*Privy Council Appeal No.* 72 *of* 1925.

*Patna Appeals Nos.* 42 *and* 46 *of* 1923.

**Jaigobind Pandey** - - - - - - - *Appellant*

*v.*

**Ramnandan Sahai and others** - - - - - *Respondents*

**Ramnandan Sahai and others** - - - *Appellants*

*v.*

**Jaigobind Pandey and others** - - - - - *Respondents*

(*Consolidated Appeals*)

FROM

## THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH FEBRUARY, 1928.

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*Present at the Hearing :*

LORD SHAW.
LORD CARSON.
SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

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These are two consolidated cross-appeals from a decree of the High Court of Judicature at Patna, dated the 12th June, 1923, which reversed a decree of the learned Subordinate Judge at Chapra, dated the 20th September, 1919.

The issue between the parties is as to ownership of the lands in a village or mauza called Babhangawan, in the Saran district, except a portion of it which measured 33 bighas and 3 kathas, and which is admitted to belong to and to be in the possession of the plaintiffs.

Proceedings were instituted under the provisions of section 145 of the Code of Criminal Procedure, and the Magistrate decided that the defendant-appellant was in possession of the lands in dispute, and was entitled to remain in possession until ousted by due course of law.

Thereupon the plaintiffs filed the present suit on the 21st of December, 1914.

They alleged that the entire lands of Mauza Babhangawan were within Mahal Raiputti, Tauzi No. 3142, which belonged to them, that they had been dispossessed by the order of the Magistrate; that the defendant had no title thereto, and they claimed a declaration that the entire Mauza Babhangawan was within their Mahal No. 3142, possession and mesne profits.

The first defendant admitted that the plaintiffs were in possession of 33 bighas 3 kathas of the land in Babhangawan, but disputed the plaintiffs' title to any more land therein. The learned Subordinate Judge held that the lands in dispute appertained to the defendant's Mahal Tauzi, No. 3143, and that the plaintiffs had no title thereto.

He accordingly dismissed the plaintiffs' suit with costs, and directed that his finding regarding the 33 bighas 3 kathas should be embodied in the decree. From this decree the plaintiffs appealed to the High Court of Judicature at Patna.

The learned Judges of the High Court allowed the appeal in part, and set aside the decree made by the learned Subordinate Judge. By the High Court's decree, it was declared that the plaintiffs were entitled to one-third of 771 acres 2 roods 37 poles, shown in the revenue survey as Mauza Babhangawan, with the exception of 33 bighas 3 kathas with respect to which the Court had already given the plaintiffs a decree. It was further ordered that the plaintiffs should be awarded possession over the aforesaid area (minus the 33 bighas 3 kathas) with mesne profits to be determined by the lower Court from 1320 until delivery of possession or three years from the date of the decree, whichever is earlier.

It was further ordered that there should be no mesne profits with respect to the 33 bighas 3 kathas which were declared by the Court below to be in the plaintiffs' possession.

Directions as to costs were included in the decree of the High Court.

As already stated, both parties have appealed against the High Court's decree.

Jaigobind Pandey, who was the defendant No. 1 in the suit, in his appeal alleged that the plaintiffs' title as constituted by the permanent settlement, was limited to a specific and definite area, viz., the 33 bighas 3 kathas of land hereinbefore referred to, and that, with the exception of the said area, the plaintiffs had not proved a title to any portion of the village of Babhangawan.

His printed case contained allegations as to limitation and adverse possession, but it may be stated at once that it was

admitted by the learned counsel for both parties in this appeal that, owing to the nature of the lands, their periodical diluviation by the water of the river and the disputes relating thereto, no question of title by adverse possession or prescription could arise.

The position adopted by the appellant Jaigobind was that he was in possession of the lands in dispute under the Magistrate's order, that the onus was on the plaintiffs to prove title thereto, and that they had failed so to do.

The case of the plaintiff-appellants shortly stated was that the documentary evidence proved the plaintiffs' title to the whole of the village of Babhangawan ; and that in any event the plaintiffs claimed through purchasers at sales held under Act XI of 1859, and were entitled to the whole of Babhangawan, as recorded in the books of the Collector as part of Tauzi No. 3142.

