

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Udai Partab Adiya Dat Singh v. Musammat Muna and others; from the Court of the Judicial Commissioner of Oudh; delivered the 7th December 1905.*

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Present at the Hearing :

LORD MACNAGHTEN.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The Appellant, on whose behalf the suit was brought in the Court of First Instance, is the Raja of Bingha. The Raj of Bingha includes the taluka of Deotaha, in which is comprised the village of Pipra Bazaar.

This suit was brought in order to eject the Respondents from a 12 annas share in the village.

No question arises as to the title or position of the Appellant.

The Respondents, together with the representatives of one Ganesh who had a 4 annas share as well as some sir land in the village, but who has been finally ejected from both the village and the sir land, were Thekadars of the village and also cultivated certain defined plots of sir land within its limits. So far as the village is concerned the Rent Court, on 15th February 1892, decided that the Respondents were simply Thekadars, but at the same time added a proviso to the effect that the judgment should not affect the lands cultivated by the Respondents in regard to which certain notices of

ejectment had been cancelled on previous occasions. From this decision the Respondents did not appeal. On the 17th of June 1892 possession was delivered to the Appellant. However, notwithstanding formal delivery of possession the Respondents remained in or retook possession of the village.

This suit was then brought on behalf of the Appellant in the Court of the Subordinate Judge of Gonda against the representatives of Ganesh and the Respondents.

On the 25th of September 1899 the Subordinate Judge delivered judgment. He held that the representatives of Ganesh, who had in the meantime unsuccessfully challenged the Appellant's right in the Civil Court, were mere trespassers and that the Appellant was entitled to possession of Ganesh's 4 annas share in the village. He held, however, that the owners of the 12 annas share were not trespassers and he dismissed the suit as against them, being apparently under some misapprehension as to the effect of the proviso in the Judgment of the 15th of February 1892, and the previous Orders to which that Judgment referred.

From the Decree of the Subordinate Judge the Appellant appealed to the Court of the Judicial Commissioner of Oudh. The Court was of opinion that the Judgment of the Subordinate Judge was erroneous, and that the issue between the parties depended solely upon the question whether the Respondents were Thekadars of the village, a question which seems to have been already determined without appeal by the Rent Court. However, the question was remitted to the Subordinate Judge who returned his finding, and decided that up to the year 1892 the Respondents were ordinary Thekadars of the village.

The Court of the Judicial Commissioner was dissatisfied with the finding of the Subordinate

Judge, although no evidence had been offered on behalf of the Respondents on whom, apparently, lay the burden of proving that they had underproprietary rights in the village, and although it had already been decided, without appeal, that, as regards the village, they were ordinary Thekadars. The Court in the result dismissed the Appellant's suit against the Respondents with costs.

Their Lordships are of opinion that, having regard to the facts as they appear in the various orders to which their attention has been called, the Respondents were merely Thekadars of the village and merely trespassers as regards the village after delivery of possession in 1892.

As this Appeal has been heard *ex parte* their Lordships think it better, in order to avoid any possible injustice, that no order should be made as to recovery of mesne profits, without prejudice however, to the right of the Appellant to recover in a fresh suit such mesne profits as he may be entitled to.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be allowed and that the Appellant should be declared to be entitled to possession of the 12 annas share in the village of Pipra Bazaar of which the Respondents were Thekadars up to the 17th of June 1892 with costs of suit, and that the Appellant should be at liberty to bring such suit as he may be advised in order to recover mesne profits of the village from the 17th June 1892, but that the order should be without prejudice to the rights of the Respondents in the sir lands cultivated by them which are referred to above.

The Respondents will pay the costs of the Appeal.

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