

*Privy Council Appeal No. 29 of 1917.*

*Bengal Appeal No. 83 of 1913.*

**Mohunt Paramanandra Das Goswami, since  
deceased (now represented by Mohunt  
Balabhadra Das), and Others - - - Appellants**

v.

**Kripasindhu Roy and Others - - - Respondents.**

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY, 1918.**

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*Present at the Hearing :*

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR WALTER PHILLIMORE, Bart.

[*Delivered by* SIR JOHN EDGE.]

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This is an appeal against two decrees, dated the 4th June, 1913, of the High Court at Calcutta, which modified a decree, dated the 22nd March, 1909, of the Court of the Subordinate Judge of Cuttack.

The suit in which this appeal has arisen was brought in the Court of the Subordinate Judge of Cuttack by the appellants on the 5th October, 1907.

The plaintiffs, who are the appellants here, claim to be, with the defendants Lakimani Ama and Bhagabat Deb Thakur, proprietors of revenue free lands in Orissa. Kripasindhu Roy, who will be in this judgment referred to as the first defendant, is the principal defendant. The plaintiffs claim a declaration that the lands in dispute in this suit are their free behali lands held and enjoyed by the plaintiffs and the defendants Lakimani Ama and Bhagabat Deb Thakur; a declaration that except the share of 11 gandahs, 3 karas, 7 dantis, 10 biswas, 9 gandahs, 1 kara of the Darpanarayan Math purchased by the first defendant, he has no right to the share of 15 annas, 8 gandahs, 1 danti, 5 biswas, 10 gandahs, 3 karas of the lands in dispute; a

declaration that 57·892 acres of land mentioned in schedule (Kha) of the plaint is the Sarbarakari chakran jagir land appertaining to the properties in suit, and that the first defendant has no right of occupancy in 30·045 acres of land mentioned in schedule (Kha); a decree of ejectment against him from the disputed lands mentioned in Schedules (Ka) and (Kha); mesne profits; an account of moneys received by him as Sarbarakar from 1306 to 1308 Fasli; and any other relief to which the plaintiffs might be found to be entitled.

It was alleged in the plaint that the first defendant held the lands from which it was sought to eject him by virtue of his office as a Sarbarakar in the service of the plaintiffs and their co-sharers, who are Mathdharis, to whom or their predecessors the Government had granted in 1861 five mowzahs of Garh Atiri in Khurdah revenue free, in lieu of an annual allowance of salt theretofore made by the Government to the Mathdharis. The five mowzahs were Bande, Koranga, Sardhapore, Atiri, and Chutipalang. It was alleged by the plaintiffs that it was the duty of the first defendant as Sarbarakar to collect the rents due from occupiers of lands of the plaintiffs, to account for moneys received by him as the Mathdharis' Sarbarakar and for disbursements, and that he was liable to dismissal from his office for misconduct. It was also alleged by the plaintiffs that the first defendant, in right of his office of Sarbarakar, was entitled to apply to his own use 20 per cent. of the rents received by him from the lands of the Mathdharis, and to hold certain revenue-free grants of land known as Sarbarakari jagirs. Some of the Sarbarakari jagir lands which were held by the first defendant as a Sarbarakar of the Mathdharis were in Mowzah Bande, which had been granted to the Mathdharis by the Government in 1861, other Sarbarakari jagir lands which were held by him as Sarbarakar of the Mathdharis were in Mowzah Panasabasta, which had not been granted to the Mathdharis. It was alleged in the plaint that after the settlement which was completed in 1899 the first defendant, having been called upon by the Mathdharis to execute an ekrarnama as Sarbarakar and directed by the Mathdharis to collect as their Sarbarakar the newly assessed rents of their lands, and to pay the same to the Mathdharis, did not execute the customary ekrarnama, and assuming to be himself the proprietor of the Mathdhari lands collected rents from the tenants of those lands and misappropriated the same, and that in consequence of such misconduct the Mathdharis dismissed him from his office of Sarbarakar. It was also alleged in the plaint that the first defendant had dispossessed the plaintiffs.

By his written statement the first defendant denied all the material averments contained in the plaint; he denied the title of the plaintiffs, and alleged that the plaintiffs' claim was false and fraudulent, and that he was a tenure-holder of the lands of the Mowzahs from which the plaintiffs sought to eject him.

and held the jagir lands in his own right, and denied that he was liable to dismissal from his office of Sarbarakar.

