

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Udaya Aditya Deb and another v. Jadub Lall Aditya Deb, from the High Court of Judicature at Fort William, in Bengal; delivered July 1st, 1881.

Present:

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

— IN this case the only Appellant—the other Plaintiff in the suit being the manager of the estate of the first Plaintiff—is the Rajah of Patcum, in Chutia Nagpur, and he is the son and successor of Rajah Shatrooghun. The raj is admittedly an impartible raj, and one in which the custom of primogeniture exists. There is also a custom that the younger sons of the Rajah are entitled to maintenance, the second being called Hakim, the third, Konwar, and the fourth and subsequent, Lals; but the maintenance given according to this custom ceases with the life of the grantor, and has to be renewed upon a succession to the raj.

The late Rajah Shatrooghun during his lifetime executed two instruments, one being called a pon-baha mokurruri pottah or permanent lease at a fixed rental granted in consideration of a bonus or fine, and the other a khorposh mokurruri pottah or permanent maintenance grant. The pon-baha mokurruri pottah was the first, being dated the 30th April 1868, and is in these terms:—“ This mokurruri pottah, on pay-

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“ ment of bonus, is executed. Within my zemin-
 “ dari of pergunnah Patcoom, appertaining to the
 “ sub-district of division Manbhoom, the entire
 “ mouzah Kallianpore (being one mouzah), as
 “ per boundaries given below, was previously
 “ fixed for your maintenance. Now, excluding
 “ it from that maintenance, I make a mokurruri
 “ settlement of the above entire Kallianpore,
 “ one mouzah, and Jhimri, one mouzah, with all
 “ rights appertaining thereto, in all two mouzahs,
 “ with you, by means of a mokurruri pottah, and
 “ on receipt of a bonus of Rs. 1,200, and at an
 “ annual mokurruri rental of Rs. 85-10-2-2-2.”

Then after some further passages it says:—

“ Neither I nor my heirs shall have any other
 “ right in those two mouzahs beyond the above-
 “ fixed mokurruri rent.”

The other instrument is dated the 30th
 November 1868, and is in these terms:—“ This
 “ mokurruri pottah for maintenance is executed.
 “ My second son and the future Hakim Keshub
 “ Lal Aditya Deb deceased having died, and you
 “ being at present the second of my sons, you
 “ will, according to the special rule of our
 “ Rajdhani, become the Hakim on my death.
 “ A gift was therefore made to you before of
 “ one mouzah Doodri, one mouzah Chamda, one
 “ mouzah Laya, one mouzah Kallianpore,”—and
 so on, naming other mouzahs, in all eight
 —“ without any title deed, and for your
 “ maintenance as Hakim, and you are in posses-
 “ sion of those mouzahs. Now considering it
 “ proper to execute a deed in respect of seven
 “ of the above mouzahs, except Killianpore, I
 “ execute a deed for the remaining seven mouzahs
 “ aforesaid with the exception of one mouzah,
 “ Kallianpore. You shall continue to possess
 “ and enjoy the rights appertaining to the seven
 “ mouzahs aforesaid lying within the following
 “ boundaries by right of maintenance during

“ your lifetime.” Then after some other passages—“ I made a gift of mouzah Kallianpore for maintenance. I have excluded that mouzah Kallianpore and granted you a mokurruri settlement of the same along with mouzah Jhimri by a separate deed, and on another date, *i.e.*, the 19th Bysack of the present year.” These two instruments were given to the Respondent, who was the half-brother of the Appellant, and had been the third son of Rajah Shatrooghun, but in consequence of the death of his brother had become when the instruments were executed the second son and the future Hakim.

It is to be observed here with reference to the intention of these instruments that Kallianpore had, as is stated in the latter, been originally given for maintenance, but it is withdrawn from that gift and is included in the other mokurruri with the mouzah Jhimri, showing that Kallianpore was no longer intended to be for maintenance, and that the instrument of the 28th April 1866 was not intended by the Rajah to be of the nature of a maintenance grant, but was intended to be a gift, or, as he thought it would be safer to make it on the face of it, a mokurruri for consideration.

The suit is brought by the eldest son, the present Rajah, to set aside both these instruments and for possession of the mouzahs included in them. The Lower Courts have found that the instrument of the 30th November 1868—which is described as being a mokurruri pottah for maintenance—ceased to have effect on the death of the grantor Rajah Shatrooghun; and there is now no question with reference to that part of the decision of the Lower Courts.

The question in this Appeal arises upon the instrument of the 30th April 1868, and it is contended that the estate being impartible was inalienable—

as their Lordships understand the argument—by reason of such impartibility; and further that, there being the custom to give maintenance, this instrument was in reality for the purpose of maintenance, and consequently subject to the limitation, which is part of the custom, that it could not remain in force beyond the life of the grantor.

