Privy Council Appeal No. 11 *of* 1926.
Bengal Appeal No. 32 *of* 1924.

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

v.

The Secretary of State for India in Council - - - - *Respondent*

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 29TH JULY, 1929.

Present at the Hearing:
LORD CARSON.
SIR GEORGE LOWNDES.
SIR BINOD MITTER.

(*Delivered by* SIR BINOD MITTER.)

This is an appeal from the judgment and decree of the High Court of Judicature at Fort William in Bengal dated the 4th August, 1924, which reversed the decree of the 9th December, 1921, and restored the decree of the Subordinate Judge of Murshidabad dated the 28th March, 1919.

The questions for determination in the suit out of which the present appeal arises were whether the appellants are *raiyats* or tenure holders of a certain holding in Chur Narainpur consisting of about 800 Bighas, (2) whether the suit comes within the purview of Section 104H or the Proviso to 111A of the Bengal Tenancy Act, and (3) whether the suit is within time having regard to the law of limitation under Section 104H of the same Act.

The Subordinate Judge held that the appellants have not proved that the entry in the record of rights finally published on the 2nd April, 1915, to the effect that the appellants are tenure

holders is incorrect and he further held that the plaintiffs' suit is not maintainable under the provisions of Section 111A and that the same is barred under Section 104H as it was not brought within six months from the date of the certificate of the final publication of the record of rights.

From the decision of the Subordinate Judge there was an appeal to the District Judge of Murshidabad, who held that the appellants were occupancy *raiyats* and not tenure holders, and he further held that the suit was maintainable under Section 111A and was not barred by limitation.

From this decision there was a second appeal to the High Court and that Court held that there was no reliable evidence to justify the District Judge's conclusion that the original purpose for which the tenancy was created was for cultivation.

The High Court further held, that the onus of showing that the entry in the record of rights is not correct, was upon the appellants and that there was no evidence to justify the finding that they have discharged the onus. The High Court did not decide any other points involved in the case.

Their Lordships have to observe at the outset that no second appeal lies on the ground that the District Judge came to an erroneous finding of fact. The only question which the High Court could consider was whether the District Judge had before him any evidence proper for his consideration in support of his finding. Section 100 of the Code of Civil Procedure, being Act No. 5 of 1908, corresponds with Section 584 of the Civil Procedure Code of 1882. The construction of Section 584 of the Civil Procedure Code of 1882 has often been considered by the Board. In *Durga Choudhrain* v. *Jawahir Singh Choudhri*, 17 I.A. 122, at page 127, the Board said :—

> "It is enough in the present case to say that an erroneous finding of fact is a different thing from an error or defect in procedure and that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. Where there is no error or defect in the procedure, the finding of the first Appellate Court upon a question of fact is final, if that Court had before it evidence proper for its consideration in support of the finding."

In *Anangamanjari Chowdhrani* v. *Tripura Soondari Chowdhrani*, 14 I.A. 101, at page 110, the Board laid down the law to the same effect :

> "It was in the opinion of their Lordships within their jurisdiction (that is to say within the jurisdiction of the Judges on a second appeal) to dismiss the case, if they were satisfied that there was, as an English lawyer would express it, no evidence to go to the jury, because that would not raise a question of fact such as arises upon the issue itself, but a question of law for the consideration of the Judge."

The learned District Judge in his judgment held (1) that the holding in question was acquired for the purpose of cultivation of indigo by hired labour ; (2) that the Ijara of 1840 could not be rightly regarded as the origin of the holding, and that the origin

was unknown, and from these findings of fact, he came to the conclusion that the entry in the record of rights was wrong and that the appellants were occupancy *raiyats*.

It seems to their Lordships that the real test, whether a holding is a tenure or *rayati*, depends upon the purpose for which the holding was acquired.

