

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Joynarain Giri v. Sheeb Proshad Giri and
others, from the High Court of Judicature
at Fort William in Bengal; delivered 6th
March 1873.*

Present :

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
LORD JUSTICE MELLISH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THEIR Lordships are of opinion that the ordinary rule which they have observed, respecting the findings on questions of fact by two courts applies in this case. It was a case in which the Plaintiff alleged that he and the Defendant had lived in commensality and enjoyed certain joint property of which the Defendant being the elder was the manager; that the Defendant had claimed exclusive possession as against him, and their commensality had ceased, and he applied for his share of the joint property. The Defendant alleged that the property was not joint. Upon that issue both courts have found against him; and it is not now contended that the finding is not right with respect to the bulk of the property. But it is alleged that with respect to a certain portion of the Plaintiff's claim, the decision is wrong, or at all events that some further enquiries should be instituted. That portion of the claim is this. It appears that the Plaintiff and Defendant held a joint lease of certain khas lands from the Government, and certain joint property had been deposited as a security for the payment of the

rent to the Government, but the Defendant alleges that since the institution of this suit that property had been taken possession of by the Government in consequence of the failure of the ryots to pay the rent, which he attributes to a certain cyclone which occurred in 1864, wherefore he was unable to pay the Plaintiff his share of it; and he further alleges that all papers connected with the transaction by which he could prove this part of his allegation were lost in the cyclone. Both courts appear to have disbelieved the Defendant's statement upon this matter, which was almost entirely unsupported by any evidence except his own, that evidence being of a very unsatisfactory character. It appears to their Lordships that the whole of this part of case was in fact before both courts, and the Defendant, if he had a case, might have proved it, and they are not disposed to set aside the finding of the courts that the Plaintiff is entitled to his half of this joint property which was deposited as a security for the payment of the rent with the Government, As to the amount of mesne profits to which he would be entitled, that is another question, but that has not been concluded and will be determined upon execution. It appears to their Lordships that this is the only matter upon which any enquiry could be necessary, and upon this an enquiry will be held. There was also a question as to the Plaintiff's right to recover certain nij jote lands which the Defendant said he had given up to the landlord. The courts below did not believe his story upon that, they did not believe that he proved that they were given up to the landlord, but if they have been given up to the landlord then the Plaintiff will not get them in execution.

On the whole their Lordships see no ground for reversing the decision of the two courts, which appears to be on questions of fact which they have properly enquired into; and under these circumstances their Lordships will humbly advise Her Majesty to dismiss this Appeal, and to affirm the judgment of the court below.