Now it is important to see what has been found by the Lower Courts upon this subject. The Deputy Commissioner has said:—“With regard to the mokurruri pottah, I hold that Plaintiff has failed to prove that the granting of it was contrary to family custom. An attempt has been made to show that the deed should be thrown out, because it is more than doubtful whether the consideration recited in it ever passed; but I agree with the defence that such shifting of the Plaintiff’s claim cannot be allowed. I have not a shadow of a doubt that the late Rajah did grant the deed to the Defendant; Plaintiff himself does not deny it. But whilst I cannot allow the shifting of the claim, I hold that the fact, if fact it be, and I believe it to be a fact, that the consideration of Rs. 1,200 did not pass, is a valuable piece of evidence. If no consideration passed, does it not prove that the late Rajah was not sure of his ground? It seems to me he felt that he was going somewhat near a breaking of a family custom which the Courts might possibly not allow, and therefore he wished to give a business look to the transaction and pretended to take a consideration. If I am right, what was the family custom? I think that referred to by Regulation X. of 1800, that a zemindar, such as Plaintiff unquestionably is, succeeds to all that his father cannot by such custom alienate. So far as the evidence goes, I am of opinion that even if Shatrooghun

“ had made on paper, what I believe he made in
 “ fact, a present of the mokurruri lease to the
 “ Defendant, the Plaintiff could not have set the
 “ deed aside.” This shows the Deputy Commis-
 sioner considered that, although it had not been
 proved that the consideration passed as stated
 in the instrument, a gift of the lease was
 in fact made to the Defendant. Further on
 he says :—“ It appears to me that the right to
 “ alienate land in Patcoom has been proved, and
 “ therefore that the mokurruri grant must stand.
 “ The granting of a mokurruri is a favour on
 “ the part of the grantor, the obtaining of
 “ maintenance is a right on the part of the
 “ grantee; and the Courts of this district have
 “ been in the habit of laying down what main-
 “ tenance any particular member of a zemindar’s
 “ family shall be entitled to recover.” Here,
 therefore, we have two distinct findings; one
 that this was intended to be a present to the
 Defendant, the Respondent, and the other that
 there was a right in this raj to alienate land.

The case then went by way of appeal to
 the Judicial Commissioner, and he agreed with
 the Deputy Commissioner in the finding as to
 the consideration. He says :—“ There is no
 “ doubt whatever, as the Lower Court holds,
 “ that the receipt of the Rs. 1,200 by the
 “ grantor is a complete fiction, and that the
 “ transaction was not a business one, but a sim-
 “ ple gift to Defendant. But then the question
 “ arises what was there to prevent the Raja
 “ from making a mokurruri to the Defendant in
 “ the same way as he might to a stranger, even
 “ if no *pun* (consideration) passed?” Further
 on he says :—“ I think I ought to confirm the
 “ decision of the Deputy Commissioner. The
 “ general power of alienation on the part of the
 “ late Raja being, I think, established, and the
 “ mokurruri pottah being undoubtedly genuine

“ and registered, it lies with the Plaintiff to
“ show its invalidity ; and this he has attempted
“ to do by maintaining that it is contrary to
“ family custom :” and in a later paragraph he
says, “ That custom has not, I think, been
shown to be opposed to the mokurruri.”
Therefore the Judicial Commissioner quite
concurrs with the Deputy Commissioner in the
findings of fact.

When the case came before the High Court,
the Judges pointed out that it was necessary
for the Plaintiff in order to succeed to show
that there was some custom which would
prevent the operation of the general law which
would give a power of alienation ; and they
said that the only custom proved was, that the
estate descends to the eldest son to the exclusion
of the other sons, and that, instead of there being
proof of a custom against alienation, what
evidence there was showed that alienations had
been made.

Upon those findings, the question whether the
mokurruri pottah is valid or not seems to be
concluded. It could only be impeached either
upon the ground that it was really intended to
be a maintenance grant, and so would cease at
the death of the grantor. or that, either by law
or by a family custom, there was no power to
alienate any part of the raj. It seems that there
have been some decisions in India in which it
was considered that there was not a power of
alienation in zemindaries of this kind. But one of
those decisions came before this Board in the case
reported in the 5th Moore, page 82, and there their
Lordships considered that the inalienability of the
zemindary was a matter to be proved ; and as it
appeared to them that it had not been sufficiently
established, they proceeded to consider whether
or not the grant that had been made was for
maintenance. They certainly did not consider

that, as a matter of law, the impartibility of the raj made it inalienable, but their Lordships treated the question of inalienability as one depending upon family custom, which would require to be proved. Here the findings are very distinct that there is no such custom in existence with reference to this raj; and their Lordships therefore are of opinion that the judgment of the High Court is a correct one, and they will humbly advise Her Majesty to affirm it and to dismiss the Appeal.

