Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rai Banomali Roy Bahadur v. *Jagat Chandra Bhowmick and another, from the High Court of Judicature at Fort William in Bengal; delivered the* 15*th March* 1905.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The material facts of this case are as follows. In the early part of the last century Krishna Sunder Roy was the owner of certain zemindaris. Shortly after his death his widow, Hemlata Chowdhrani, under a power given to her by Krishna Sunder Roy, adopted Gour Sunder Roy, who was in possession of the estate until his death in February 1834. Gour Sunder Roy also died childless and his widow, Brajeswari, succeeded him as his heiress.

By an *anumati patra* executed by Gour Sunder Roy shortly before his death he empowered his widow, with the consent of his mother Hemlata, to adopt a son. This document contains expressions of confidence in Hemlata, in whose name the properties were registered, and directed that her name should continue to stand registered and she should have control as long as she lived. In the year 1846 Brajeswari, under the power given to her by her late husband, adopted Banwari Lal Roy, who thereupon became the heir and successor in title of his adoptive father Gour Sunder Roy. Hemlata died in the year 1848.

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On the 8th August 1837 Hemlata purported to grant to Makunda Chandra Bhowmick certain mouzahs including Kharamkuri, Chuck Haripur, and Banomalikuri (the two former of which are the properties now in suit) on a permanent putni tenure in consideration of the payment of Rs. 1,000 and of an annual rent of Rs. 351. The kobala contains a statement that the zemindari had then been put up (*i.e.*, advertised) for sale six days later for arrears of the sudder revenue, and the grantor was unable to secure money to pay the entire sudder revenue and the zemindari could not be saved unless the revenue was paid.

Banwari Lal attained his majority in or about the year 1856. By an ekrarnama dated the 12th August 1857 it was agreed that a 10-annas share of the estates should remain in Banwari Lal's khas possession and a 6-annas share should remain in the possession of Brajeswari for her life. The copy of this instrument, executed by Brajeswari, contains the following passage, according to the amended translation given in the Judgment of the High Court :—

"With regard to any permanent settlement that Hemlata "Chowdhrani, during the period of her possession, made "beyond her own powers, the expenses that may be incurred "in your setting it aside, you shall pay such expenses on "account of the mehals included in your *saham*, and you "shall enjoy the whole profits of the same, and I shall pay the "expenses incurred on account of the mehals included in the "*saham* possessed by me, and, according to the conditions "made above, I shall get the entire profits of the same till the "end of my life."

The ekrarnama was followed by a butwara or partition. The mouzah Banomalikuri was allotted to Banwari Lal and the mouzahs in suit to Brajeswari. Banwari Lal subsequently took forcible possession of mouzah Banomalikuri, and the putnidars appear to have acquiesced in his so doing. The exact date on which this resumption took place is left in some obscurity

on the evidence, but their Lordships see no reason to dissent from the finding of the High Court that it was shortly after the execution of the partition. An apportioned rent of Rs. 242 odd appears to have been paid to Brajeswari in respect of the mouzahs in suit until her death which took place on the 10th July 1894.

Banwari Lal died in 1880, and was succeeded in title by his adopted son and heir, the present Appellant. The Respondents are the successors in title of Makunda Chandra Bhowmick, the original putnidar.

The present suit was commenced by the Appellant, on the 13th September 1897, to recover from the putnidars mouzahs Kharamkuri and Chuck Haripur. The material issues were the second: Is the Plaintiff's suit barred by limitation? and the fifth: Is the lease binding on the Plaintiff?

The Subordinate Judge held that the cause of action arose only on the death of Brajeswari, and that the putni in suit having been granted by Hemlata, whose interest in the estate was limited, was not binding on the Appellant. In accordance with these findings he made a decree, dated the 2nd August 1898, in favour of the Appellant for recovery of the properties in suit with mesne profits and costs.

On appeal by the Respondents, the High Court of Bengal reversed this decree, and by their decree, dated the 3rd July 1902, the Appellant's suit was dismissed with costs. Hence this Appeal.

The learned Judges differed from the Subordinate Judge in both of the grounds on which his decree was based. They held that the suit should have been instituted at latest within 12 years of the date on which Banwari Lal attained his majority. The learned Judges also held that there was sufficient *primâ facie* evidence, which

had not been rebutted, to show that the putni had been granted under such circumstances of legal necessity as would make it binding on subsequent owners of the estate, in accordance with the Judgment of this Board in *Hanuman Pershad* v. *Manraj Kunwari* (6 Moo. I. A. 393).

Their Lordships will shortly state their reasons for agreeing with the learned Judges that the suit is barred by limitation. Hemlata had no estate in the property in question. On the most favourable view for the Appellant she granted the putni as manager of the estate for Brajeswari, the then legal owner. If the putni was void, the period of limitation ran from the date on which it was granted under Reg. II. of 1803, as amended by Reg. II. of 1805, which was then in force. But if it was voidable only by Brajeswari's successor, the right of action arose on the adoption of Banwari Lal, and time would begin to run against him from the date when he attained his majority in 1856. Under either Reg. II. of 1803 or Act XIV. of 1859, time ran from the date when the cause of action arose.

As their Lordships are of opinion that the suit is barred by limitation, it is not necessary to express an opinion on the question whether the putni was in law binding on the Appellant. But their Lordships must not be understood as throwing any doubt on the soundness of the principle laid down in the case of *Hanuman Pershad* v. *Manraj Kunwari*.

It remains only to notice an argument addressed to their Lordships to the effect that the proper inference from the facts proved was that a new agreement, in the nature of a compromise, was made between Banwari Lal and the putnidars that Banomalikuri should be resumed by Banwari Lal and the putnidars should be allowed to retain Kharamkuri and Chuck

Haripur on a new tenure at the apportioned rent for the life of Brajeswari. The short and sufficient answer is that there is no evidence of any such new agreement. Tarak Chandra Bhowmick, one of the original Defendants, in his evidence says that they had been in possession of the property in putni right since 1244 (1837), under the Kobala executed by Hemlata, and he was not asked any question in cross-examination as to the supposed new agreement and no issue was settled respecting it. The proper inference from the receipt by Brajeswari of a reduced rent after the partition between her and Banwari Lal is that it was an apportioned rent agreed to between her and the putnidars.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed. The Appellant will pay the costs of it.