Privy Council Appeal No. 89 of 1912; Bengal Appeal No. 53 of 1908.

Maharaja Surja Kanta Acharjya Bahadur, since deceased (now represented by Maharajkumar Sashi Kanta Acharjya) - - *Appellant.*

v.

Sarat Chandra Roy Chowdhuri - - - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH JULY 1914.

Present at the Hearing:

LORD DUNEDIN. SIR JOHN EDGE.
LORD ATKINSON. MR. AMEER ALI.
LORD SUMNER.

[*Delivered by* LORD ATKINSON.]

This is an appeal from the judgment and decree, dated the 22nd May 1908, of the High Court of Judicature at Fort William in Bengal, affirming a judgment and decree of the 27th March 1905 of the Court of the Subordinate Judge of Rajshahye.

The action out of which the appeal arises was brought by the respondent as purchaser at a sale held under Act 11 of 1859 in consequence of the non-payment by the owner of the Government assessment of the Kas Mahal Shyampur Paharpur situate within the Pergunna Sersahabad, and No. 218 on the Touzi of the Maldah Collec-

[66] J. 355. 125.—7/1914. E. & S. A

torate, to recover possession of about 2,720 bighas of the Mouzah Nij Shampur alleged to form portion of the said Khas Mahal, the possession of which was withheld by the appellant, and for damages for mesne profits and further relief.

This sale was held on the 14th of January 1891 and duly confirmed on the 15th of March following.

The appellant relied upon two defences :— First, that the land, the possession of which was sought to be recovered, styled for convenience the land in dispute, did not form any portion of the mahal so purchased by the respondent, and, secondly, that even if it did, the appellant and those through whom he claimed had held possession of this land adversely to all persons having claims upon it continuously since, if not before, the year 1859 up to the present time, and that the respondent's claim was therefore barred by the Limitation Act. In anticipation of this second defence the respondent, in his plaint, alleged that this adverse possession, even if proved, was under the provisions of Act XI. of 1859 only an incumbrance on the mahal purchased, that on sale this latter was vested in him free from all incumbrances, including the incumbrance thus created, and that consequently his right to recover possession was not barred by the Limitation Act.

It was admitted by Mr. de Gruyther, on behalf of the appellants, that on the failure of an owner to pay the Government assessment, his estate or interest in the land is forfeited, or rather, determined, and that under such a sale as that which took place in this case, what was sold was not the interest of the defaulting owner, but the interest of the Crown, subject to the payment of the Government assessment, and that therefore the time limited by the Limitation Act only commenced to run from the date

of the sale, in this case the 14th of January 1891. If this be so, then, as the action was instituted on the 23rd of December 1902, the statutory period of 12 years had not elapsed before the latter date, and the claim of the respondent to recover was unaffected. This defence may be accordingly put aside. There remains the part and parcel question.

In order to appreciate the respective contentions of the parties litigant, and the rulings of the Courts below upon this question, it is necessary to refer shortly to the history of those properties of which the land in dispute is alleged to have formed part.

It was not, their Lordships think, disputed that at the time of the decennial settlement of Bengal, one Chandra Narayan Roy was the zemindar of the pergunnah Sersahabad, and that the permanent settlement of 1793 was made with him in respect of that pergunnah. Neither was it disputed that at the time of this settlement Chandra Narayan Roy improperly returned as debottar lands, *i.e.*, lands devoted to religious purposes, and therefore unassessable to Government revenue, portions of eight mouzahs or villages forming portion of the pergunnah Sersahabad. The Crown being misled by this untrue statement subsequently instituted proceedings under Regulation 2 of 1819 dealing with such matters, to deprive by way of resumption, Chandra Narayan Roy and his successor of the land so untruly described. The Crown represented by the Indian Government obtained a decree for resumption of this latter land on the 24th of December 1834, which was on appeal confirmed by the Special Commissioner on the 18th of June 1836. Possession of the misdescribed land having been thus obtained by the Government, they unified it and constituted it a Khas Mahal.