The Subordinate Judge of Cuttack found on the evidence that the first defendant was not a tenure-holder of the Mowzahs in suit; that he was a Sarbarakar liable to be dismissed from his office for misconduct, and that by his acts he had dispossessed the Mathdharis, and had been dismissed from his office of Sarbarakar; that 30·045 acres of the 57·892 acres mentioned in Schedule (Ga) of the plaint were rayati lands, and that 27·847 acres, remainder of the 57·892 acres, were Sarbarakari jagir lands which were liable to resumption on the dismissal of the first defendant from his office of Sarbarakar. The Subordinate Judge found that 19·677 acres of the 27·847 acres were in Mowzah Panasabasta. He dismissed the claim for an account as time barred; he reserved the ascertainment of mesne profits; and he found that the plaintiffs were entitled to a declaration of their revenue-free title to the Mowzahs in dispute. The Subordinate Judge gave the plaintiffs a decree declaring their proprietary right to the share which they claimed in the Mowzahs in dispute; decreed that the plaintiffs and the defendants on whose behalf they claimed should be jointly put in Khas possession of those Mowzahs, with the exception of 30·045 acres, which he had found were rayati land,

“if the defendant No. 1 (the first defendant) as a Sarbarakar, as found in the judgment, do not in two months execute a kabuliyat in their favour, agreeing to pay annually the sum total of the rents assessed on tenants as per khatians prepared during the last settlement, deducting 20 per cent. thereon, *minus* the rent payable in respect of the jagir land in his possession, for a term expiring with that of the present settlement. . . . If the defendant No. 1 execute the kabuliyat within the time allowed to him, the plaintiffs will not have Khas possession of the Mowzahs in suit.”

From that decree the plaintiffs and the first defendant respectively appealed to the High Court at Calcutta.

As stated in the judgment of the High Court, the case of the plaintiffs as argued on the appeal was that the first defendant, his father and grandfather before him, were mere officers or servants, first of the Government, then of the Mathdharis, liable to dismissal for misconduct during the currency of a settlement, and having no right to any renewal of their appointments at the close thereof.

“They, therefore, sued for the ejectment of defendant No. 1 (the first defendant) from the 2½ mowzahs in suit, and also from the jagir lands recorded in villages Bande and Panasabasta.”

As stated in that judgment the first defendant—

“on the other hand, contends that he and his ancestors were and are tenure-holders, not liable to dismissal or summary ejectment, and that he held the jagir lands in Bande and Panasabasta as Dalabehara, and not as Sarbarakar.”

The learned judges on the appeals considered historically the position of Sarbarakars in Khurdah, from the insurrection in 1817 of Jagabandhu Mahapatra, the hereditary Bukshi or commander of the forces to the Raja of Khurdah, down to the present time, and relied mainly for the information on which they acted on the "Selections from the correspondence on the settlement of the Khurdah Estate, in the district of Puri" (volume I published in 1879, volume II published in 1881).

The Mowzahs which were in 1861 granted revenue free to the Mathdharis were in and prior to 1818 and thence until 1861 Khas Mahals in proprietary possession of the Government, by whom the Sarbarakars were appointed. It is not necessary for their Lordships to refer to all the reports and papers contained in the "Selections," to which their attention has been drawn at the hearing of this appeal. They will refer to those of them only which they consider to be the most important.

Mr. Forrester, who was the Deputy Collector in special charge of Khurdah, in his report of the 17th October, 1819, on the then settlement, stated that he had in general admitted as Sarbarakars the persons who had entered into engagements at the preceding settlements, and had reverted to the rates fixed for the different classes of land in the different villages by Gholam Kadir in 1806, that the Sarbarakars were bound by their engagements to adhere to those rates, and not to charge more than 4 annas per man on new cultivation, and they had no proprietary right in their villages. ("Selections," vol. I, p. 105.) Mr. Forrester also in his report referred to the general resumption of jagir lands after the rebellion of Raja Mukunda Deo and his followers. The Governor-General in Council confirmed Mr. Forrester's settlement, which was for a term of years.

Mr. Wilkinson, who had succeeded Mr. Forrester in charge of Khurdah, in a report of the 24th October, 1836, on a settlement which he had made, stated that he had—

"taken from the old Sarbarakars engagements for the payment of the aggregate of the raiyati rents, less 20 per cent. in lauds and money, and that in this 20 per cent. he had included the assessed or estimated rents of the jagirs reserved for Delabeharas and Dalais by Government order."

He added that the Delabeharas were removable for misconduct and claimed no proprietary rights ("Selections," vol. I, p. 123). On the 22nd August, 1837, the Government confirmed that settlement of Mr. Wilkinson, and stated its agreement with Mr. Halliday, then member of the Board of Revenue—

"that neither the engagements (of the Sarbarakars) with Government nor, of course, the lands by which the service rendered is remunerated, should be matters of inheritance and liable to subdivision among heirs." ("Selections," vol. I, p. 136.)

The orders of the Government were on the 15th September, 1837, forwarded by the Board of Revenue to the Commissioner with the following instructions:—

“You will cause it to be distinctly notified to the Sarbarakars that at the expiration of the present settlement Government will select its own engager, wherever they may choose to exercise the right so to do, and that the present incumbents will be held liable to dismissal for default or bad behaviour satisfactorily proved before the local authorities. It is very desirable that in all future cases individuals only should be acknowledged and allowed to treat as Sarbarakars.” (“Selections,” vol. I, p. 133.)

In his report to the Board of Revenue of the 5th October, 1880, Mr. Metcalfe, then Commissioner of Orissa, stated in relation to Khurdah :—

“The Government revenue of Khurdah has hitherto been collected by (1) sarbarakars proper, (2) by pursethis, and (3) by reportdars.

