

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Nilmoney Sing v. Bakranath Sing and the Secretary of State for India, from the High Court of Judicature at Fort William, Bengal, delivered 10th March 1882.*

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Present :

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

This is an appeal from a decree of the High Court at Calcutta. The Appellant is Raja Nilmoni Sing, the Raja and zemindar of Pachete. He was the Defendant in the suit out of which the appeal arises, and which was brought against him by the Respondent, Bakranath Sing, for confirmation of possession of a jagir mehal, consisting of Mouzah Dhekia and other mouzahs specified in the schedule to the plaint, by establishing his title to the same and reversing a summary order of the 10th of August 1874.

It appears that the Appellant, having obtained a decree against Beer Sing, the father of the Respondent, for the sum of Rs. 72 odd, awarded to him for costs, had caused the mouzahs in question to be attached in execution of the decree, and that on the 11th June 1874 a proclamation was issued for the sale of the right, title, and interest of the judgment debtor

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therein on the 10th of August in that year. In the proclamation the Plaintiff was described erroneously as the judgment debtor, whereas he was only the heir-at-law against whom the decree had been revived after the death of his father, Beer Sing.

On the day appointed for the sale, the Respondent presented a petition stating that he was not in possession of any property of the deceased judgment debtor, and that the Government jagir mehal could not be sold on account of the debts of the deceased; that since the death of his father, the late Beer Sing, he had been appointed jagirdar, and was in possession of the mouzahs attached as ghatwal appointed on the part of Government; that the decree holder, without describing the mouzahs to be jagir, and without stating the nature of his father's interest therein, had secretly done the acts relating to the execution of his decree; and that the petitioner, having received information that the jagir mehals would be sold on the 10th of August, had presented the petition stating his objections. Upon that petition the summary order referred to in the plaint was passed by the Moonsiff:—"This petition of claim has been filed to-day just before the sale; the claim cannot be allowed at such a time. It is ordered that the petition of claim be rejected." The sale accordingly took place, and the present Appellant became the purchaser.

The suit out of which this appeal arises was originally instituted in the Court of the Moonsiff of Chowki Gungajalghati, in the district of West Burdwan, and the Secretary of State for India was made a *pro formá* Defendant. The suit was subsequently removed into the Court of the Judge of West Burdwan.

The Government put in a written statement, in which they alleged that the lands were police

service lands, and that they had been held by jagirdars in lieu of wages for the performance of police duties from before the permanent settlement, as had been formerly determined in the presence of the Raja Defendant by the Deputy Commissioner of Manhboom, in Case No. 105 of 1863, and the several Courts of Appeal; that the lands not being transferable, and the Raja Defendant having caused them to be sold without any specification that they were service lands, and having himself purchased them at the sale, could acquire no title by the purchase.

The Raja Defendant, in his written statement, contended, amongst other things, that the mouzahs were not a jagir constituting Government property, but part of his permanently settled *mal* estates, and that they had been granted by his father to the Plaintiff's father as a service tenure.

Further, he made the following statement:—

“Third. ‘Turruf Dhekia,’ in which these mouzahs are comprised, was divided into two (equal) parts, one of which is Plaintiff's ancestral property, and the other was enjoyed by Dhurmo Das Chuckerbutty as a service tenure in the manner described above. Subsequently, the half share of turruf Dhekia, held by the said Dhurmo Das, having been sold by auction for arrears of rent, his grandson, Uday Chuckerbutty, brought a civil suit to set aside the sale, alleging the share to be Government jagir property; but, in the judgment of the High Court, the suit was dismissed, on declaration that the disputed estates appertained to the *mal* land, and in rejection of the allegation as to the Government jagir lien, as will appear from the decision. Therefore the Plaintiff's suit is evidently false.”

The Plaintiff himself was examined, and stated that his profession was that of a ghatwali jagirdari, that he was jagirdar of Ghat Dhekia, that he was appointed in 1273 by the Magistrate of Bancoora, and served the Government and carried out the orders issued by the thannah; that the jagir lands did not remain in his possession unless he performed the service; that the person who is appointed in the place of a dismissed ghatwal

holds possession of the land; that after his appointment the sub-inspector put him into possession; and that he never did any service for the Raja, and did not receive any permission from the Raja on his appointment.

Amongst other issues, the following were raised :—

2nd. Whether the status or condition of the lands as Government service, *i.e.*, ghatwali or jagir, had been decided in a former suit by a Court of competent jurisdiction.