The following statement contained in the judgment of Jwala Prasad, J., shows the various parties to the suit, and traces the title of the plaintiffs to the Mahal Raiputti Tauzi No. 3142 and of the defendant to the Mahal Raiputti, Tauzi No. 3143 :

> " The plaintiff No. 1 and the predecessors of the plaintiffs Nos. 2 to 11 purchased at a revenue sale the Ijmali Khata of Mahal named Raipati, Tauzi No. 3142, on the 6th January, 1883. Khata No. 1 of that Tauzi was purchased at a revenue sale by one Balbhadra Sahay on the 10th January, 1901. He sold a part of it on the 21st December, 1901, to plaintiffs 12 to 14 and the remainder on the 2nd February, 1902, to plaintiff No. 15.
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> " Thus the plaintiffs are now the owners of the entire Mahal Raiputti bearing Tauzi No. 3142. The serial number of this Mahal was 82 in the register of 1249. It was subsequently altered to No. 114 and then to No. 2007 (Tauzi) and now it bears Tauzi No. 3142.
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> " Close to this, there is another Mahal of the same name Raipatti the serial number whereof was 84 in the register of 1249 which was altered to No. 116 and then to No. 2009 (Tauzi) and now it bears Tauzi No. 3143. This was purchased in 1899 at a revenue sale by defendants 2 to 3 in the Farzi name of their servant Gopal Das from whom they obtained a Ladavi deed (Ext. 49) and then sold it to defendant No. 1 Jaigobind Pandey, brother of defendant No. 6, who is the servant and Gomashta of defendants 2 to 3. Defendants 1 and 6 are members of a joint family and are joint in mess and business. Defendants 4 and 5 are the Thicadars of the said Mahal. The two Mahals Raipatti bearing Tauzi Nos. 3142 and 3143 are situate in Pargana Kasmar, district Saran.
>
> " The dispute in this case concerns a block of land shown and designated as Mauza ' Babhangawan ' in the Thak and the revenue survey maps of 1843-44, bearing No. 53, covering an area of 771 acres 2 roods 37 poles defined by boundaries noted therein. Contiguous to the south-east of ' Babhangawan ' are the lands shown in the Thak and the revenue maps of 1843-44 in No. 179 under the name of Mauza ' Kedarpura Babhangawan.' with an area of 267 acres 1 rood 3 poles."

Their Lordships are of opinion that the appeal presented by the defendant-appellant Jaigobind is without any foundation and must fail. They did not consider it necessary to hear the learned counsel for the plaintiffs in respect of this appeal, and in view of the elaborate and complete judgments delivered by the learned Judges of the High Court, in which the whole of the documentary

evidence, on which the appeal depends, was very carefully reviewed, they do not think it necessary to say more than that in view of the aforesaid evidence the contention that the plaintiffs have a title to no more than the said 33 bighas and 3 kathas in the village of Babhangawan is clearly untenable.

The appeal filed by the plaintiffs presents more difficulty.

The first point, upon which the plaintiffs relied in this appeal, is that they claimed through purchasers at sales held under Act XI of 1859, and that consequently they are entitled to the whole of Babhangawan as recorded in the books of the Collector as part of Tauzi No. 3142.

There is no doubt that the predecessors in title of the plaintiffs purchased the Mahal Raiputti, Tauzi No. 3142, at sales held under Act XI of 1859. The certificates make that plain.

The sale certificate dated the 29th September, 1883, which referred to the sale of the 6th January, 1883, shows that the Ijmali share in Mahal Raiputti, Tauzi No. 3142, was sold for arrears of Government revenue, that the share was subject to a separate annual Jama of Rs. 1240-7-3, the Sadar Jama of the entire Mahal was stated to be Rs. 2028-8-6¾, and the name of the proprietor was Ghinnu Singh. In this certificate the villages in the Mahal which were sold are not specified.

The sale certificate, dated the 10th September, 1900, which related to a sale of the 9th June, 1900, shows that Balbhadra Sahay was under Act XI of 1859 declared the purchaser of the shares of the property specified in the certificate, and of which a separate account had been opened.

The Mahal was Raiputti and the Tauzi No. 3142.

In this certificate seven villages were named, one of which is " Babhangawan-Kedarpura 8 as."

It was declared that the Sadar Jama of the property sold was Rs. 774-15-9¼ and the Sadar Jama of the entire Mahal was Rs. 2005-1-5¼.

It appears therefore that the shares mentioned in the two certificates were subject to the payment of the two sums of Rs. 1,240-7-3 and Rs. 774-15-9¼ respectively in respect of Government revenue, and the Sadar Jama of the entire Mahal was stated in one certificate to be Rs. 2,028-8-6¾ and in the other Rs. 2,005-1-5¼.

The question is whether the two sales, to which the above-mentioned certificates relate, included the whole of the village Babhangawan, and if not, what, if any, part of it.

The sale certificate relating to the defendant's Mahal, Tauzi No. 3143, was in respect of a sale of the whole of the estate of Raiputti, Tauzi No. 3143, dated the 6th June, 1899, the Sadar Jama being stated as Rs. 7,236-4-6½.

Under Act XI of 1859 the Collector had power to sell for arrears of revenue the estates or (in cases in which separate accounts are kept for one or more shares) the shares of estates in respect of which the arrears of revenue are due, and by the Bengal Act XII of 1868, which is to be read with and taken as part

of the said Act of 1859 provision is made that in that Act and in Act XI of 1859 the word "estate" means any land or share in land subject to the payment to the Government of an annual sum in respect of which the name of a proprietor is entered on the Register known as the General Register of all revenue-paying estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of the said Act XI of 1859, have been opened.

