

Judgment of the Lords of the Judicial Committee on the Appeal of Maharaja Jagatjit Singh (a minor, by his guardian Koer Harman Singh) v. Raja Sarabjit Singh, from the Court of the Judicial Commissioner of Oudh, Lucknow ; delivered 21st November 1891.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Hobhouse.*]

The Appellant is the Raja of Kapurthala, and the proprietor of estates in Oudh on the banks of the Gogra river. The Respondent is the Raja or Talookdar of Ramnagar, and the proprietor of estates on the other side of that river. There has been litigation between the two houses extending over many years. The present dispute commenced in the year 1871, when the Appellant's father was living ; but his death has not, except on one point not necessary to decide or state now, affected the question. There have been suits and cross suits, appeals and cross appeals, petitions and cross petitions, sometimes by agents, and sometimes by principals, and the parties have interchanged places on the record so often that it is confusing to speak of them in the character of Plaintiffs or Defendants. It will perhaps be clearer to call

the Appellant's side Kapurthala and the Respondent's Ramnagar.

In the month of December 1871 Kapurthala brought a suit against Ramnagar to assert his title to a tract of land on the banks of the Gogra; and in January 1872 Ramnagar brought a cross suit against Kapurthala in respect of the same land. After a while the parties came to a compromise, which was expressed in a decree dated the 3rd February 1873, and pronounced by Colonel Chamier, the then Deputy Commissioner of Bara Banki, in whose Court Ramnagar's cross suit was pending. The terms of the compromise were to the following effect. Part of the land in dispute was to be attributed to Kapurthala's village, Tappa Sipah, according to the Revenue Survey map; another part was to be attributed to Ramnagar's villages, Para and Deorya Tilkunia, according to the same map; the remainder was to be apportioned rateably to the villages above named.

In December 1873 an order was made in the execution proceedings, ascertaining the acreage apportionable to each village; and it seems that Ramnagar was disappointed with the result, considered that he had been outwitted in the transaction, and began to offer opposition to the execution of the decree. In point of fact he has successfully resisted its execution from that day to this—a state of things which appears to their Lordships to suggest grave doubts as to the efficiency of legal processes in Oudh.

After this point the execution proceedings dragged slowly on. It is not necessary to detail them. A map was made and signed by Colonel Chamier in June 1874. In April and June 1876 orders were made for possession, and on the 27th June 1876 a receipt of possession was signed by Kapurthala's agent, and the long dispute appeared to be finally decided on the 1st

September 1876, when Mr. Wood, then the Deputy Commissioner of Bara Banki, pronounced an order as follows :—

“ After hearing the objections of the pleaders on both sides, the Court decides that the decree must be executed according to the map prepared by Colonel Chamier, dated 16th June 1874, and the southern boundary of the disputed land will be that drawn in the above map. If either party consider that they have any claim to lands thrown up by the river, they have their remedy by a regular suit.

“ This Court cannot go contrary to the map prepared by Colonel Chamier. The parties have been informed of this order, and as the decree, from the report of the Extra Assistant Commissioner, has now been executed, the papers will be consigned to the Records.”

A controversy then arose respecting alluvial land, which Kapurthala alleged to belong to another of his villages called Khasapur. In one of the execution proceedings, a petition of the 27th June 1876, a statement was made on behalf of Kapurthala to the effect that Khasapur land had by error been mixed up with Tappa Sipah land. Probably Deputy Commissioner Wood was referring to that statement, when he spoke of a regular suit being brought for lands thrown up by the river. However that may be, Kapurthala did, on the 16th of January 1877, bring a fresh suit, the proceedings in which must be accurately stated, because the main question now to be decided is whether the decree does not exclude a large portion of the relief sought in the suit now under appeal.