3rd. Whether the land in suit was held by the Plaintiff as service land, *i.e.*, ghatwali or jagir under Government, or as service land under the Defendant, Raja Nilmoni Sing.

4th. Whether the land was land on account of which rent was paid to the Raja by the Raja's appointee, and whether this rendered the tenure a saleable one.

5th. Whether the Plaintiff's interest in the land was such an interest as admitted of being brought to sale in satisfaction of a decree due from the Plaintiff's predecessor to the Raja.

The case was tried by the Officiating Judge of West Burdwan. On the trial the Government accepted the full burthen of the suit, and supported the Plaintiff. It still holds the same position, having been made a Respondent, and having appeared by Counsel before their Lordships and opposed the appeal.

The only substantial question to be decided is, whether the mouzahs in question, which had been held by the Plaintiff's father during his lifetime, and which at his death descended to the Plaintiff, as his heir, and to which the Plaintiff was appointed by Government, were liable to be seized in execution of a decree against the father as assets by descent in the hands of the Plaintiff, his son.

Neither the origin of the jagir nor the precise

time at which it was created is known, but it appears that as far back as 1771, corresponding with 1178 B.S., the villages of which it was composed were held by jagirdars who paid to Government two thirds of the annual value thereof as revenue, and retained the other one third as remuneration for the services under which the jagir was held. The villages included in the jagir were permanently settled as part of the zemindary of Pachete, of which the Defendant Appellant is the zemindar. In fixing the Government revenue at the time of the decennial settlement, the lands included in the jagir were assessed at the two thirds then payable by the jagirdar to the Government, and the one third retained by the jagirdar in lieu of services formed no part of the assets of the zemindari in respect of which the Government revenue was fixed.

Jagirdars were successively appointed or approved by Government up to the time of Gooroo Churn Mookerjee, who was appointed in 1816 in the place of Roop Sing, who was dismissed for misconduct.

In February 1817 Gooroo Churn petitioned the magistrate for leave to associate Dhurmo Dos Chuckerbutty with himself as headman; this was sanctioned, and they divided the jagir and the duties. On the death of Gooroo Churn, his son applied to be installed as his successor, but Roop Sing having applied to be reinstated, his application was granted. In 1834 Roop Sing attempted to oust Dhurmo Dos Chuckerbutty, but this was not allowed, and the jagir has ever since remained divided.

It was contended, on behalf of the Appellant, that, as the lands were included in his permanently settled zemindari, the services as well as the rent belonged to him; that the services were private services, and that he had a right to

cause the lands to be sold in execution of his decree.

In support of his case, the decision of the High Court referred to in the Raja's written statement was cited. It is set out in the appendix to the record, p. 36, and was in a suit brought against the Raja by Udoy Chuckerbutty, who had been appointed successor of Dhurmo Doss Chuckerbutty, to obtain possession of the mouzahs which constituted that portion of the jagir which upon the division of it had been allotted to Dhurmo Doss, whose right and interest had been sold by the Raja in execution of a decree for rent obtained by the Raja against him. The Government was a party to that suit, and supported the claim of the Plaintiff therein. The first Court held that the Plaintiff had a right to recover possession of the jagir lands, but that decision was reversed on appeal by the High Court. In speaking of that case, the Officiating Judge in the present case remarked:—"It is not relevant as evidence in this case, but is useful as a precedent or in argument. The Court found in that case that the services exacted by Government were encroachments on the Raja's rights, and that the duties, *i.e.*, service, attached to the holding of the land, and not the holding of the land to the appointment to perform the duties. With respect to the lands in dispute, I have to remark that the Raja's evidence in this case, as well as that of the Government, shows that the opposite is true in this case." Then, after referring to the evidence, he says:—"I therefore conclude that the performance of the services is the chief title to the jagir lands, and that no man has any right to hold these lands except on a title arising out of a valid appointment to discharge the services; to adapt the words of the High Court's judgment," or rather the converse of it, "to the facts of the case,

