

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Prianath Das v. Ram Taran Chatterji and others  
from the High Court of Judicature at Fort  
William in Bengal, delivered the 6th May  
1903.*

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Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

This Appeal arises out of a suit for rent of a property known as chuck Khatali. The proceedings have an appearance of complexity which does not belong to the facts.

In 1867, Raja Baroda Kant Roy, from whom the Appellant's title is derived, executed a *pottah*, creating, in favour of the Respondent Chatterji, an estate of permanent *ganti* tenure in Mouzah Pankhali, which included along with other chucks the chuck Khatali, now in dispute.

A bonus of Rs. 7,500 was paid for this grant; and the annual rent to be paid for the whole of the lands was Rs. 2,300. It was known at the time of the *pottah* that the Government had right to resume, and was likely to resume, some part of the lands, and the following clause is part of the *pottah* :—

“ If there be any lawsuit with Government or  
“ with any person regarding (torn) the pro-  
“ prietary right of any other part of the land,  
“ and if any (torn) steps are necessary to be

“ taken, then such steps shall be taken by me.  
 “ God forbid if I lose the said suit and if the  
 “ land of that suit go to the possession of another  
 “ person (torn), then the rent of the said land at  
 “ the rate prevailing in the mehal for the jami-  
 “ jumma thereof shall be deducted from the afore-  
 “ said jumma of Rs. 2,300. Proper (torn) should  
 “ be taken by me whenever any dispute shall  
 “ arise regarding proprietary right. Except the  
 “ above, on no other account abatement or  
 “ enhancement shall be made regarding the  
 “ aforesaid mowrussi mokurruri jumma of  
 “ Rs. 2,300, and neither I nor my heirs shall be  
 “ competent to enhance the rent of (—hundred  
 “ torn indistinct) and neither you nor your heirs  
 “ shall be competent (torn) to claim abatement  
 “ of the aforesaid fixed jumma at any time.”

In 1882, the Government did in fact resume,  
*inter alia*, the chuck Khatali. The Government  
 did not, however, take *khas* possession of Khatali,  
 but granted it in temporary settlement to the  
 heirs of Raja Baroda Kant Roy, he being now  
 dead. The period of settlement was 20 years  
 from 1884. 1904 being “ the year fixed for the  
 “ expiry of settlements in the Presidency Divi-  
 “ sion”; and the rent fixed for chuck Khatali  
 was Rs. 850.

The theory of the plaint, which was filed on  
 13th April 1897, is that the effect of these  
 settlement proceedings was that the Respondent  
 Chatterji became liable to the owner of Khatali  
 for the rent fixed in the settlement. Accordingly,  
 the plaint ignores entirely the *pottah* of 1867,  
 and rests the liability of Chatterji on the settle-  
 ment alone; and the present Appellant maintains  
 his right to sue alone (he being purchaser of  
 Khatali only), without the action being sued by  
 the owners of the other lands which formed parts  
 of the *ganti* tenure of 1867, and for which the  
 lump annual sum of Rs. 2,300 was the rent.

(It is true that originally there was a plurality of Plaintiffs, the two widows, who are now formal Respondents and into whose position it is unnecessary to enter, having been Plaintiffs, but Kali Prosunno Ghose, who is now owner of part of the land granted in 1867, was never a Plaintiff).

To the plaint thus laid the Respondent Chatterji opposed, as his substantial defence, his *ganti* right of 1867, as constituting his title to the chuck Khatali; and, with reference to the demand for Rs. 850, he said, in his written statement:—

“The present Defendant does not hold any *jami-jumma* at a rent Rs. 850. 2. 4 pic appertaining to chuck Khatali subordinate to the Plaintiffs, and he (Defendant) did not bind himself by any engagement or pay rent regarding such *jami-jumma* either to the Plaintiffs or to their predecessors, and he (Defendant) is not bound to pay rent as above to the Plaintiffs.”

The Subordinate Judge of Khulna, before whom the action came, dismissed the suit with costs, on 16th September 1897. On appeal, the Court of the District Judge of Jessore varied the decree of the Subordinate Judge, and on further appeal to the High Court, that Court reversed the lower Appellate Court and restored the decree of the first Court.

In their Lordships' judgment the defence of the Respondent Chatterji was well founded. The settlement proceedings of 1884 cannot be held to have abrogated the rights of that Respondent under the *pottah*, so long as the Raja Baroda Kant Roy and his heirs were themselves in a position to let him have the lands. In fact, the resumption by Government did not disturb the possession either of the Raja's heirs or of Chatterji. The mere fact of resumption cannot be held to have brought to an end the rights

of the Respondent Chatterji under the *pottah*, for the *pottah* itself recognises the precarious nature of the grantor's title, and provides against the loss of possession should that be the result.

The Appellant founded mainly on the 10th Section of the Bengal Act VIII. of 1879. The claim of the Respondent Chatterji in no way conflicts with the operation of this Section, or with the rights of the Government under it. The Section is plainly intended to fix for the future the liability of such under-tenants as may enter into possession.

If it had seemed good to the Government to take the land into their own *khas* possession, or to settle it on strangers to the contract with the Respondent Chatterji, then the recorded rent would have been the rate of payment by that Respondent. But the lands having been settled on the heirs of the Raja who granted the *pottah*, the Act does not interfere with the contractual rights of the subordinate holder. Now, the period of the settlement being still current, the *ganti* right still subsists, and the Respondent is only liable for the rent payable under the *pottah*.

The Appellant endeavoured to make out that the Respondent Chatterji had, by his letter of 11th April 1886, made himself liable for the rent of Rs. 850 ; but their Lordships agree with the Courts below in considering that document to be wholly insufficient to lead to this result.

The High Court have rested their judgment on the somewhat narrow ground that, Kali Prosunno Ghose not being a party to the suit, the Appellant could not obtain the decree sought. It appears to their Lordships that this really implies the broader ground upon which they proceed. If the theory of the suit were right, and the settlement of 1884 created liability

against the Respondent Chatterji for Rs. 850 of rent to the owner of the chuck Khatali, then the Appellant would not require the concurrence of the owner of another and different chuck.

It is because the liability of the Respondent Chatterji is not under the settlement, but for a lump sum under the contract of 1867, that all in right of the lands, for which the lump sum is the rent, are necessary parties in any action for rent for chuck Khatali.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant must pay the costs of the Respondent Chatterji.

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