Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Ram Ranjan Chuckerbutty v. *Ram Narain Singh and others, from the High Court of Judicature at Fort William in Bengal, delivered 8th December* 1894.

Present:

LORD HALSBURY.
LORD HOBHOUSE.
LORD SHAND.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Shand.*]

The Appellant in this *ex parte* case, in which two appeals have been consolidated, is the Raja of Hetampore in Zillah Birbhoom and the Zemindar of a Talook in the Sonthal Pergunnahs called Koroya, within which are comprised the seven mouzahs now in suit, of which the six mouzahs embraced in the first suit, and the seventh, called Dumdumi, the subject of the second suit, form a subordinate talook or estate known as Sitamarhi.

The Appellant was Plaintiff in both suits, which were instituted on the 20th December 1884 against the respective Respondents in the first Court, which was that of the Sub-Divisional Officer of Jamtara. Both suits were, after a remand by the Deputy-Commissioner of Sonthal Pergunnahs, dismissed by the first Court on the 17th August 1889, and on the Appellant's appeals in both suits to the Court of

the Deputy Commissioner those appeals were dismissed on the 19th December 1889, and his second appeals from the judgments and decrees of the Deputy Commissioner's Court were again dismissed by the High Court at Calcutta on the 9th February 1891.

During the settlement proceedings which took place in the Sonthal Pergunnahs in 1875, the Appellant claimed settlement with him directly of the seven mouzahs in question, and a claim was made on behalf of the first Respondent, Ram Narain Singh, for settlement with him as Mokurruridar, and on behalf of the other Respondents, in the first Appeal, as Dur-Mokurriridars of the six mouzahs, and a similar claim was made on behalf of the Respondent in the second Appeal, Mahomed Bhikan, as Mokurruridar of Dumdumi.

The Settlement Officer, finding that the Respondents were in possession, and that they had been so for a long period of time, made the settlement with them on the 16th December 1875, and referred the Appellant to a regular suit to try the question of right; and about nine years thereafter the present suits were instituted in which the Appellant seeks to have it declared that the Respondents have no such rights, Mokurruri, or Dur-Mokurruri, as they maintain, and to have possession given to him.

The Appellant founds his claim to the mouzahs in question on the fact that they are locally within the Zemindari belonging to him, a fact which is not disputed by the Respondents, and in his plaint he alleged that his predecessor and afterwards he himself held possession of these properties, "by letting out the same in ijara. "The term of the ijara expired in the year "1284." He does not state when or how he or his ancestors acquired right to the Zemindari

nor when the term of the ijara or ijaras commenced.

In defence, besides a plea of limitation, with which it will be unnecessary to deal, the Respondents in the first appeal by their written statement asserted that from a period before the year 1793, that is before the decennial settlement, they and their ancestors had been in possession of the mouzahs in dispute as a ghatwali tenure, and they maintained that having possessed respectively under permanent mokurruri and dur-mokurruri rights at fixed rents without variation for this long period of time the Appellant had no right to dispossess them. The Respondents did not admit that the Appellant had granted ijaras of the mouzahs in question, and they alleged that the ancestor of the Appellant had acquired the Zemindari by purchase after their mokurruri and dur-mokurruri rights had been acquired, and while they or their ancestors were in possession under a tenure which could not be defeated by a purchaser of the Zemindari. As to the nature of the mouzahs they explain that these lands were originally dense jungle infested with tigers and other wild animals, and that tanks and other improvements having been executed by the efforts and at the expense and with the labour of themselves and their ancestors the ground was now occupied by tenants. In point of fact the lands in question are now the site of seven villages.

The case was originally decided by the Judge of First Instance in favour of the Respondents on the ground of limitation, in consequence of the proceedings which took place before the Settlement Officer in 1875, and the lapse of time thereafter before the suit was instituted. But this decision was recalled by the Deputy Commissioner, and the case remanded for trial on the merits. Thereafter evidence oral and documentary was adduced for both parties, and the

decision of all the three Courts before which the suits came proceeds on the evidence adduced.

It was not disputed by the Counsel for the Appellant that the Respondents and their ancestors have been in possession for a very long period of time, and there are indeed concurrent findings to this effect. It has been found by the Judge of First Instance (Record I. p. 103) that the Defendant Ram Narain Singh "has "held at a fixed mokurruri rental from before "the Permanent Settlement, of Rs. 35 Sicca, "Government Rs. 37. 5. 4" (and it is conceded that if the mokurruri rights be established the dur-mokurruri rights cannot be successfully challenged), and again in the judgment of the Deputy Commissioner on Appeal (Record I. p. 112) it is stated that "there has been no serious "attempt before me to prove that the rent "payable by Ram Narain Singh and his "ancestors has been varied since the time of the "Permanent Settlement."

Further it has been held by these Courts that the Appellant has never held khas, or had immediate possession, of the mouzahs which have for upwards of a century been in the possession of the Respondents and their ancestors. The original grant of a mokurruri right is said by the Respondents to have been granted by Gambhir Singh the ghatwal of talook Koroya in 1777, by a lease of five villages granted to Bundhu Singh a direct ancestor of the Respondent Ram Narain Singh at a fixed rent of Rs. 25 in perpetuity, and that in 1788 two more villages were added, the rent being raised to sicca Rs. 35.

The ground of judgment by the High Court is that "the Court may very properly "presume the grant of a permanent mukarrari "tenure from long continuous possession at "an invariable rental," and that "upon the

"evidence . . . the Lower Courts were amply "justified in coming to the conclusion that the "defendants were in possession long before the "date of the Plaintiff's purchase, and that it "has not been proved that they derived their "title from a mere ijaradar."