“ ‘the holding of the lands attaches to the “ ‘duties, and not the performance of the “ ‘duties to the holding of the land.’ ” On the 3rd issue he found that the land in suit was land held by the Plaintiff, Bakranath Sing, as service under Government, *i.e.*, not ghatwali but jagir land, and was not held as service under the Raja. On the 4th issue he found that the land in suit was not land on account of which rent was paid to the Raja by the Raja’s appointees; and on the 5th that the Plaintiff’s interest in the lands was not such as admitted of its being brought absolutely and without special conditions to sale in satisfaction of a decree due from the Plaintiff, or his predecessor, to the Raja, but that the interest was saleable for the purpose aforesaid, provided it be sold subject to the performance of the jagir services by the purchaser, after he has obtained appointment to the duties at the hands of the magistrate or his representative police authorities, and installation by the same authorities. He accordingly annulled the sale of the lands under the execution; set aside the summary order of the Moonsiff, and declared that the Plaintiff had a right to continue in possession as the service tenant of the Government, and as the rent-paying tenant to the Plaintiff. The case was appealed to the High Court. The appeal was heard by a Division Bench, consisting of Mr. Justice Markby and Mr. Justice Romesh Chunder Mitter, who differed in opinion. The decree of the Officiating Judge was reversed, and the suit dismissed, in accordance with the opinion of the Senior Judge, Mr. Justice Markby, Mr. Justice Romesh Chunder Mitter dissenting, and holding that the decree ought to be affirmed.

Mr. Justice Markby agreed with the Officiating Judge that the Raja had not shown that the Plaintiff held as his appointee; he relied upon

the fact that the lands were part of the revenue-paying lands of the Raja, and also upon an admission of the Advocate General, on behalf of the Government, that the tenure was an hereditary one, unless there was some special objection to the person entitled to succeed. He also relied very strongly upon the decision in Udoy Chund Chuckerbutty's case, already referred to, and added, "An appeal against this decision was lodged in the Privy Council by the Government, but it has not been prosecuted; and it is admitted that there is no intention to prosecute it." He stated that he thought it was his plain duty to follow the former decision, unless he had the clearest possible reasons for differing from it; and that so far from differing from the decision, having considered the evidence and heard the arguments, he entirely concurred in it. He then proceeded to discuss the question whether the fact that the holders of the lands were liable to perform some services of an exceedingly indefinite character but something of a police kind to Government took away from this tenure the character of alienability, which it would otherwise possess, and expressed his opinion that it did not.

An appeal was preferred under Section 15 of the Letters Patent of the High Court from the decree of the Division Bench to the High Court, and was heard by Mr. Louis S. Jackson, then Officiating Chief Justice, Mr. Justice Ainslie, and Mr. Justice Sewell White, when the decree of the Division Bench was reversed, and the decree of the First Court affirmed by a majority, consisting of the Acting Chief Justice and Mr. Justice Sewell White, against the opinion of Mr. Justice Ainslie. Their Lordships concur generally in the view taken by Mr. Justice Romesh Chunder Mitter and the Acting Chief Justice, and are of opinion that the decree now under appeal ought



to be affirmed. The judgment of Mr. Justice White was founded merely upon the form of the proclamation; he concurred with the First Court in holding that as the proclamation did not describe the lands as held under a service tenure, the sale to the Raja, under the execution, passed no title to the property, and he abstained from expressing an opinion upon the question as to which Mr. Justice Markby and Mr. Justice Romesh Chunder Mitter differed, viz., whether the interest of the Plaintiff's deceased father in the lands was such that when they came into the possession of the Plaintiff they were assets of the father, and as such liable to be attached and sold for his debts.

According to the report of Lala Kanji, tehsildar of Pachete, made on the 18th of July 1799, it appears that there were in Chakla Pachete, in addition to the digwars, three other classes of guards, whom he describes as jagirdars, ghatwals, and chowkidars. He says of the first, they hold their mouzahs in jagir, and whenever the digwars require assistance in arresting thieves or rioters, the jagirdars assist them with their men. Of the second, that is the ghatwals, he says the second were posted at the ghats, 36 in number. In 23 of these the ghatwals were subordinate to the digwars, and were paid by them out of their jagirs; 13 are occupied by the Raja's own immediate servants paid by him.

It is clear that the jagirdar in question was not one of the ghatwals referred to in the report, as being subordinate to and paid by the digwars out of their jagirs, for they were paid by the one third of the malgoozari, which they were allowed to retain as a compensation for their services.

Mr. Justice Romesh Chunder Mitter held that the tenure in question was analogous to a ghatwali tenure, Mr. Justice Ainslie treated it as one of the ghatwalis to the south of Birbhoom.

Their Lordships entertain no doubt that whether it was a ghatwali or not the tenure was analogous to a ghatwali tenure of the nature described in preamble to Reg. 29 of 1814; and the Acting Chief Justice appears to have entertained the same view, by referring to Mr. Harington's Analysis of the Regulations, Vol. 3, 509, where, after mentioning Regulation 29 of 1814, he goes on to say, tenures of this description were mentioned generally in a note to the 2nd volume of this Analysis, as held at a low rent by ghatwals or guards of passes.

