance, and for the sum of R. 1707. 1. 6 the amount of cesses for three years before suit. The rest of the claim he dismissed. (Rec. p. 141.)

From this decree both parties appealed to the Judicial Assistant to the Commissioner, who considered that the sole question was the proper amount of maintenance. He first allowed the Plaintiff to amend his plaint by asking a declaration "what amount of maintenance the Defendant is entitled to, and on what conditions he should continue to hold his 11 villages." Then he remanded the suit to the Civil Judge for the trial of those questions. (Rec. p. 153.)

At the hearing after remand he expressed his opinion that "Loknath should continue to hold his villages on the same terms as those on which he held them during the 20 years settlement." His principal reason was that Loknath was not receiving so large a proportion of the profits as he had when the settlement of 1869 came into operation. He dismissed the suit with costs. (Rec. pp. 315-316.)

The Talookdar then appealed to the Judicial Commissioner, who considered that Loknath was getting an undue share, and declared him to be entitled to the net increase of the profits of the 11 villages, but subject to pay the increased Jama. His decree is dated 20th February 1896 (Rec. p. 330). A cross appeal by Loknath was dismissed.

All these judgments, widely differing in result, proceed on the principle that the dispute between the parties is of the ordinary kind which occurs when the head of a family and a junior member cannot agree on the proper amount of maintenance. Their Lordships asked the Respondent's Counsel whether there is any authority to show that the Courts have jurisdiction to disturb compromises or settled arrangements of a permanent character on the ground that they were originally based on claims for maintenance. No such authority was produced, and the principle adopted by the learned Judges below has no warrant in law unless it can be shown that Loknath's interest in the villages was of the variable character which belongs to an ordinary allowance for maintenance. To attribute that character to it is, their Lordships think, to misread the history of the case.

It would indeed be difficult so to view it if we had nothing before us but the decisions of Mr. Chisholm. In December 1864 he decided what has been called an Appeal, which however was not an Appeal but an attempt by Loknath to set aside a compromise. Mr. Chisholm saw no reason for setting it aside, because there was no evidence, such as he hinted might be forthcoming at the settlement enquiry, showing concealment of facts by the Talookdar. In effect he postponed the dispute to the more convenient

season of the settlement. In his order of October 1867, during the settlement proceedings, he lays down that Loknath can have no claim until the agreement is cancelled, and for that there is no case because he has got enough. Besides that, he dissents from the opinion of his predecessors that the Talookdari is partible. It is indeed very probable that Loknath got a good bargain by effecting a compromise during the prevalence of an official opinion that the estate was partible, though he himself was dissatisfied with getting only 11 villages, while the Talookdar got the bulk of the estate, which was potentially, and soon became actually, of much greater value. But anyhow the bargain was maintained against the dissatisfaction of both parties.

But whatever doubts might occur on Mr. Chisholm's judgments, they are only part of the history, and must be read with what preceded and what followed. They were preceded by a decree for half profits; an attempt to execute it; fresh disputes; a compromise which says that Loknath shall have 11 villages to possess occupy and manage them just as he pleases and that each is to hold possession of his own share; and which makes arrangements for the public burdens, for the debts of the estate, furniture, buffaloes, apparently all matters that could be thought of. It is very difficult to suppose that such an arrangement was ever thought to be of a temporary character; and it is left in force by Mr. Chisholm. The transactions which accompany and follow the judgment of 1867 are even more emphatic and precise. For the wájib-ul-arz was settled at that time, and was followed by the Sunnuds of 1867 and 1868 which incorporate it and make it impossible for the Talookdar to show title to the villages of the Talook without also showing Loknath's interest in 11 of them.

Their Lordships are of opinion that the Plaintiff is not entitled to any relief except as regards the cesses for the repayment of which he sued. The proper course will be to discharge all the decrees below except that of the Civil Judge of Bilaspur so far as it gives to the Plaintiff the amount of cesses sued for. Instead thereof it should be declared that the Talook is vested in the Plaintiff, subject to the right of the Defendant to hold possession of the 11 villages on the terms specified in Chapter I. of the wájib-ul-arz of the 24th May 1867; and that, as between the Plaintiff and the Defendant, the Plaintiff is liable for the Government Jama, and the Defendant for the local rates and cesses levied on such villages or on the Talook in respect of them. As the Defendant has disputed payment of the cesses at least up to the Court of the Judicial Assistant, he should pay the due proportion of costs in the two first Courts. His Appeal to the Judicial Commissioner must have been misconceived, seeing that the suit against him had been dismissed, and his appeal was rightly dismissed with costs. With these exceptions the Respondent should pay the costs of all the proceedings in all the Courts. Their Lordships will humbly advise Her Majesty to pass a decree in accordance with the foregoing opinion. On this Appeal the Respondent wholly fails and he must pay the costs of it.