The ground of the appeals by the Appellant to this Board, as stated in his case and by his Counsel at the bar, is that this conclusion was reached by taking into view evidence which was not legally admissible, and in particular the evidence of certain decrees granted in proceedings relating to the mouzahs in question to which the predecessors of the Appellant as zemindars were no parties. These decrees were pronounced in proceedings at the instance of Digambur Singh the son of Gambhir Singh, by whom the original grant is alleged to have been made, against persons in possession of the mouzahs in question, predecessors of certain of the Respondents, the first dated in 1817 and the second in 1845. In the first of these cases which originated in 1811 the Plaintiff describing himself as owner of the ancestral ghatwali property of the Talook Koroya claimed recovery of possession of the villages now in question from the persons then in possession. The defence was that Gambhir Singh the father of the Plaintiff Digambur Singh had granted permanent rights of ghatwali tenure at fixed rents amounting to Rs. 35, and that possession had followed, and the ghatwali duties had been continuously performed, so that possession could not be decreed in the Plaintiff's favour. The suit for possession was dismissed, but with leave to bring another suit for assessment of rent, but decree was therein given for the arrears of rent for the past years and for future rents at the rate of Rs. 35 which had been "hitherto paid." The subsequent suit for

assessment of rent was instituted in 1842. The defence in the former case was repeated. It was maintained that the Defendants held under permanent rights of ghatwali tenure at a fixed rent, and for performance of police duties, and that he had fulfilled these obligations, and that in such a case no assessment or enhancement of rent could be given; and this defence was sustained, and the action was dismissed in 1845.

It was argued for the Appellant that the judgments of which he now complains were arrived at by holding certain of the statements of the parties as recorded in the decrees or judgments of 1817 and 1845 as evidence against him in the present suits. Their Lordships do not think this complaint is well founded. It does not appear to their Lordships that the statements of the parties recited in the decrees in these former cases were accepted as evidence in the present suits.

The Judge of First Instance states with reference to these decrees (Record I. p. 99): "I am of "opinion that the documents produced by the "defendants may be accepted as evidence in this "case, as showing ancient possession, and that "the title on which the defendants now rely "was openly asserted as early as 1195 B.S., "corresponding to 1788 A.D., and at subsequent "dates irrespective of the findings come to in "those decrees. The orders passed in these "decrees themselves would not be evidence "against plaintiff's title, nor can they be con-"sidered as proving the defendants' title; but "they may be accepted to show ancient possession "and to show that the title was asserted rightly "or wrongly many years ago."

The Judges of the High Court say (Record I. p. 122):—"As regards the admissibility of "the judgments to which exception has been "taken, we observe that the Lower Appellate

" Court has only used those judgments as evidence
" that there was litigation between the parties
" thereto at the dates to which they relate. It
" uses those judgments to show that at those
" dates the so-called ghatwal was suing the so-
" called mukarraridar respecting the villages in
" suit, and that in those suits the parties asserted
" the same rights which they now assert. To
" this extent we think that the judgments were
" admissible in evidence, even though the
" zemindar was no party to them."

It must be observed that by the judgment of 1817 decree for rent of the mouzahs now in question was given at the rate of Rs. 35 *per annum* against the predecessors of the Respondents. Their Lordships are of opinion that although the predecessor of the Raja was no party to that litigation it was competent to use the judgment as evidence shewing the rent paid for the possession at and prior to that date, now nearly 80 years ago. Taken with the other evidence in the case the Respondents have thus established possession at a uniform rent for so long a period as to lead to the inference that the tenure was and is of a permanent nature.

As the case came finally to be presented for judgment on the evidence the Appellant had really proved nothing beyond his title as Zemindar of the Talook within which the villages were situated, which indeed was not disputed. This admitted title no doubt *primâ facie* imposed on the Respondents the onus of establishing a defence which entitled them to continue in possession. On the other hand the Appellant has given neither statement nor evidence as to when or how his title had its origin. The only information given on the subject is to be found in certain statements in the decrees to the admission of which he himself objected. It is there said that about the year 1807 the Appellant's grandfather had become the purchaser of the Zemindari at an auction sale, at which date the

decree also showed that others were in possession paying rent to Digambur Singh who claimed in the character of ghatwal. The only evidence of possession by the Appellant related to dates so late as 1868 and 1869, in which years two pottahs were granted by the Appellant in favour of Doorga Pershad Singh of the whole of the Talook Koroya at rents of Rs. 550 and Rs. 600. There is no evidence that any rents were asked for or received by him from the possessors of the mouzahs in question.

The case therefore stands in this position, that against the Appellant's title to the Zemindari, without any evidence of possession of any of the mouzahs in question, there is proved uninterrupted possession by the Respondents and their predecessors from a date before the Appellant's ancestor acquired a title, and indeed it may be presumed for upwards of a century. The mouzahs were held throughout that time for the payment of a uniform rent, and there are other considerations to be found in the parole evidence and specially referred to in the judgment of the Judge of First Instance, which support the view that the tenure was ghatwali. Their Lordships are satisfied that the presumptions in favour of a fixed and permanent ghatwali tenure arising from the long continued possession of the Respondents and their predecessors at a uniform rent are sufficient to overcome the mere title of the Appellant as Zemindar. There is no reason to presume that by the purchase of the Zemindari the Appellant's ancestor acquired any right to set aside the rights then existing and exercised by the Respondents' predecessors. On the contrary the presumptions arising from possession are all to a contrary effect. Their Lordships are therefore of opinion that the judgments appealed against are well founded, and they will accordingly humbly advise Her Majesty that the appeals ought to be dismissed.