“The first enjoy jagir lands, and enjoy rents of lands brought under cultivation during the period the settlement runs.

“The second are sarbarakars of homestead lands, who, as a rule, do not enjoy jagir lands.

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“No one of the three classes has any proprietary or hereditary rights.” (“Selections,” vol. II, p. 258.)

The reports and papers in the “Selections” from the correspondence relating to the settlements in Khurdah have satisfied their Lordships that Sarbarakars in Khurdah had under the Government no heritable or transferable right in their office of Sarbarakar or in the Sarbarakari jagirs; that they were liable to be dismissed for misconduct, and that on dismissal they lost all right to occupy any Sarbarakari jagirs; and that on the termination of a settlement they were bound to enter into a fresh engagement with the Government if they wished to be continued in the office of Sarbarakar. When the Government in 1861 granted the Mowzah revenue free to the Mathdharis a settlement had in 1857 been made, and the Sarbarakars, including the first defendant’s father, Brindaban, had entered into engagements by Kabuliyats with the Government for the period of the settlement, and the grant to the Mathdharis was subject to those engagements of the Sarbarakars. That settlement terminated in 1880. Brindaban died in 1889. The statements in the suits in which Brindaban was concerned, which are referred to in the judgment of the High Court, do not alter the conclusions as to the position of Sarbarakars in Khurdah which are to be drawn from the reports and papers in the “Selections.”

The High Court came to the conclusion that it was clear that from 1818 onwards the tendency of the Government and of the majority of its officers was to regard the Sarbarakars in Khurdah as mere office holders, and that in practice their position was hereditary. The High Court held that the first defendant was a tenure-holder, and by its decree in the appeal in which the plaintiffs were the appellants dismissed

their appeal. In the appeal in which the first defendant was the appellant the High Court by its decree affirmed the decree of the Subordinate Judge, in so far as it declared the plaintiffs' title as proprietors of the two and half mowzahs in suit; declared that the first defendant was a tenure-holder; and in other respects set aside the decree of the Subordinate Judge and dismissed the suit.

On the hearing of this appeal counsel for the first defendant contended that the decision in 1871 of the High Court at Calcutta in *Saddanando Maiti v. Nowrattam Maiti* and others (8 Bengal Law Reports, 280), was an authority which showed that Sarbarakari tenures in Cuttack are permanent, hereditary, and transferable. Apparently that decision was not brought to the attention of the Subordinate Judge or of the High Court in this case, possibly because it does not appear that the lands the rent of which was in that case sought to be enhanced were situate in Khurdah; possibly because it does not appear on what finding of the Court of First Appeal or on what evidence, if there was any, as to the position of Sarbarakars in Cuttack the High Court came to the conclusion that Sarbarakari tenures in Cuttack were permanent, hereditary, and transferable. That case before the High Court was a second appeal.

Their Lordships agree with the Subordinate Judge that the first defendant was not a tenure-holder; that he was liable to be dismissed for misconduct from his office of Sarbarakar; that he was rightly dismissed from that office; and that on his dismissal he ceased to be entitled to hold the Sarbarakari lands in Mowzah Bande; and that except as to the Sarbarakari lands in Mowzah Panasabasta, the plaintiffs were entitled to the decree in ejectment and for possession, and to the declaration of title which the Subordinate Judge by his decree gave to them.

The plaintiffs have failed to prove any title in them to the jagir lands in Mowzah Panasabasta.

Their Lordships will humbly advise His Majesty that this appeal should be allowed; that the decree of the High Court in the appeal in which the plaintiffs were the appellants should be set aside with costs; that the decree of the High Court in the appeal in which the first defendant was the appellant, except in so far as it affirmed the declaration of the Subordinate Judge, of the title of the plaintiffs as proprietors of the  $2\frac{1}{2}$  Mowzahs in suit, should be set aside with costs; and that the decree of the Subordinate Judge should be affirmed so far as it declared the proprietary title of the plaintiffs to the  $2\frac{1}{2}$  Mowzahs in suit; that it should be varied by decreeing the ejectment of the first defendant from possession of the jagir lands in Mowzah Bande, but not from the jagir lands in Mowzah Panasabasta, by decreeing mesne profits to be ascertained in the Court of the Subordinate Judge; and by striking out of that decree the clause giving to the first defendant an opportunity of executing a kabuliyat in favour of the plaintiffs; and by giving the

plaintiffs the costs of the suit as against the first defendant. The costs, if any, of ascertaining the amount of mesne profits should be in the discretion of the Court of the Subordinate Judge. The first defendant must pay the costs of this appeal.

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In the Privy Council.

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MOHUNT PARAMANANDRA DAS GOS-  
WAMI, SINCE DECEASED (NOW  
REPRESENTED BY MOHUNT BALAB-  
HADRA DAS), AND OTHERS

2.

KRIPASINDHU ROY AND OTHERS.

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DELIVERED BY

SIR JOHN EDGE.