The claim made is for possession of 3,921 bighas 18 biswas in village Khasapur, on the basis of ancient possession, by cancelment of possession wrongfully taken by the Defendant since the month of June 1876. The record does not show what issues were settled, which is a defect, because the judgment of the Court is framed by reference to them. But the language of the judgment shows clearly enough to what they must have been confined. The case was

heard on the 2nd April 1878 before Colonel Chamier, who was again Deputy Commissioner of Bara Banki. In giving judgment he said:—

“The plaint set forth that the land belonged to Khasapur, but after a survey of the land the Plaintiff discovered that he must abandon this contention, inasmuch as he holds land between Khasapur and the land in suit, under a decree in a former suit, when it was assigned to Tappa Sipah, another of his villages. . . . It is quite clear from the map, the correctness of which has not been impugned by either party, that Plaintiff has no business south of the Gogra under his ownership of the village of Khasapur. The fact appears to be that there is some doubt as to the exact land decreed to Tappa Sipah, and therefore Defendant applied for an Amin to point it out, but the Plaintiff asked that it might be postponed until this suit might be determined. But be that as it may, Plaintiff cannot complete his possession under the Tappa Sipah decree by tacking on land to Khasapur.”

After these observations the learned Judge proceeds to state his findings on the several issues. The material ones are:—

“On the second issue I find that this suit cannot be maintained for land alleged to belong to Khasapur when land decreed to Tappa Sipah intervenes.

“On the third issue I find by an examination of the present map A with the maps of the Revenue Survey, that the greater portion of land marked B in red is the exact site of Defendant's villages Durgapur and Sissounda, and therefore it would be manifestly impossible to decree the land shown in green to Plaintiff. In my opinion the claim is without any fair foundation.

“Plaintiff should take steps to have the land defined which has been decreed to him under Tappa Sipah, and this judgment of course will not affect any of that land.”

And on these findings he dismissed the plaint.

Kapurthala appealed to the Commissioner of Lucknow, Colonel Reid, who on the 20th June 1878 dismissed the appeal. In so doing he made the following observations:—

“The facts appear to be as set forth by the District Judge in his judgment, and I agree with him that the claim, as laid, is quite untenable.

“But the District Judge himself remarks that there is some doubt as to the exact land decreed to proprietor Sipah, and I am therefore of opinion that, on an assign (probably a misprint for application) to that effect being made by P. H. Appellant, the District Judge should proceed to the spot and satisfy himself by

local inquiry, in presence of the parties, that his decree has been proper, land has been assigned to Tappa Sipah exactly in accordance with his decree."

After this Kapurthala (who indeed was a little child, but their Lordships speak of the acts of principals and agents as all due to the principals) addressed himself to the Sisyphean task of executing the decree of the 3rd February 1873. On the 11th October 1878 he addressed the Deputy Commissioner, praying "that proceedings may be taken as directed by the Commissioner of Lucknow in his order dated 20th June 1878. A clear determination of boundaries will probably put a stop to all litigations." It is apparently to this application that the order which stands next in the Record relates. It was made by the Deputy Commissioner, Colonel Chamier, on the 3rd March 1879, and is as follows:—

"This is another file which Mr. Harington has not touched during his three months' incumbency. It is impossible now to take it up this season. It seems to me that, before the Raja of Kapurthala can expect the Court to ascertain whether or no a decree passed years ago was accurately executed or not, he should state the Section of Act X. 1877 under which he applies, and he should present an accurate map of the land showing what he is entitled to under the decree, and what he does not hold.

"Papers to be filed."

Their Lordships cannot refrain from observing that this appears to them a very unsatisfactory way of dealing with such a business. The land to which Kapurthala was entitled under the compromise was not ascertained and put beyond the reach of dispute till September 1876. In the suit of 1877 it appeared that there were still some doubts as to the exact land, and in the final judgment given in that suit, on the 20th June 1878 it was intimated to Kapurthala by the Commissioner, Colonel Reid, that on his application the District Judge should proceed to the spot, and satisfy himself that the land had been assigned to

