

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Rajkishen Sing Surma Bahadoor v. The Collector of Mymensingh (on the part of Government), from the High Court of Judicature at Fort William, in Bengal; delivered 23rd April 1874.*

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Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE object of this suit was twofold. It was brought to set aside the boundary line which had been laid down by the survey authorities, and confirmed by all the revenue authorities up to and including the Sudder Board of Revenue; and it further sought a declaration of the right of the Plaintiff, as the zemindar of the permanently settled zemindary of Pergunnah Shooshung, to the whole of the lands lying to the north of that boundary line within the boundaries set forth in the plaint. Now there does not seem to be much dispute or difficulty as to the western, eastern, or north-eastern boundaries, but the difficulty in the case has been to say what is the northern boundary of the permanently settled zemindary of Shooshung, if it is not the line laid down by the survey authorities. The boundary claimed by the plaint is "the hills running along the north of the villages of Abulgarai and Sensengarai upon the north." Their Lordships will presently advert to the difficulty of giving a definite interpretation to that description of

the northern boundary. At present it is sufficient to say that the first object sought by the suit has been fully obtained; that the zillah Judge found that the survey authorities had erroneously laid down the boundary line; that although there was some difference of opinion in the division bench to whom that decision of the zillah Judge went in the first instance by appeal, all the judges composing the Full Bench of the High Court concurred in ruling that that line had been improperly laid down; and that it was not binding in any way upon the Plaintiff.

There is no cross-appeal against that decision, and the boundary line in question must therefore be taken to have been conclusively set aside.

The only question then which has been brought here by appeal, and the only question with which their Lordships have to deal, is whether the Plaintiff, the Appellant, has made out his title to the declaration sought in his suit of his right as zemindar to all the lands within the boundaries described in the plaint. Their Lordships have no hesitation in saying that they concur entirely with the High Court in thinking that the Appellant has given very strong evidence of rights of dominion exercised within the forests lying to the north of what may be called the survey line, and of rights of ownership as zemindar and possession as zemindar of certain villages, more particularly those villages which are referred to in the judgment of Mr. Justice Phear, as mentioned in the rubocarees, of Mr. Irwin and Mr Inglis, and in the final decision of Mr. Jenkins, the Commissioner.

In respect of those villages there was a distinct contest whether they belonged to the zemindary of Shooshung, or whether the Government had a right to assess them as belonging to the territory alleged to be independent and unsettled, or whether they belonged to the

Cossyah Rajah; and the result of those proceedings was to affirm the title of the Rajah of Shooshung.

Those proceedings then, if not conclusive in this case, at least afford very strong evidence that those villages are part and parcel of the Appellant's settled zemindary. And if their Lordships could have seen their way to any decision which would shut the door to future litigation and define beyond all further question the rights of the Appellant, they would have been extremely glad to pronounce it. But upon full consideration they do not see how upon the pleadings and evidence before them, and consistently with the practice of the courts in like cases, they can make such a decree. They must observe that there is upon this record, even as to the extent of the claim of the Plaintiff, considerable ambiguity. It has already been stated that the northern boundary claimed is said to consist of the hills running along the north of the villages Abulgarai and Sensengarai upon the north, and the decree of Mr. Simson, the Zillah Judge, adopts that boundary, and declares that the Plaintiff is entitled to the lands within it. But what is that boundary? The Appellant's counsel have wholly failed to satisfy their Lordships where the village of Sensengarai lies. It is not marked upon the survey map, and though it would appear, by the very rude sketch map which is also in evidence in the cause, to be in the neighbourhood of Abulgarai, it is impossible to fix geographically its precise position. Then again, taking the position of these two villages to be fixed, it would be impossible for their Lordships, on the evidence before them, to say that the hills running along the north of those villages was the Doora range of hills, which the learned counsel for the Appellant have

asserted to be the northern boundary of his zemindary. Upon the evidence and the maps it would rather seem that the boundary described in the plaint is to be found in some hills considerably to the south of the Doora range and nearer to the village of Abulgarai. Therefore any declaration in the terms of the plaint would, as it seems to their Lordships, leave the real boundary of the Plaintiff's estate still a matter of doubt and difficulty, and keep the door to future litigation still open. Again their Lordships do not see that they are in a condition to direct in terms any inquiry, the result of which would be certain to do justice between the parties and to ascertain the true boundary. At one time it appeared to their Lordships that if the district of Gowalparah or the zillah of Rungpore, out of which that district was taken, had been shewn to be precisely conterminous with Mymensingh, they might, by directing an inquiry as to the line which divides the two districts, have settled the question between the Government and the Appellant, inasmuch as the Appellant's zemindary comprises the whole pergunnah of Shooshung, and that seems to have extended to the northern limit of Mymensingh. Mr. Cowie's argument has, however, left it, to say the least, extremely doubtful whether there was not always some undefined and independent territory known as the Garrow hills, between Gowalparah and Mymensingh. Upon the whole, then, their Lordships feel that they are incompetent to declare the boundary or to do substantially more than has been done by the High Court. It has, however, been suggested that the decree of the High Court (and this has been fairly admitted by Mr. Cowie) may be open to some misconstruction, and their Lordships would propose to vary it in the way to be now stated. They do not think it necessary to alter that part of it which reverses the decree of the Zillah

Court, in so far as it declares the Plaintiff to be entitled to the lands specified in the plaint, because there is really no substantial difference between reversing that part of the decree and directing that that part of the decree be omitted; and they leave unaltered the declaration—"That  
 " the boundary line laid down in the survey map  
 " as the boundary line of the said Plaintiff's  
 " settled estate is not the true boundary line, and  
 " that the said Plaintiff is not bound by the said  
 " survey map or by the order of the collector  
 " of the 15th April 1859, and the subsequent  
 " proceedings thereon."

But after that declaration they propose to insert the following words:—"And the Court  
 " not defining the true boundary line of the  
 " Plaintiff's zemindary of Shooshung, doth  
 " further declare that this decree is to be  
 " without prejudice to the rights of the Plaintiff  
 " to any portion of the lands in dispute as part  
 " of his settled zemindary of Shooshung or  
 " otherwise." That will prevent any possible  
 misconstruction of the former decree as a decision adverse to the Plaintiff's claim in this suit.

Their Lordships cannot refrain from expressing their opinion that it is extremely desirable that whatever means may be open to the Government for defining and ascertaining the boundary of the Plaintiff's zemindary and his rights in this large tract of land, which under the special Act of 1869 has been put under the peculiar jurisdiction thereby created, should be taken with as little delay as possible.

There may be sound political reasons founded on the peculiar character of the Garrow tribes which justify such an enactment. But care should be taken to prevent such abnormal legislation from interfering more than is absolutely necessary with the private rights of a zemindar under the perpetual settlement.

And it is but fair that the Plaintiff, who has already been put to so much expense and trouble in relation to his property, should be relieved from further expense and trouble as much as possible. It must be, one would think, within the power of the survey officers to ascertain the true boundaries of his settled zemindary, which upon the evidence would certainly seem to comprise the villages as to which he has given such strong evidence of title, and, presumably at least, so much of the disputed land as lies to the south of them.

Their Lordships, therefore, will humbly recommend to Her Majesty to vary the decree of the High Court by inserting the further declaration stated above, and, subject to that variation, to affirm the decree; and they think that, there being some variation of the decree, but that variation not being a very substantial one or going to the full extent of what was claimed by the Appellant, each party should pay his own costs of this appeal.