The preamble of Reg. 29 of 1814 is as follows:—"Whereas the lands held by the class of persons denominated ghautwals, in the district of Beerbhoom, form a peculiar tenure to which the provisions of the existing regulations are not expressly applicable, and whereas every ground exists to believe that according to the former usages and constitution of the country this class of persons is entitled to hold their lands generation after generation in perpetuity, subject nevertheless to a fixed and established rent to the zermindar of Beerbhoom, and to the performance of certain duties for the maintenance of the public peace and support of the police." Pachete was formerly one of the pergunnahs and mehals of Zillah Beerbhoom, but by Reg. 18 of 1805 was separated from the jurisdiction of the magistrate of that zillah, and placed under the jurisdiction of a distinct officer to be denominated Magistrate of the Jungle Mehals (*see* Sections 2 and 3 of that Regulation). Their Lordships consider that the jagir in question, although not falling within the regulation, was a tenure of the nature of those described in the preamble. In the case of Rajah Nilmoney Singh *v.* the Government and others, 6 Weekly Reporter, 121, it having been found by the Lower Courts that the lands were held upon a ghatwali

tenure, the High Court upon special appeal held that they were not resumable by the zemindar, upon the ground that the tenure had been forfeited on account of the tenant's refusal to perform them. The Chief Justice remarked, "If the Government received only two thirds of the annual value of the lands as rent or revenue, and allowed the tenant to retain one third on account of services, the services must have been public and not private. The Government would not have allowed any portion of their revenue in consideration of private services to be rendered to the zemindar."

That case was affirmed by Her Majesty in Council on appeal. 18 Weekly Reporter, P.C.C., 321.

The permanent settlement of the lands did not alter the nature of the jagir or of the tenure upon which the lands were held, nor could it convert the services which were public into private services under the zemindar. The zemindar became entitled only to the rent or revenue which was previously payable to the Government and in respect of which he was assessed, and not to the services in respect of which the one third of the rent or revenue was allowed to the tenant as compensation for the services. Those services continued to be due to the Government.

In the very luminous judgment pronounced by Lord Kingsdown in the case of *Raja Lelalund Sing v. The Government of Bengal*, 6 Moore's Ind. Appeals, 101, the origin and nature of the ghatwali tenures of Beerbhoom, and the effect of the permanent settlement thereon, were fully explained, and it was there held that lands held under that tenure were not resumable by Government under Bengal Regulation 1 of 1793, sec. 8, cl. 4, as lands included in the allowances to zemindars for thannah or police establishments. In that case it was no doubt held that it was the

province of the Raja of Khuruckpore to appoint and dismiss the ghatwals (p. 127), but it was also stated that ghatwals held their lands in virtue of sunuds granted by the zemindar, except some who had received theirs from the former authorities (p. 123), it was also found that in that case the lands had been granted by the ancestors of the Raja (p. 112), and it was said that the regulation did not apply to lands which the zemindars had permitted other persons to hold free from rent, or at a reduced rent, or (referring to the cases in which the sunuds had not been granted by the zemindar) to lands which such persons had a right to hold free from rent or at a reduced rent.

The above cases show that the jagirs of which the lands in question formed one, and which were expressly found, in the case above referred to between the Appellant and Beer Sing the father of the Plaintiff (Record 109), and also in the present case, to be analogous to the ghatwali holdings of Beerbhoom, are not resumable by the zemindar or by the Government.

In the case of *Hurlah Sing v. Jorawan Sing*, 6 Sud. Dew. Repts., 170, cited with approbation by Lord Kingsdown, in 6 Moore, 125, it was held that the ghatwali tenures were not divisible on the death of a ghatwal, but descended to the eldest son.

In delivering the judgment in that case Mr. F. C. Smith said, "Regulation 29 of 1814 says  
 " nothing on the subject, the point must therefore  
 " be decided with reference to the usual practice,  
 " and the meaning and intent of the term ghat-  
 " wal. Now the ghatwali lands are granted for  
 " particular purposes, especially of police, and to  
 " divide them into small portions amongst the  
 " heirs of the ghatwals would be to defeat the  
 " very ends for which the grants were made. I  
 " have submitted the question to the Judges of

“ the Court, and all, with one exception, are of  
 “ opinion that a mehal of this nature cannot be  
 “ divided, but should, on the death of an incum-  
 “ bent, devolve entirely on the eldest son, or the  
 “ next ghatwal.”