It was contended on behalf of the plaintiffs that they are entitled to the estate sold at the above-mentioned revenue sales, viz., the lands which were subject to the payment of the said two annual sums of Rs. 1240-7-3 and Rs. 774-15-9¼, in respect of which the successors of Ghinnu were entered in the General Register of revenue-paying estates, and in respect of which separate accounts had been opened under section 10 of Act XI of 1859, that is to say, to the Mauza Babhangawan with the area of 771 acres 2 roods 37 poles.

It is clear, therefore, that reference must be made in the first instance to the General Register of revenue-paying estates in order to ascertain the estate or share of the estate which the Collector was entitled to sell in respect of the arrears of revenue.

It was agreed by both of the learned counsel who appeared for the parties, that exhibit 64 (*a*) (printed at pages 386-7 of the record) is a copy of the material entry in the General Register of revenue-paying lands which relates to the Mahal, Tauzi No. 3142, which may be called the plaintiffs' Mahal—and that exhibit 64 (*d*) (printed at pages 388-90) is a copy of the entry in the said General Register which relates to the defendants' Mahal, viz., Tauzi No. 3143.

These registers are in the form provided by sections 6 and 7 of Bengal Act VII of 1876.

The entry relating to the plaintiffs' Mahal gives the name of the Mahal as Raiputti, the Tauzi No. 3142, and the names and residence of the proprietors. It describes the Mauza as "Babhangawan 5 as. Mauza," and states the Government revenue of the estate to be Rs. 2028-8-6¾, which in consequence of a deduction in respect of land acquired for the railway is reduced to Rs. 2005-1-5¼.

The area is not mentioned, but there is an entry of the number "3375" which refers to the entry in the Mauzawar Register, which gives the area of "Babhangawan Kedarpura" as 771 acres 2 roods 37 poles.

The entry in the General Register relating to the defendants Mahal give the name of the Mahal as Raiputti, the Tauzi No. 3143, and the names and addresses of the proprietors; the Mauza is described as "Babhangawan Kedarpura 6 as. 1 Mauza."

In this entry the area of the Mauza is stated to be 267 acres 1 rood 15 poles.

The Government revenue of the estate is stated to be Rs. 7262-10-11, which is reduced on account of land acquired for the railway to Rs. 7236-4-6½. The reference number to the Mauzawar

Register is 3376, which describes the area of " Babhangawan Kedarpura " as 267 acres 1 rood 3 poles.

It was argued on behalf of the plaintiffs that the entries in the General Register were conclusive, and that if that be so the plaintiffs' predecessors purchased the whole of the lands in Mauza Babhangawan, and that the predecessors of the defendant purchased Babhangawan Kedapura, which was a distinct Mauza different from Mauza Babhangawan.

Their Lordships do not think it necessary to express any opinion on the question whether ordinarily the entries in the General Register of revenue-paying estates are to be treated as conclusive as to what passes to the purchaser at a sale for arrears of revenue under Act XI of 1859, and they desire to guard themselves by making it clear that their decision in this case must not be taken as a decision of that question, which is one of much importance.

One sufficient reason for not deciding the above-mentioned question is that in this case the entries in the said General Register on material matters are so ambiguous that if reference is to be made to them alone, it is not possible to say with any certainty what was sold, at the revenue sales, and consequently that in this case the entries in the General Register by themselves cannot be considered to be conclusive on the above-mentioned question.

As, for instance, in the entry relating to the plaintiffs' Mahal, Tauzi No. 3142, the entry under the heading of " Name of Mauza," appear the words " Babhangawan 5 as. Mauza."

The learned counsel, who appeared for the defendant, argued that the entry meant that one-third of the Mauza only was included in the estate, Tauzi No. 3142, which was liable to the revenue of Rs. 2005-1-5¼. On the other hand, the learned counsel for the plaintiffs urged that the meaning, placed upon this entry by the defendant, was not correct, and that it did not mean a 5 annas' share of the Mauza Babhangawan. He suggested that it meant something else, and he referred their Lordships to Ex. T (1) for the purpose of supporting his contention.

It was not clear to their Lordships what exactly the effect of this contention was, except that in the end the learned counsel was constrained to suggest that the said entry in the General Register was a mistake.

Again, the area of the village of Babhangawan is not mentioned in the said General Register, and in order to ascertain that area, reference to documents other than the General Register is necessary.

One of these documents is the Mauzawar Register, and it is curious to note that in that register (Ex. 64 (*b*) at page 384 of the record) the Mauza is not described as " Babhangawan " but as " Babhangawan Kedarpur," with an acreage of 771 acres 2 roods 37 poles.

