Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharanee Shamohini v. *Sheikh Zeeaoollah Chowdry and others from the High Court of Judicature at Fort William at Bengal; delivered 1st August*, 1873.

Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague Smith.
Sir Robert P. Collier.

Sir Lawrence Peel.

THIS is an Appeal from a Judgment of the High Court at Calcutta. The suit was brought by the late Maharaja Tarucknoth Roy, of whom the Appellant is the widow, to recover an eight anna share of certain lands alleged to appertain to Mouzah Nij Chatnye, Mehal No. 289, in Chuckla Karjeehaut Zillah Rungpore. The Plaintiff, the late Maharajah, alleged that he purchased an eight anna share of the said Mouzah Nij Chatnye at a Government sale for arrears of revenue, and that the Defendants immediately before the auction purchase, at the time of the survey, fraudulently caused the lands in dispute to be measured, and entered in the Government Survey Map as a cheet or detached portion of Mouzah Jhar Singeshwur and had the same entered as such in the thack map, and that the Defendants had dispossessed the Plaintiff of the said lands. It appears that Mouzah Chatnye was formerly part of a large estate in which several persons had undivided shares; that, in the year 1798, the estate was divided, and that in the course of that division Mouzah Chatnye was apportioned in certain shares

amongst four distinct talooks or estates, each of which was brought on to the district towjee under a a separate number, name, and Jumma.

No. 289, named Neej Chatnye, comprised a 10 anna and 1 cowrie share of Mouzah Chatnye; No. 46, named Bothnagoree, a 5 gunda 3 cowrie share; No. 40, named Karjeehaut, a 5 anna 6 gunda share; and No. 49, named Dokarhaut, an 8 gunda share.

It was contended, on the part of the present Appellant, that each of the subdivisions of Mouzah Chatnye consisted of a distinct and specific portion of land, and not merely of an undivided share of lands held jointly; and that the whole of the lands in dispute were included in the estate numbered 289, named Neej Chatnye, of which he purchased an 8 anna share. On the other hand, it was contended that each of the separate estates comprised an undivided share of Mouzah Chatnye, the estate No. 289, called Mouzah Neej Chatnye, containing an undivided 10 anna 1 cowie share of that Mouzah.

At the first trial, before the Principal Sudder Ameen, several issues were raised for the purpose of ascertaining whether the lands in dispute were part of Mouzah Chatnye, from which they had been excluded in the survey map, or whether, as alleged by the Respondents, they belonged to Mouzah Singeshwur. Those issues were found in favour of the Plaintiff, and the finding was upheld by the High Court upon appeal. No appeal has been preferred to Her Majesty in Council from that decision, and it must therefore be assumed that the lands in dispute are part of Mouzah Chatnye. The question, however, remains, whether the entirety of those lands, or only an undivided 10 anna 1 cowrie share thereof, belongs to the estate No. 289, of which the Plaintiff purchased a moiety.

The 5th issue was—Whether the Plaintiff had purchased at the auction sale 8 annas out of 16 annas of Mouzah Chatnye, or a moiety of 10 annas 1 cowrie share thereof: or, in other words, whether he had purchased one-half of Mouzah Chatnye, or one-half of a 10 annas 1 cowrie share thereof.

The 6th issue was—Whether the entire Mouzah Chatnye belonged to talook No. 289, or portions of it belonged to talooks Nos. 40, 46, and 49.

Upon the 5th issue the Principal Sudder Ameen found that the Plaintiff purchased only a moiety of a 10 annas 1 cowrie share; and as to the 6th issue, he found that the entire Mouzah Chatnye did not appertain to talook No. 289. He said (*see* Record, p. 814)—

"Although the plaintiff has stated in his written statement, that the four lots have been demarcated separately at the time of thack, yet he has failed to file different thack maps. On the contrary, the thack map, dated 2nd February, 1857, relating to mouzah Chatnye, which has been filed, shews that 8 gundas share appertains to talook No. 49. Although, in the said map, 15 annas, 12 gundas share has been entered as appertaining to talook No. 289, yet from the ruboocaree, dated 14th March, 1862, authenticated copy whereof has been filed with the record, it appears that out of the said 15 annas, 12 gundas share, 5 annas, 6 gundas share appertains to talook No. 40, and 5 gundas, 3 cowries share to talook No. 46; especially when talook No 289 has been proved by several documentary evidence to comprise 10 annas, 1 cowrie share, the mention of 15 annas, 12 gundas share can be attributed simply to mistake."