The respondent relied on Section 103B, clause 3 and Section 5, clause 5 of the Bengal Tenancy Act. Their Lordships have no reason to doubt that in coming to his findings of fact the learned District Judge did give proper weight to the entry in the record of rights to which it is entitled under Section 103B. He has expressly referred to the statutory presumption under Section 5 clause 5. If he had evidence proper for his findings notwithstanding the statutory presumptions then it seems to their Lordships that his findings of fact were final and conclusive. (See *Kumeda Prosunna Bhuiya* v. *Secretary of State*, 19 Calcutta Weekly Notes, 1017.)

Their Lordships will now consider whether there was before the learned District Judge evidence proper for his finding.

It appears that the Menasakkans to whom the holding originally belonged conveyed their interest in 1873 to Jagendra Roy and others who in their turn sold in 1887 to Messrs. Louis Payen & Company. Louis Payen & Company sold their interest in the holding to the appellants in 1913. It is a fact worthy of consideration, that in the present suit the *zemindars* or proprietors under whom the appellants hold, and also the sub-tenants under them, admitted that the appellants are occupancy *raiyats*. It appears from the final settlement report of 1890 that occupancy holdings in the *mehal* in which Chur Narainpur is situate are by local custom transferable. Chur Narainpur has been assessed to revenue from time to time by the Government. The appellants drew their Lordships' attention to the Rubokaris of the 27th March, 1851, the 23rd February, 1861 and the 15th March, 1871, and the other papers prepared for purposes of such settlements. These settlements were for ten years respectively. The settlement of 1871 expired on the 31st March, 1880, but was extended to the 31st March, 1890. From these settlement records including the Rubokaris it appears that the only tenants cultivating the land were Baldav Saha, Ram Prasad and Beni Prasad Hazari (who were also the *zemindars* of the *mouza*) and the Menasakkans. The *zemindars* were growing *dofasli* crops, and the Menasakkans were cultivating indigo. These settlement records were prepared under regulation VII of 1882, and although they may not have the same evidentiary value as the settlement records prepared under the Bengal Tenancy Act, still in their Lordships' opinion they are evidence against the Secretary of State for India in Council.

Mr. De Gruyther has drawn their Lordships' attention also to certain *ekrars* executed by the tenants in favour of Louis Payen & Company, as also to the account books ranging from

1887 to 1901. These account books show clearly that at any rate indigo was being cultivated on a portion of the land in question by Louis Payen & Company through hired labourers.

Suits had been instituted upon the *ekrars*, given by the various *jotedars* or tenants under Louis Payen & Company and the tenants contested these suits, on the allegation that these *ekrars* in which Louis Payen & Company were acknowledged to be occupancy *raiyats* were taken by force, but these *ekrars* were held to be valid.

It is not necessary to go into further detail as regards the evidence, but their Lordships are satisfied after a careful examination of the record, that there was evidence before the learned District Judge proper for his finding. The learned District Judge did not discuss in detail the various settlement records and other evidence, oral and documentary, to which their Lordships' attention has been drawn, but their Lordships have no reason to doubt that the learned District Judge fully considered them.