The same name " Babhangawan Kedarpur " is used in Mauzawar Exhibit 64 (*e*) with an area of 267 acres 1 rood 3 poles.

In the General Register relating to the defendants' Mahal, Tauzi No. 3143, the name of the Mauza therein referred to is entered as "Babhangawan Kedarpura 6 as. Mauza," with an area of 267 acres 1 rood 3 poles, and as being included in the estate liable for the revenue of Rs. 7262-10-11.

In these circumstances their Lordships are of opinion that, whatever may be the general rule, as to which they offer no opinion, in this case the entries in the said General Register are so ambiguous that in order to ascertain their meaning reference to other documents and evidence is necessary, and it is not possible to hold that the entries in the said General Register are in themselves conclusive as to what passed at the above-mentioned revenue sales to the purchasers.

The next point raised by the learned counsel for the plaintiffs was, that if it were permissible to go beyond the entries in the General Register, then the survey maps, the mauzawar and Mahalwari registers, and the Collector's mutation registers were the best evidence of what had been permanently settled, and that the earlier documents produced in the case, when rightly construed, were quite consistent with the above-mentioned maps and the registers.

It was contended that from the year A.D. 1790 the villages Babhangawan and Kedarpura were known as distinct villages but that they were treated as one Mauza for revenue purposes under the name of Babhangawan Kedarpura or Kedarpura Babhangawan, and that one-third of the total area of these villages, namely, 1163 or 1161 bighas was settled with Ghinnu Singh, one of the predecessors in title of the plaintiffs, and that the remainder of the total area, viz., about 2324 or 2321 bighas was settled with Parbhu Singh, the predecessor of the defendant.

It was further argued that in or about the year 1843 the part of the country, in which the villages were situated, was surveyed and that the survey maps for the first time showed Babhangawan and Kedarpura with defined boundaries and separate areas, that Kedarpura village sometimes had the word Babhangawan before or after it; that the two villages from that time were treated as separate entities for revenue purposes; that there must have been a division by metes and bounds between the predecessors of the plaintiffs and the predecessors of the defendants and that the plaintiffs' predecessors became the owners of the whole of the village of Babhangawan as part and parcel of the Mahal Raiputti, Tauzi No. 3142.

It is not necessary for their Lordships to state in greater detail the contentions of the plaintiffs on this point, for they are fully and clearly set out in the judgments of the High Court.

There is no doubt that the defendant was in possession of the lands in suit, and that the plaintiffs had to prove their title in order to support their claim to the whole of the lands in the village of Babhangawan.

The learned counsel on each side with much care drew their Lordships' attention to the many documents, registers and maps exhibited in the case, and their Lordships are indebted to the learned counsel for the assistance which they rendered not only in that respect, but also by their arguments—presented both in detail and in a summarised form.

The High Court decided that the plaintiffs had not proved their title to the whole of the village of Babhangawan.

The conclusion of the High Court, however, was that Ghinnu Singh, the predecessor of the plaintiffs, had land not exclusively in Babhangawan but in Babhangawan and Kedarpura ; that Parbhu Singh, the predecessor of the defendant, had land not exclusively in Kedarpura but in Kedarpura and Babhangawan, and that the shares of Ghinnu Singh and Parbhu Singh in the land of both villages was one-third and two-thirds.

The learned Judges held that as the present litigation was confined to Babhangawan alone, no question arose as to the plaintiffs' right in Kedarpura. Consequently the decree of the High Court was made in the form and to the extent which has been already mentioned, viz., that the plaintiffs were entitled to one third of the area now shown in the revenue survey as Mauza Babhangawan.

The question which their Lordships have to consider is whether the plaintiffs have succeeded in showing that the decision of the High Court was wrong.

The evidence has been referred to very fully in the judgments of the learned Judges in the High Court, and their Lordships think it is unnecessary to set it out again in detail. It is sufficient to say that with the assistance of the learned counsel they have considered it fully, and they are of opinion that there was ample evidence to justify the above-mentioned conclusions at which the learned Judges of the High Court arrived, and the decree which was made in accordance therewith.

It was submitted by the learned counsel for the plaintiffs at the end of his argument, that if their Lordships were of opinion that the plaintiffs had not proved their title to the whole of the village of Babhangawan a declaration should be made that the plaintiffs' share was the above-mentioned area of 1163 or 1161 bighas, and that there should be an allocation of that area to the plaintiffs within the boundaries of the Mauza Babhangawan as they are now shown in the revenue survey maps. It is not possible for their Lordships, on the materials which are now before them and at this stage of the proceedings, to accede to this application.

Their Lordships therefore are of opinion that both the appeals should be dismissed, and that in view of this result no order should be made as to the costs of the appeals to this Board.

They will humbly advise His Majesty accordingly.

**In the Privy Council.**

JAIGOBIND PANDEY

*v.*

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