The result was that, by his Decree dated 4th December, 1862, he ordered that the Survey Map should be amended, and that out of the disputed lands possession of a 5 annas 2 kaugs share (the same being one-half of a 10 annas 1 cowry share) thereof should be delivered to the Plaintiff as appertaining to the share purchased by him at the auction sale. The Defendant appealed to the High Court from that decision upon the ground that the finding that the lands in dispute were part of Mouzah Chatnye was erroneous; and the Plaintiff, under the provisions of Section 348, Act 8, of 1859, filed objections to the decision upon the ground that only one-half of a 10 annas 1 cowry share of the lands in dispute, instead one-half of the whole of such lands, had been awarded to him.

The Defendant's Appeal was rejected; but it appears that the objections urged by the Plaintiff were not decided by the High Court; the Plaintiff consequently applied to the High Court for a review of judgment which was granted, and, upon the hearing several fresh issues were sent down to the Principal Sudder Ameen for trial under the provisions of Section 354 of Act 8 of 1859. The case having gone back to the Principal Sudder Ameen, a Civil Court Ameen was deputed to make a local investigation, and he, after examining the Survey Map

and numerous documents and witnesses, reported in substance that the lands of the four lots were joint, and that the respective proprietors held possession of them jointly.

The report having been sent to the Principal Sudder Ameen, who, it may be remarked, was not the same Principal Sudder Ameen as the one who tried the case in the first instance, he examined as a witness, upon solemn affirmation, the Civil Court Ameen who had made the local investigation, and his evidence is very important. He said ("Record," p. 1403) :—

"When I was Acting Civil Court Ameen, I made a local investigation on the lands, in this suit, and have verbally heard from the ryots thereof. I do not distinctly recollect the number of the talook. Zeeaoollah Chowdhry is in possession and enjoyment of the other two talooks, besides Nos. 289 and 46. There are no traces in the mofussil of these lands being separate except that they have separate names only. The whole of the undisputed lands of Chatnye are in joint possession of the zemindars of the 4 lots. Talook No. 289 is contained within the 10 annas and 1 cowrie share of Chatnye, the rent of the half of which is even now being taken by the present plaintiff and of the remaining half by Moonshee Soleem and other sharers. The lands and ryots are joint. The rents are collected by shares, that is to say, out of the 16 annas of the rent the plaintiff gets his 5 annas and 2 kags for each rupee, the remaining shareholders receive according to their (respective) shares. I do not know in what way the defaulter, viz., Zeeaoollah Chowdry, held possession of the disputed lands previously to the auction-sale, nor have I made any enquiries on the spot on that score. The plaintiff did not obtain possession of the disputed land after auction-purchase. This I have ascertained on my local investigations."

The Principal Sudder Ameen proceeded with the trial of the issues sent down for trial by the High Court. He found in effect that the rents of the undisputed lands of Mouzah Chatnye were collected separately by the several co-sharers according to their respective shares, but that the lands were undivided and joint. He said (see Record, p. 1402, line 24) :—

"With reference to the subject matter of dispute, my opinion is, that the talook No. 289 formed a part of Mouzah Chatnye, *i.e.*, registered as included in 10 annas, 1 cowrie share, since a long time. This fact is shown in detail by the reports called for and received from the Collectorate of this district, respectively dated 21st November, 1862, and 28th April, 1865. It appears from the quinquennial papers that Mouzah Chatnye was included in 4 numbers. At present the fact of the collection of the rents

separately, according to shares, though the lands are held jointly, is not disproved by the depositions on oath of the present co-sharers, Soleem Moonshee, Abool Hyet and others, and by the collection papers filed by both parties. Also the greater portion of the principal tenants of the said talook have given their evidence in support of the said fact. Moreover, the Ameen who conducted the investigation did not contradict it in his deposition on oath."

In reporting his findings to the High Court, the Principal Sudder Ameen stated that he had proceeded to the trial of the issues without any reliance upon the Ameen's report, but with reference to the deposition of the Ameen himself on oath, and after taking the evidence of seven principal tenants.

The High Court, after examining the documents and evidence, arrived at the same conclusion as the Principal Sudder Ameen. They found that the lands of Mouzah Chatnye were not separate, and that Lot No. 289 comprised only a 10 anna 1 cowry share of Mouzah Chatnye, and they affirmed the Decree of the first Principal Sudder Ameen of the 4th December, 1862. Their Lordships, after a careful examination of the documents and evidence, are of opinion that the High Court arrived at a correct conclusion.