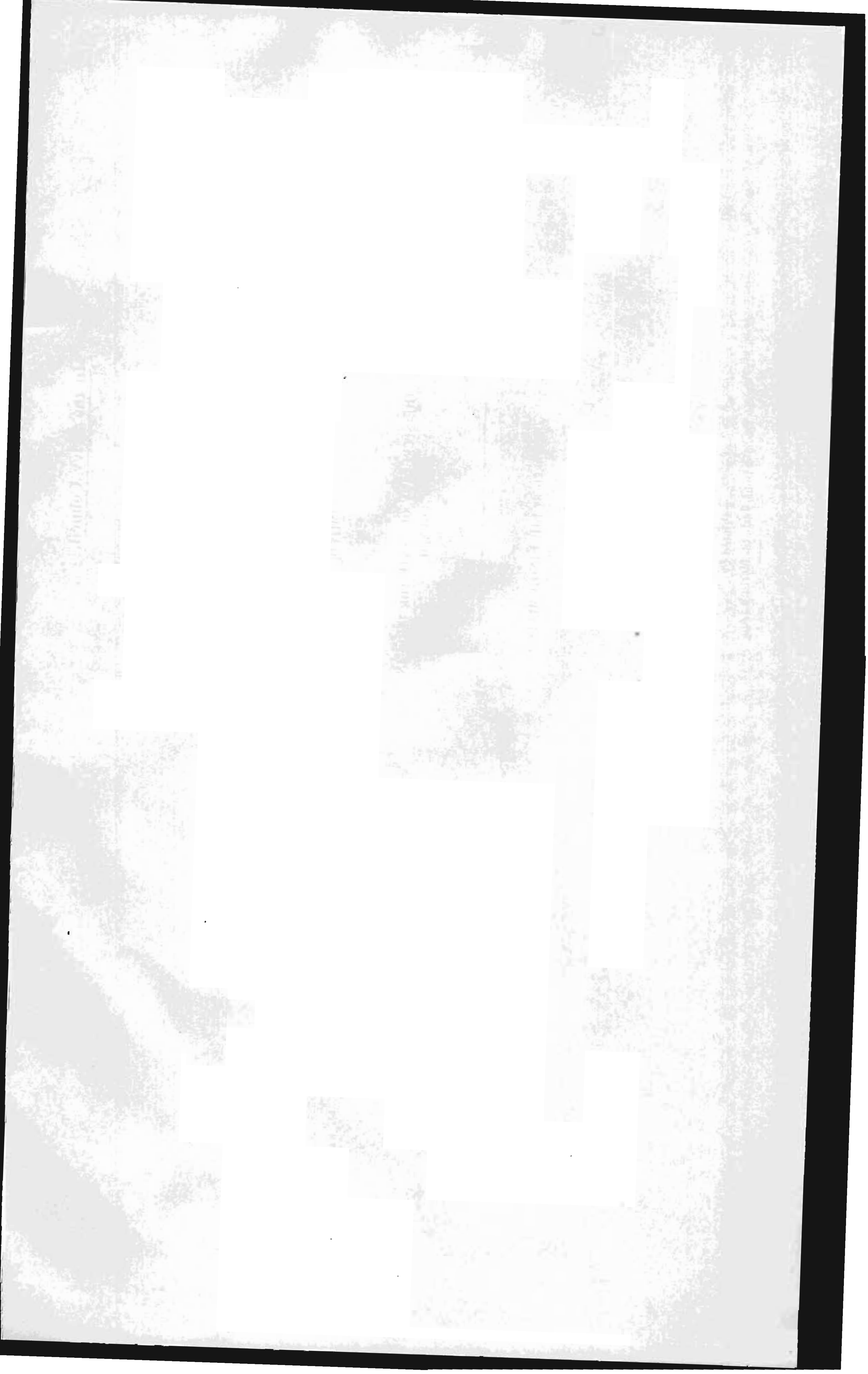
Having regard to the practice of the High Court in second appeals it seems probable that the full record of the case which was laid before their Lordships was not placed before the learned Judges of the High Court.

The two other points that their Lordships have to decide are whether the suit is maintainable and whether the same is barred by limitation. The identical points came up for decision in the case of *Raja Promoda Nath Roy* v. *Asiruddin Mandal*, 15 Calcutta Weekly Notes, 896, and the High Court decided that a suit like the present would come within the proviso to Section 111A of the Bengal Tenancy Act, and that the period of limitation applicable to such suits was that provided by Art. 120 of the Limitation Act.

Their Lordships concur in this decision and the reasons given in its support by Mr. Justice Chatterjee.

For the reasons aforesaid, their Lordships are of opinion that the appeal should be allowed, the decree of the High Court set aside, and the decree of the District Court restored, with costs in all the Courts, and they will humbly advise His Majesty accordingly.

The respondent will pay the costs of this appeal.



In the Privy Council.

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v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL

DELIVERED BY SIR BINOD MITTER.

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