Tappa Sipah in accordance with his decree. The District Judge and the Deputy Commissioner appear to be one and the same officer. In October 1878 Kapurthala asks the Deputy Commissioner to do what Colonel Reid said he ought to do. And then, after five months' delay, not imputed to Kapurthala but to Mr. Harington, he is told that his decree was passed years ago, and that, before anything can be done, he should state under what section he applies, and present an accurate map of the land showing what he is entitled to, and what he does not hold. Now, when Kapurthala made this application, the land had been finally and effectually ascertained barely more than two years. The Court was in possession of the map of 1874 (Colonel Chamier's own map), which the Courts had taken as conclusive. The execution sections of the Code, if unknown to the Deputy Commissioner, could have been referred to at once. What Kapurthala was entitled to was the land awarded him by the decision resting on the map of 1874. What he had not got in actual possession was the matter to be ascertained by the Deputy Commissioner or his officers, and was in fact ascertained by his successor in the course of a day's visit to the spot.

It is not very surprising that, after this repulse in the Civil Court, Kapurthala should have tried whether he could get assistance from the Revenue Court. On the 28th January 1880 he procured an order for the erection of boundary marks, according to the decree of February 1873. Ramnagar appealed, but though his appeal was dismissed, nothing effectual was done till the 2nd February 1881, when Mr. Forbes, Deputy Commissioner, visited the spot, ascertained the boundary line adjudged under the decree, and ordered pillars to be erected. At the same time

he found that the adjudged land, within certain lines which he laid down on a map, was in the possession of Ramnagar, who strongly urged his right to remain in possession until ousted in due execution of the Civil Court decree, and denied the right of the Revenue authorities to lay down boundaries except on the basis of actual possession. The boundaries however were laid down on the 11th August 1881, as appears from an order of that date.

Kapurthala's next step was to bring rent suits against tenants who paid their rent to Ramnagar. He got decrees on the 19th June 1882 from the Extra Assistant Commissioner, against the tenants, and notwithstanding the intervention of Ramnagar. But on appeal it was decided that the question was not within the competence of a Revenue Court, but should appropriately be decided in a Civil Court. This decision was upheld by the Judicial Commissioner, who by order dated the 14th October 1882 dismissed Kapurthala's appeal, saying, "I quite agree with the Deputy Commissioner; if the Appellant has any claim to the land he should sue Raja Sarabjit Singh in the Civil Courts."

It appears to their Lordships that those decisions were right, but their effect was to throw Kapurthala back again upon the Civil Courts. After two failures, owing to want of proper formalities, and much loss of time in consequence, the plaint in the present suit was presented and received on the 5th February 1886. It claims 2,679 bighas 14 biswas of land under the decree of February 1873.

The first question, going to the entire suit, is whether it is barred by time. Both of the Courts below have decided this point in favour of Kapurthala, and their Lordships concur with them. It is true that the compromise which is

the foundation of the claim dates from February 1873, but the land which accrued to Kapurthala under the compromise was not ascertained till the proceedings in 1876. Therefore, without considering the effect of any of the subsequent litigation, June 1876 is the very earliest time at which a right to recover the land in suit accrued to Kapurthala, and that is less than 12 years before the reception of the plaint.

The Deputy Commissioner, Colonel Newberry, dismissed the suit with costs. As to 1,226 bighas 6 biswas, he considered that the dispute had been previously decided in the suit of 1877 by the decree of the 2nd April 1878. As to the rest of the land claimed, he held that the case fell within the sections of Civil Procedure Code (42 and 43) which relate to the splitting of claims.

On appeal by Kapurthala the Judicial Commissioner affirmed the decree, so far as it relates to the 1,226 bighas 6 biswas comprised in the suit of 1877. But as to the rest of the claim he varied the decree, and decided for Kapurthala. In the latter part of the Judicial Commissioner's decree their Lordships entirely concur, and as there is no appeal from it by Ramnagar they need not further examine that part of the case. But Kapurthala now appeals from the rest of the decree, and the question is whether it can be maintained.

