

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Secretary of State for India in Council v. Durbijoy Singh and others, from the High Court of Judicature at Fort William in Bengal; delivered 6th February 1892.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

LORD SHAND.

[*Delivered by Lord Shand.*]

The Government of India, by their plaint in this case, dated the 30th January 1883, claim possession, as their property, of 2,169 bighas of land in the district of Monghyr, described by boundaries and delineated on a plan produced with the plaint. It is not disputed that the Defendants have been in possession of the lands since June 1870, but the Plaintiffs allege that this possession was obtained improperly and without title on the Defendants' part; that although it has endured for upwards of 12 years the ordinary law of limitation will not avail the Defendants in a question with the Crown; and that the lands remain the property of the Government, being part of the mouzah of Bhawanundpore which admittedly belongs to them.

The Defendants maintain that the lands claimed are their property, and form part of

their mouzah of Ishakpore. They explain that many years prior to 1862 the River Ganges, which had flowed considerably to the south of Ishakpore, gradually encroached on the land to the north, and that in this way, in the course of time, it encroached on and covered or washed away the lands of Ishakpore prior to 1848; but that subsequently the river receded, taking again a southward course, and that in this way the lands of Ishakpore gradually again emerged on the north of the river, their old situation; and they maintain that their property never was lost, but that in 1862 they had right to these lands under the Government settlements and surveys of a much earlier date. In addition, however, to this contention they maintain as a defence, which must in the first place be entertained and disposed of, that it is *res judicata* that the lands in question belong to them, for they say that it was so decided in a suit at their instance against the Plaintiffs which was raised in 1862, and in which final judgment was given in their favour in 1865, followed by possession taken shortly after the decree, and at all events by possession since June 1870.

The Subordinate Judge held that the Plaintiffs were entitled to succeed in their claim to the land in question, with the exception of a triangular area described in his judgment. His view was that the possession obtained by the Defendants after the judgment in their favour in the suit of 1862 was not such as could be effectual to them, as the Government officials had been misled in the proceedings relied on, and that the Government settlements and surveys of earlier times sustained the conclusion that the lands in 1862 were not part of Ishakpore but of Bhawanundpore. The High Court, however, reversed this decision and decreed the dismissal of the suit with costs, holding that in a question between the parties

“ the lands now in dispute must be found to be
 “ lands which were recovered by the now De-
 “ fendants against the Government in the suit
 “ brought in 1862, and that therefore the claim
 “ on behalf of the Secretary of State wholly
 “ fails.”

It cannot be disputed that if the lands now in question were included in the decree granted in the suit of 1862 the judgment of the High Court must stand, and it becomes necessary therefore in the present appeal to ascertain the facts bearing on this question.

The decree, dated the 13th of June 1865, ordered “ that the suit of the Plaintiffs be “ decreed,” and “ that the Plaintiffs be put in “ possession of the lands in suit.” The plaint itself described the lands of Ishakpore (of which a share of 15 annas 5 dams formed the subject matter of the suit) by general boundaries only, and not by boundaries stated with so much detail, or so delineated on a detailed plan, as to admit of the lands being identified and taken possession of in the same way as if they had been demarcated or described in detail. The decree was issued on the 16th June 1865. An execution suit followed, in which an order was granted on the 7th February 1868 directing possession to be given to the decree holders. A return to this order, dated the 6th May 1868, bears that the peon “ went to the mofussil “ and duly delivered possession” to the decree holders, from whom he took a receipt acknowledging the delivery of possession; and this receipt duly filed in the proceedings of the Court and dated the 26th April 1868 declares that possession was “ awarded by beat of drum,” and was obtained. On the face of these proceedings there is nothing to define the lands in suit more exactly than they are defined in the plaint. Some evidence has been adduced

to show that the peon who executed the order placed *bullas* or bamboos along the boundaries of the ground to mark off the special lands of which delivery was made, but the evidence as a whole does not support this view.

It is, however, quite clear on the evidence that immediately after the delivery of possession of the 26th April *bullas* were put into the ground to mark off the land described in the decree—it does not clearly appear by whom—and the evidence shows that the possession since that time, or immediately after it, of the land enclosed by these *bullas* has been with the Defendants. Their Lordships hold this to be the result of the evidence because of the following facts proved. On the 29th April 1868, Gundur Singh and others had obtained a renewed lease and settlement of lands of Bhawanundpore, and on the 13th May 1868 they complained to the Settlement Officer that the Ishakpore maliks had, in execution of decree through the nazir of the Court, taken possession of about 2,000 bighas of Bhawanundpore by posting *bullas*. The Collector deferred inquiry into the matter until the next cold season, and, in the meantime, other persons obtained the settlement from Government, the original settlement-holders having failed to find the requisite security. The order of the Collector on the 16th May, on the complaint made to him, was “that if it should appear on enquiry that some portions of the “lands of this mehal” (*i.e.* Bhawanundpore) “which were settled, have been taken possession “of by the proprietors of Ishakpore, then, “after settlement of the question, the said portions of lands and jumma can be deducted, “and that they should at present submit a “kabuliyat.” The proceedings which followed are stated with considerable detail in the judgments of the Subordinate Judge and the

