Privy Council Appeal No. 39 *of* 1922.

Bengal Appeals Nos. 36–54 *of* 1920.

The Midnapur Zamindary Company, Limited - - - *Appellants*

v.

Uma Charan Mandal and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH JUNE, 1923.

Present at the Hearing:

LORD SUMNER.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD SUMNER.]

Their Lordships do not desire to hear the respondents. The point arising for decision on this appeal is a short one. In the group of suits, which the appellants brought in India, the question which, for the purposes of to-day, was the material one to be considered was this:—At what date is the under-tenure, of which they had become purchasers at a sale under a decree for rent, to be taken to have originated?

It was in connection with a prayer to have encumbrances cleared off that this question arose, and according to the date fixed, earlier or later, they would be able to clear off more encumbrances or fewer. Now to ascertain the date, at which a particular holding first began to be held as a definite holding, is essentially a question of fact, and must depend on evidence. That evidence may be, and naturally is, documentary, but the documents admitted in evidence upon that question are really historical materials, and although they have to be construed,

and if possible understood, they are not to be treated as involving issues of law merely because they have to be construed. It is not as though they were being construed as instruments of title, or were contracts or statutes, or otherwise the direct foundation of rights.

The Subordinate Judge, who tried a number of these suits, came to the conclusion that the date at which the under-tenure purchased by the plaintiffs had first arisen was the 6th March, 1884. Some others were heard by the munsif, who came to a contrary conclusion. They were all consolidated and came before the District Judge, and the finding of the District Judge affirmed that of the Subordinate Judge, not in every respect upon the same grounds in detail, but substantially upon the same lines.

The case was then appealed to the High Court. When first it came before the High Court, that tribunal contented itself with observing that the issues which are now before their Lordships raised questions of some nicety, and proceeded to dispose of the appeal upon a different ground, which need not be further enlarged upon. That judgment of the High Court was brought before their Lordships and was reversed, and so the case came to be remitted to India to be finally disposed of, and on the second occasion the High Court dealt with the issues now in question, which they had previously said little about, and briefly concurred in the view taken by the District Judge.

Now if the question before the District Judge was one of fact, admittedly there is an end of the matter. The District Judge, having to fix a date, fixed this particular date as being the date at which a certain *ruffinama* or compromise was arrived at, under circumstances which are not very clear, for no oral evidence was called, but which he thought he could sufficiently infer from the contents of the *ruffinama* and from some previous documents of earlier date. He came to the conclusion that there was at that time a dispute, the gist of which was, whether the tenant was right in claiming that all the land of which he was in possession was held on *ghatwali* tenure, or whether the Zemindar was right in contending that but a small portion of that land was held on *ghatwali* tenure and the rest was really *mal* land. This is the dispute which was compromised in the *ruffinama*; and the conclusion which the District Judge, agreeing therein with the Subordinate Judge, arrived at was that upon that occasion the parties solved this dispute by deciding that the amount of *ghatwali* land was less than it was claimed to be; and that, in addition to what was admittedly *mal* land, some further land should be regarded as and held as *mal* land, and so the matter ended. Thereupon, he held that it was from that date, and in consequence of that compromise, that the present under-tenure relating to some of these *mal* lands, of which the plaintiffs were the purchasers, came into existence as a separate tenure. There had been produced a series of documents, of earlier date, which

it is not necessary to go through—they are of varying characters, and it must be admitted that they are scarcely luminous as to their purport. It cannot really be suggested from these previous documents when the alleged separate *ghatwali* tenure or the alleged separate *mal* tenure came into existence. As to the latter, it is hypothetically said to begin about 1834, and as to the former, it is said to have been in existence at least as early as 1799 ; but these documents are only fragments, and by no means copious fragments, of a long chain of documents of various kinds, which must have existed at one time or another, and they, like the *ruffinama*, are documentary evidence of the point in dispute from which the District Judge had to draw his own conclusions.

It is clear, therefore, that, unless it can be shown that he has misdirected himself in point of law in dealing with this question of fact upon this evidence, there is no ground for appealing from his decision upon the question of fact, and from the judgment of the High Court upon it. The suggestion is that it can be made to appear clearly from the construction of the documents prior to the *ruffinama*, that the present tenure can be dated earlier than the 6th March, 1884. That appears to their Lordships to be nothing but a contention that a different conclusion of fact might have been drawn from those documents.

The other way of putting the matter is to say that on the construction of the *ruffinama* itself, it negatives the view taken that this under-tenure was first created at that date. Their Lordships do not wish to be understood as agreeing with that view of the contents of the *ruffinama*, but again the construction of it is merely the weighing a fo particular piece of evidence expressed in that particular form. Their Lordships are unable to see that there has been any error in law on the part of the District Judge and of the High Court, and that being so they neither desire nor are entitled to criticise the merits or otherwise of the conclusion of fact.

The result being that this is a pure question of fact which has been determined in India by tribunals whose judgment must be final, nothing remains but to dismiss these appeals, with costs, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

THE MIDNAPUR ZAMINDARY COMPANY, LIMITED

v.

UMA CHARAN MANDAL AND OTHERS.

DELIVERED BY LORD SUMNER.

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