Both the learned Judges grounded their opinion on the fact that the tract of land claimed in 1877, being 3,921 bighas, included the 1,226 bighas belonging to Tappa Sipah, and that the claim was dismissed. That, they say, is conclusive. The Judicial Commissioner says the mere fact that Kapurthala claimed it as belonging to Khasapur is immaterial. And as to the direction given by the Courts to have the Tappa Sipah lands defined, the Deputy Commissioner

says it is the decree which contains the formal adjudication, and it is not possible to amplify the decree from the judgment. But the fact that Kapurthala in 1877 claimed the whole tract as belonging to Khasapur, and that, when part was found not to belong to Khasapur but to another of his villages he was left to recover it in another way, may be very material. And when a decree simply dismisses a suit, it is necessary to look at the pleadings and judgment to see what were the points actually heard and decided.

Section 13 of the Civil Procedure Code does not enact that no property comprised in a suit which is dismissed shall be the subject of further litigation between the parties. What it does enact is that no Court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit, and has been heard and finally decided. Was then the title to Tappa Sipah lands put in issue by the suit of 1877, and was it heard and finally decided against Kapurthala?

The proceeding have been stated above at some length. Their Lordships will recapitulate them. Kapurthala claimed a large area as belonging to Khasapur. Whether land belonging to Tappa Sipah was included in that area by mistake, or in the hope of getting some advantage in the other dispute, does not appear. It must be remembered that far the greater portion of these disputed lands is still uncultivated and jungle. Anyhow, the fact was discovered by a survey made in the suit of 1877; it appeared that doubts had been raised as to the position of the land decreed to Tappa Sipah; Ramnagar asked for an amin to point it out, but Kapurthala preferred to have the suit decided first. The decision is

that the land not belonging to Tappa Sipah belonged to two of Ramnagar's villages, rather more, apparently, than two thirds of the whole. But it is clear that the moment land was shown to belong to Tappa Sipah, it was considered as out of the suit. Both Courts treat it so, and both Courts direct Kapurthala to get the Tappa Sipah land ascertained. Their Lordships cannot see what matter respecting Tappa Sipah was in issue between the parties, or what was heard or decided. It seems to have been the express intention of both Courts to decide nothing about Tappa Sipah. Yet, according to the view now put forward, the moment that this suit was dismissed Kapurthala was deprived of all right to recover those 1,226 bighas, and was incompetent to take the proceedings which the Courts contemplated.

The only remaining point is that of mesne profits. The Deputy Commissioner says there is no proof. There is some proof, because the rent suits show that Ramnagar was receiving rent for some of the land. But it is quite competent for the Court to direct an inquiry under Section 212 of the Code. Ramnagar has for a number of years kept Kapurthala out of property which clearly belonged to him, and it would be a denial of justice not to make him account for the profits. The Judicial Commissioner says that Kapurthala ought not to have any mesne profits, because of his extraordinary supineness for years. To their Lordships it seems that Kapurthala has been constantly endeavouring, through great discouragements, and sometimes by mistaken proceedings, but with no great intervals of time, ever since February 1873, to get the land which he was entitled to under that decree, and that Ramnagar has been thwarting him by every device in his power, with a success which is very lamentable; and

that, even if supineness could be properly treated as equal to a bar by lapse of time, there is in this case no supineness which affords a reason for leaving Ramnagar to enjoy the fruits of his illegal and wilful holding on to land not his own.

Their Lordships are of opinion that both the decrees below should be discharged, and that a decree should be made for the Plaintiff for possession, according to the prayer of his plaint, and for mesne profits, with an inquiry as to the amount. Whether this decree will be more fruitful in results than former ones have been their Lordships cannot tell, but it is to be hoped that the Oudh Government will see its way to give suitors what the Courts of law award to them. The Plaintiff should also have the costs of suit in the First Court, and of the appeal before the Judicial Commissioner, and the costs of this appeal. Their Lordships will humbly advise Her Majesty in accordance with this opinion.
