

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Tekait Ram Chunder Singh v. Srimati Madho  
Kumari and others, from the High Court of  
Judicature at Fort William, in Bengal,  
delivered 11th July 1885.*

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Present :

LORD MONKSWELL.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

Tekait Ram Chunder Sing, ghatwal of a large estate named Pathrole, brings the action to eject from Lalgurh, a subordinate tenure within its ambit, the Defendants, who are widows of the last holder of it, Bunwari Sing, and are under the protection of the Court of Wards. He claims the right to resume that tenure at will, and further asserts that his right to this resumption has been conclusively decided in a previous suit between the same parties. The Defendants claim to hold a ghatwali tenure, from which they could not be dispossessed, on the payment of a fixed rent ; they deny that the question had been decided as alleged, and set up the plea of limitation. The Subordinate Judge found for the Defendants on the plea of *res judicata* and for the Plaintiff on the plea of limitation, and gave the Plaintiff a decree on the ground that the tenure was resumable at will.

The High Court reversed this judgement, finding for the Defendants on the plea of limita-

tion only. From that judgement the present appeal is preferred.

The following facts appertain to the history of the tenure.

One Digbijoy Singh was the ghatwal of Pathrole about the beginning of this century.

The property held by the Defendants called Turuf Lalgurh was granted by him to one of his younger sons, Kanhia Singh, for maintenance in or before 1804: for receipts of rent are put in, one in 1805 for rent due in 1804.

In 1800 or 1801 a settlement for 10 years seems to have been made with Digbijoy, another settlement at the expiration of that for three years, and another in 1813-14 for ten years, which became permanent by the operation of Regulation 29 of 1814. We hear little or nothing more about it till 1853, when a proceeding took place before the Judge of Birbhoom, which arose in this way. Some creditors who had obtained decrees sought to execute them against the owners of ghatwalis, among them Barat Chunder Singh, grandfather of the Plaintiff, ghatwal of Pathrole, and Kanhia Singh, ghatwal (as he described himself) of talook Lalgurh. The ghatwals contested the right of judgement creditors to seize their estates in execution, whereupon an order was made for the release of the estates from attachment, which was confirmed on appeal to the Sudder Dewani Adaulut in May 1853. The Court gave judgement in these terms:—

“The Court are of opinion that, under the law, the ghatwali tenures of Birbhoom being not the private property of the ghatwals, but lands assigned by the State in remuneration for specific police services, are not alienable, nor attachable for personal debts.”

In a similar proceeding in 1857 a decision to the same effect was arrived at, and a notice was

sent to Bharat Singh that the grant to Kanhia had not given Kanhia any right in mouzah Lalgurh, but as far as we know Bharat took no action on this, nor does any assertion or counter-assertion of rights appear to have taken place between the holders of Pathrole and the owners of Lalgurh, till the time which will be hereafter referred to. It further appears that the owners of Lalgurh have been treated as bound to perform, and, indeed, have performed the police duties incident to their tenure; this is recognized by a perwana from Barat to Bunwari in 1855, and by a further perwana from the Assistant Commissioner of the Sonthal Pergunnahs in 1873.

The first question in the case to be determined is, whether the contest of title between the parties is *res judicata* under Act 10 of 1877, sect. 13, which is in these terms :—

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been heard and finally decided by a court of competent jurisdiction, in a former suit between the same parties or between parties under whom they or any of them claim, litigating in the same title.”

The Plaintiff's father died in 1865, leaving him a minor. During his minority, which ended in 1873, the rent of Lalgurh was paid by Bunwari to the Court of Wards on his behalf, and no question of title or conflicting right arose. On his attaining majority some time in 1873 he brought a suit against Bunwari, claiming against him the whole of the compensation money which had been paid into Court by the East India Railway Company in respect of land in Lalgurh, which had been taken by the Company, Bunwari claiming a share in that money.

Pending the suit Bunwari died, his widows were substituted for him, and the Subordinate

Judge decided in their favour, giving them a considerable part of the compensation money.

On appeal to the High Court this judgement was reversed.

The contention of the respective parties, and the ground of the judgement, are so clearly stated by Mr. Justice Romesh Chunder Mitter, that their Lordships think it well to give the following extracts from his judgement:—

“This suit was instituted on behalf of Ram Chunder Singh, minor, who has now attained his majority, for obtaining Rs. 15,125. 11. 6 deposited in the Government Treasury of Deoghur, being the compensation money for 1,765b. 9c. 14ch. of land appertaining to the ghatwali talook Pathrole, taken for the construction of a railway. The allegation of the Plaintiff is that he is entitled to the whole of this compensation money, and, the Defendants having unjustly claimed the same, it has been detained in the Treasury, leaving the contending parties to have their respective rights settled by a competent Civil Court. . . . .