If the several estates into which Mouzah Chatnye was divided had each consisted of separate and distinct lands it would have been necessary, under Regulation 25 of 1793, which, though since repealed was in force when the estate was divided, to have had an Ameen appointed under section 12 to divide the estate, and a survey made of the different parts of the property under section 15. It would also have been necessary, under section 18, for the Ameen after completing the division of the property, and allotting the public revenue on each of the estates, to submit to the collector the papers of the division and allotments, specifying the names of the mehals or villages included in each separate estate, the gross produce of each of such mehals and villages for the three preceding years, the proportion of the public Jumma assessed by him upon each of the separate estates, together with such observations, accounts, and other matters as were required by that section. The collector would then, after having examined the documents delivered to him by the Ameen, have had to draw out a paper of partition specifying the villages and mehals included in the

several estates into which the property was divided, and the gross produce of each village &c., and to transmit a copy of such paper to the Board of Revenue for their confirmation, or for such alterations as they might think proper. If the proprietors of the estate had agreed to make the division of the estate themselves, or by arbitrators, the whole matter must, under section 22, have undergone the revision of an Ameen who would have submitted all the documents to the collector, and the collector, upon the receipt of them, would have had to proceed in the same manner as if the division had been made by the Ameen as above pointed out. Then after the division of the estate was completed, each of the several proprietors would have had separate possession of his own estate, and nothing to do with the estates of any of the other proprietors.

No evidence was given to prove that any proceedings were ever taken under Reg. 25 of 1793; nor were any of the papers which ought to have existed if such proceedings had been taken, produced or their non-production accounted for. The reasonable inference is that no such proceedings were taken, and that the estate was not divided into four different estates, each consisting of separate and distinct lands or villages, but that each of the four estates consisted merely of an undivided share of lands held jointly, each undivided share being separately liable for its own proportion of the revenue. This view is confirmed by the Registry-Book of 1207 (1800), in which, in the column headed "Name of the Mouzah," the entry is "Chee Chatnye" (admitted to refer to Neej Chatnye), "Share in the Mouzah, 10 annas 1 cowrie." Share in the Mouzah. What Mouzah? Not Mouzah Neej Chatnye, for the proprietor was entitled to the whole of Neej Chatnye, but of Mouzah Chatnye which was the original estate? Again, if each of the four Mouzahs into which Chatnye was divided had consisted of separate and distinct lands, and not merely of an undivided share of that Mouzah, there would have been separate thack maps, pointing out the lands comprised in each of the four Mouzahs—Neej Chatnye, Bothnagoree, &c.; yet it having been distinctly pointed out by the Principal Sudder Ameen on the first trial that, although the

Plaintiff had alleged in his written statement that the four lots had been demarcated separately, he had failed to file different thack maps, no such maps were produced or proved before the Civil Court Ameen or before the Principal Sudder Ameen after the remand.

The Plaintiff could not have been misled or induced to suppose that he was purchasing an 8-anna share of the whole of Mouzah Chatnye, for his attention was distinctly called by the description of the interest to be sold to the fact that he was purchasing only an 8-anna share of a 10 anna 1 cowry share of something. If that thing was Mouzah Neej Chatnye, he was purchasing only an 8-anna share of a 10 anna 1 cowry share of a Mouzah, the whole of which was only a 10 anna 1 cowry share of Mouzah Chatnye.

The Respondents, however, do not dispute the Appellant's right to one-half of a 10 anna 1 cowrie share.

It was found by the Principal Sudder Ameen on the first trial; by the Ameen who made the local investigation; by the Principal Sudder Ameen who tried the issues sent down by the High Court on review; and, lastly, by the High Court, that Lot No. 289 Mouzah Neij Chatnye was an undivided share of Mouzah Chatnye, of which the lands were held jointly. There are therefore four concurrent opinions upon that question of fact. Their Lordships are of opinion that the Plaintiff was never in possession of any part of the disputed lands, or of more than a 5 annas 2 kangs share of the undisputed lands of Mouzah Chatnye. The disputed lands having been found to be part of Mouzah Chatnye, the Plaintiff was entitled to the same share of them as he was of the undisputed lands of that Mouzah, that is to say, to one-half of a 10 annas 1 cowrie share thereof. That share has been decreed to him by the Principal Sudder Ameen, whose judgment has been affirmed by the High Court.

Their Lordships are of opinion that the judgment and decree of the High Court are correct; and they will, therefore, humbly recommend Her Majesty in Council to affirm the same, and dismiss this Appeal with costs.

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