

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Modhu Sudan Singh v. Rooke, from the High Court of Judicature at Fort William in Bengal; delivered 7th April 1897.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The suit in this case was instituted to recover possession of two villages part of the zemindari of the Pandra Raj in the district of Manbhoom. The Appellant is the heir of Raja Sagur Narain Singh the former owner of it, who died in May 1847 leaving his widow Rani Hingan Kumari and two brothers. The right of the widow to succeed him was disputed by the brothers and she had to bring a suit to recover possession of an 8 annas share of the zemindari. In this she was successful, and, having obtained possession of the estate, she remained in possession of it till her death in December 1881. The Appellant then took possession and in March 1882 a suit was instituted against him by the younger of the brothers claiming as the heir of Raja Sagur Narain Singh. It was dismissed by the District Court in April 1887, and this decree was confirmed by the High Court on the 25th June 1889. In July 1882 a receiver was appointed to take charge of the

estate, and he continued to be in charge of it until the 3rd of May 1887, when he was discharged.

On the 26th January 1864, the widow granted a putni lease or settlement of the two villages to the Respondent at an annual rent of Rs. 475, and upon receipt of a bonus of Rs. 2,525. The Appellant in his suit asked to have this putni set aside on the ground that the widow had no legal reason or necessity for making it. This was the subject of one of the issues which has been found in the Appellant's favour by the District Court and the High Court. The question upon which the Courts have differed arises from the receipt of rent by the Appellant after the widow's death. For three years the rent was paid to the receiver. The important payment is of the rent due for the native years 1295 and 1296 (1887-1890) after he was discharged.

On the 10th of September 1890 the Respondent presented a petition in the Court of the Moonsiff of Ranigunge under Act VIII. of 1885 in a rent suit in which the Respondent is called "First Party" and the Appellant "Second Party." It is as follows:—"The representation of Mr. E. G. Rooke " of Jore Janoki * * * is this:—That I am in " possession on putni right of mouzah Naharjore " and mouzah Amkura in thana Assensole " pergunnah Pandra under the said second party " at an annual rent of Rs. 475. My officer " repeatedly went to pay the aforesaid rent for " the years 1295 and 1296 amounting to Rs. 950 " and Rs. 93 cesses from the year 1294 to the " year 1296 in all Rs. 1,043 into the mal catchery " of the said second party at Poddardihi in due time " but the rent was not received and dakhilas were " refused. Therefore I deposit the said rent in " Court praying that it may be credited in the name " of the second party and that orders may be passed

“ to serve a notice on him.” On the 21st of September the Raja executed a vakalatnama by which he appointed four pleaders by name in order to file a petition and other papers and argue the case on his behalf in the rent suit and authorised them to sign his name and file petitions &c. and take vouchers for monies in deposit. And on the 24th the following petition was filed in the rent suit “ The representation of the 2nd party in the “ above case is this:—My tenant the said 1st “ party has deposited Rs. 1043 rent due to me. “ The said 1st party has not deposited interest “ &c. and I shall take steps for the same “ hereafter. A voucher for Rs. 1043 in deposit “ may be given for the present.” None of the pleaders was called to explain how the money came to be drawn out, or to prove that there had been a mistake in doing it. There is no evidence in the case upon this matter but these documents.

In considering their effect it must be observed that the putni was not void; it was only voidable; the Raja might elect to assent to it and treat it as valid. Its validity depended upon the circumstances in which it was made. The learned Judges of the High Court appear to have fallen into the error of treating the putni as if it absolutely came to an end at the death of the widow. At page 180 of the Record after referring to six or seven cases in the Indian Courts they say “ In all “ these cases it seems to have been held that the “ receipt of rent from a person after his lease “ has expired operates as a recognition of his “ right as a tenant and constitutes in him some “ kind of tenancy which would require a notice “ to determine.” Also at page 183 they speak of the expiry of the lease upon the death of the life tenant. And they hold that a receipt of rent was at least a recognition of a tenancy from

year to year which required a notice to quit. The real question does not appear to have been considered by them or properly by the Subordinate Judge, who says that in the petition for the withdrawal of the rent deposit the status of the Plaintiff as putnidar was not recognized but takes no notice of the petition depositing the money. The taking rent which was in that petition stated to be due under the putni was *primâ facie* an admission that the putni was still subsisting, an election by the Raja to treat it as valid. If it could have been shown that the receipt of the rent ought not to have that effect evidence bearing upon that point ought to have been adduced by the Raja. In the absence of such evidence their Lordships think there is a sufficient *primâ facie* case of an election by the Raja to affirm the validity of the putni; and they will humbly advise Her Majesty to dismiss the appeal and to affirm the decree of the High Court which in their opinion is right, although not for the reasons given by the Court. The Appellant will pay the costs of this appeal.