It was stated by Mr. D. C. Smith, one of the Judges consulted, that the chakeran lands of Bengal always go to the eldest son or to the nearest member of the family most capable of performing the duties. See also Sutherland's Weekly Rep., special vol., p. 39.

These jagirs, although hereditary, are not governed by the ordinary rules of inheritance, under the Hindoo or Mohomedan law, and are subject to the condition of the Government's approval of the heir.

The same principle which precludes a division of a tenure upon death must also apply to a division by alienation. Their Lordships are of opinion that the tenure is not transferrable or saleable in execution of a decree, and that it is not one of the tenures referred to by the Bengal Reg. 37 of 1793, s. 15.

In the case of *Raja Leelalund Sing v. Door-gobutty, and others*, Suth. W. Rep., extra vol., p. 249, it was held that the ghatwalis of Kurruckpore were not capable of alienation by private sale or otherwise, nor liable to sale in execution of decrees except with the consent of the zemindar and his approval of the purchaser as a substitute for the outgoing ghatwal. In that case, however, as in the case already cited, from 6 Moore, Ind. Appeals, the ghatwal had been appointed by the Raja, and the Raja, and not the Government as in the present case, had a right to appoint and dismiss the ghatwal.

In the case of *Binoda Ram Sein v. the Deputy Commissioner of the Sonthal pergunnahs*, 7 Weekly Reporter, 178, it was held, and in their Lordships' opinion rightly, that the sur-

plus proceeds of a Beerbhoom ghatwal tenure, which had passed by descent from ancestor to heir, were not liable, in the hands of the heir, for the debts of the ancestor; and reference was made to a decision of Mr. Hawkins in the Sud. Court, 2 Sevestre's Reports, 423, in which it was held that the lands were not alienable.

In a case also between the Appellant and the Respondent Bakranath Sing, Record, p. 24, it was held that the holder of the tenure in question in this suit is not responsible for the debts of a former jagirdar. The Deputy Commissioner in his judgment said, "As jagirdar, the Defendant has what his father had, a life interest, in the jagir. Whether the son will succeed or not is, notwithstanding the tenure is hereditary, uncertain, as he may at any moment be dismissed from Government employ," rather he should have said may never be sanctioned as jagirdar. He proceeds, "The jagir is strictly a life tenure as far as the jagirdar is personally concerned, he holds the land in lieu of pay, and a new jagirdar receiving the jagir would not be bound by any arrangement made by his predecessor. A newly elected jagirdar would not be held responsible for debts incurred by the late jagirdar as such, as were he to be so he would lose the benefit of his pay. Thus, a jagirdar cannot be held responsible for arrears of rent due by a former jagirdar." That decision was upheld on appeal to the High Court, 10 W. Rep., 255. The case is expressly in point, for if a successor is not liable for rent of the jagir due from his predecessor it follows *à fortiori* that he cannot be liable for an ordinary debt. It is unnecessary to decide whether the decision is *res judicata* or not.

The above decisions are more than sufficient to outweigh the decision in the case of Udoy Churn Chuckerbutty to which Mr. Justice

Markby attached so much weight, even if that case had not been decided upon a different finding of facts.—Record, Appendix 36. Their Lordships, however, are of opinion that the learned Judges took an erroneous view in that case of the effect of the permanent settlement.

With reference to the argument upon which Mr. Justice Ainslie so strongly relied as to the difficulty under which the zemindar would lie for the recovery of his rent if the lands could not be sold in execution of a decree for rent against his tenant, it is sufficient to say that the zemindar at the time of the permanent settlement must have been aware of the nature of the tenure upon which the lands were held, and that this case does not involve the necessity of deciding what remedy the zemindar has for recovering his rent, whether by sequestration of the estate or by application to the Government to remove the tenant, or by what other mode. Their Lordships, therefore, abstain from expressing any opinion which would be a mere *obiter dictum* upon the point.

It is quite clear that if the jagir were transferable without the consent of Government, either by descent to an heir, or by voluntary sale, or sale in execution, or otherwise, there would be no security that the transferee would be a proper person to discharge the duties in respect of which the lands are held at the reduced rent. The transferee might be a person of questionable or even of bad character, as remarked by the Court in 10 Weekly Reporter, p. 250.

For the above reasons, their Lordships will humbly advise Her Majesty to affirm the decree of the High Court, from which the appeal has been preferred, and to dismiss the appeal.

The Appellant must pay the costs of the appeal.

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