“The Defendant Bunwari Lal alleged in his written statement that he holds sub-tenure in the Plaintiff's ghatwali mehal, charged with a fixed annual rent of Rs. 104; that a portion of the lands taken falls within his sub-tenure, the compensation money in respect of which was therefore due exclusively to him.” . . . . .

Then, after disposing of certain claims by other parties, the learned Judge continued:—

“Then we come to the claim put forward by Bunwari Lal. It is evident that he held a subordinate tenure within the Plaintiff's ghatwali mehal, and the said tenure is still in the possession of his widows. It has also been established upon the evidence that this tenure was created by an ancestor of the Plaintiff to provide for the maintenance of a junior branch of the ghatwal's family. It has been contended on behalf of the Plaintiff that it is not sufficient to show that Bunwari Lal during his lifetime was in possession, and his legal representatives are still in possession of this subordinate tenure, but that it must be established that Bunwari Lal was, and the widows are still, in rightful possession of it, and that it is of a permanent nature, so that the superior ghatwal cannot at his will determine it. I think that this contention is valid. These Defendants, it appears to me, are not entitled to any share in the compensation money, if it can be shown that they are allowed to remain in possession of the subordinate tenure by mere sufferance of the superior holder, who can at any moment put an end to their possession. From the nature of the tenure held by the Plaintiff, it follows that the arrangement made by

his ancestor to provide for the maintenance of a junior branch of the family is not binding upon him. He is fully competent to resume possession of these lands (*vide* 6, B. L. R., p. 652).

"Bunwari Lal, therefore, not having during his lifetime any valid right to any portion of the lands taken, his representatives are therefore not entitled to receive any share in the compensation money, the whole of which, therefore, should be paid to the Plaintiff.

"But the Plaintiff is a ghatwal. His title is not that of an absolute owner. He is only entitled to enjoy the profits of the ghatwali mehal during his life, without power of alienation. The compensation money in deposit is only a money equivalent to a portion of that mehal."

From this judgement there was no appeal. Their Lordships are of opinion that the very question in this cause, viz., whether the Defendants held a permanent tenure, or whether the Plaintiff was entitled to resume it at pleasure, was directly and substantially in issue between the parties, and has been finally decided between them.

Their Lordships are relieved, therefore, from deciding what the rights of the respective parties really were, a question which, if it had been open, might have been attended with difficulty.

The question of limitation remains. The provision in Art. 144 of the second schedule of Act 15 of 1877, which gives twelve years as the period of limitation from the time "when the possession "of the Defendant becomes adverse to the "Plaintiff," appears the only provision applicable to the case.

Their Lordships understand the judgement of the High Court to be, in effect, based on these considerations.

The tenure set up by the Defendants, being of a permanent character, was adverse for a long period of time to the claim of the Plaintiff and his ancestors, which was to resume the tenure at will; that it was not the less adverse on account of the payment of rent, which was an incident of the tenure; that the statute began to run against the Plaintiff on the death of his father in

1865, when his title accrued, although he was not recognized by the Government as ghatwal till his majority; that as he did not bring this suit till five or six years after he became of age, he was barred by the statute. Their Lordships are unable to assent to this view.

It can scarcely be contended that immediately on the creation of the sub-tenure the possession of it became adverse when there was no dispute or conflicting claim. If not so, when did the possession become adverse? It has been contended that it became adverse in 1853, when notice was given by the Court to Bharat Chunder that the grant to Bunwari conferred no title against him, and that he could eject Bunwari at pleasure. But the proceeding was wholly between creditors and ghatwals holding tenures, or under tenures. There were no proceedings hostile or otherwise between the ghatwals and the sub-tenure holders, each of whom was content to go on as before without any definition or assertion of right by either party. The same state of things continued after the death of Khargdhari Singh, the Plaintiff's father, when the rent was paid to the Court of Wards on behalf of the Plaintiff during his minority.

In their Lordships' opinion no adverse possession, within the meaning of the statute, is proved to have existed until the institution of the suit in 1873, when the claims of both parties were undoubtedly adverse, and the statute began to run only from that time. If so, the Plaintiff is not barred by limitation.

On these grounds their Lordships are of opinion that the judgement of the High Court must be reversed, and judgement given for the Plaintiff, and they will humbly advise Her Majesty to this effect. The Respondent must pay the costs of this appeal.

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