High Court, and may be now briefly noticed. By an order proceeding from the Collectorate of Zillah Monghyr two Amins were sent to the spot, who, on a date prior to the 12th March 1869, measured the lands of which the owners of Ishakpore had taken possession; and again delay occurred before the Collector personally took up the subject of the disputed lands. In June 1870, however, the matter was taken up and investigated by Mr. Lyall, the Collector, who, in the Rubokari of the Collectorate, dated the 16th June 1870, after narrating the proceedings which had previously taken place, states:—

“ This year, the papers on the record of this case
 “ were sent to this Court under the rubokari of
 “ the Collector for measurement, test and enquiry
 “ into the rate, and settlement of the boundary
 “ disputes ”; and he thereupon goes on to say
 that he went to the mehal and tested the
 measurement, and found it to be correct. He
 adds, that, “ after the necessary enquiries and
 “ settlement of the disputed land, a detail of
 “ which is given in the English judgment, dated
 “ the 25th February 1870,” he made a settlement
 for ten years. While, in a subsequent passage
 of the rubokari, which deals with the de-
 tailed measurements of lands under the heading
 “ The determination and enquiry made by the
 “ Settlement Officer regarding the same,”
 occurs this passage: “ Accordingly, for the
 “ reasons assigned in the judgment in English,
 “ dated the 25th February 1870, the entire
 “ quantity of land, the subject matter of the
 “ dispute which was between (the proprietors)
 “ of mouzah Mahadeo Simeria, Ishakpore and
 “ Siswa, is excluded from this mehal,” &c.
 If the judgment of the 25th February 1870 had
 been produced, it would probably have thrown
 light upon the posting of the *bullas*. It is not
 in the Record; but there is enough in the

other papers produced to show that the land excluded from Bhawanundpore was that of which the lessees of the Government complained in 1868 that it had been taken by the maliks of Ishakpore. From that time till 1883, when the present suit was instituted, the lands in question have been treated alike by the Government authorities and by the Defendants as part of the Defendants' mouzah of Ishakpore, and not as belonging to the Government mouzah at Bhawanundpore.

The question remains, what is the legal effect of these proceedings extending over so long a course of time? The Appellants maintain that these proceedings shall have no effect in reference to the settlement of the disputed questions of property which have arisen between the parties, either in the suit of 1862, or in the present case. Their Lordships cannot assent to this view. If the question were one of limitation, the possession of the Defendants for a period of 12 years, though it would be sufficient to bar a claim by any other party, would not exclude a claim by the Crown to recover what could be shown to be Government property. The question raised, however, is not one of limitation. The possession given and taken, and retained for so long a period, and in the circumstances stated, is used by the Defendants not to make a title, but to define the land which the decree in the action of 1862, followed by the execution order, gave them. The decree gave the Defendants the lands they claimed in the suit, and then in the possession of the Appellants. It did not contain specific boundaries; but the acts of the parties immediately after the decree are very important to fix the meaning of indefinite terms in the decree. And when we find that the Ishakpore party took possession within a few days of the peon's visit, ostensibly under the nazir's authority, as the petition of Gundir Singh

shows; and that the Bhawanundpore party complained to the Collector; and that the Collector supported the action of the Ishakpore party, there is very strong reason to infer that the possession taken was rightfully taken in execution of the decree. It is true the proceedings were not those of a Civil Court. Had they been so, it would not have been possible to maintain the present suit. But the proceedings were taken before the revenue authorities whose duty it was to fix the right boundaries for revenue purposes. It is not suggested that these officials acted otherwise than honestly. The argument submitted by the Appellants' counsel was that the officials erred or were misled, that the Government Amin too readily accepted the boundaries shown to him as covered by the decree, and that the collector merely adopted what the Amin had reported without any sufficient independent inquiry. Their Lordships can see no sufficient ground for any such inference in the documents and other evidence adduced. They will humbly advise Her Majesty that the appeal should be dismissed, and the judgment of the High Court affirmed. The appeal having been argued *ex parte* their Lordships make no order as to costs.

1000

1000