The main contention of the appellant has been that as Chandra Narayan Roy was the owner under the permanent settlement of the entire pegunnah of which the land so resumed formed part, the burden of proving that the land in dispute formed portion of the land so resumed rested upon the respondent, and that in so far as he failed to discharge that burden the lands in dispute must be taken to remain and be vested in the appellant, the successor in title to Chandra Narayan Roy, as his property. This contention, though in the main, in their Lordships' view sustainable enough, is in one respect mistaken, namely this, that it was competent for the Crown in the year 1859, when making the settlement under which the respondent in effect claims to have added to the resumed land, other land then belonging to it and made a grant of both combined. Such difficulty as the case presents arises altogether from one's inability to identify by metes and bounds the land actually resumed, and it is to this point the appellants' counsel have directed their lengthy and ingenious arguments.

Three attempts have been made to fix the boundaries of this land and to definitely ascertain its position and extent in 1838, in 1840, and in 1848 respectively. Both the Courts below have found that the last of the three, namely, that made in 1848, was so successful that the accuracy of the result then arrived at was not before them successfully impeached. It is embodied in the map of the survey of the village of Shyampur Paharpur surveyed in April 1848, a copy of which numbered Map 2 was given in evidence. The conclusions of the Courts below on this point being concurrent findings on an issue of fact the well established rule of this Board in such cases is, as

stated by Lord Herschell in *Allen* v. *Quebec Warehouse Company*, 12 A.C., 101, this:— "Their Lordships do not consider that the "question they have to determine is what "conclusion they would have arrived at if the "matter had for the first time come before them, "but whether it has been established that the "judgments of the Courts below, were clearly "wrong." It is vital to the appellant's case that this should be shown on his behalf, for this reason, that after the decree for resumption of the mis-described debottar lands had been enforced, and the Government assessment upon them fixed, Chandra Narayan Roy declined to take the grant of them offered to him by way of settlement, and thereupon a lease or Ijara settlement of them was made to one Shib Chandra Chatterji for a term of 20 years from the 1st of May 1838. On the expiration of this term, after some delay, a grant by way of final settlement of this Khas Mahal, was, on the 27th of September 1859, made to Jogendra Narayan Roy, a younger son of Chandra Narayan Roy. By successive transfers made from time to time this Mahal ultimately became vested in Udoy Chanda Bothra, the defaulting owner, upon whose failure to pay the Government revenue, it was, as already mentioned, sold to the respondent on the 14th of January 1891.

Now the Subordinate Judge has found (p. 383) that the permanent settlement of this Mahal (Towzi No. 218) in September 1859 "was un-"doubtedly made upon the Thak and Revenue "Survey of 1847–1848." And the High Court have found as a fact (p. 410), that "the settlement "of 1859 was made on the basis of the survey "map whether that map was right or wrong, "and whether it differed from the Tanabandi of "1840 and the settlement of 1838 or not. That it "was wrong there is not a particle of evidence to

" show. It was always acted upon, and must be " taken to be the best evidence of what was " settled in 1859."

It was contended before their Lordships, as before the Courts below, that on a comparison of this survey map of 1848, with the proceedings in the Court of the Collector of Maldah on the 18th of June 1838, before Mr. Edward Latour, " in the matter of the settlement of Khas " Mahal Taraj Shyampur Paharpur decreed under " Regulation 2, 1819," and the Rubokari dated the 11th March 1840 of Mr. William Bell (Deputy Collector of the District of Maldah (p. 274, R.)) and with the map prepared by him entitled Simanabundi map prepared by him, it would be found that the area of the the land alleged to have been resumed according to the Revenue Survey was largely in excess of the 20,254 bighas which in the proceedings before Mr. Latour they are found to measure, that the survey was consequently plainly inaccurate, and the findings of both the Courts below as to its being unimpeachable were, therefore, clearly wrong. This contention is dealt with in the Courts below, and especially by the High Court in their judgment at pages 410 and 411. The so-called map prepared by Mr. Bell is in truth no map at all. It is a picture containing lineal measurements, made in different directions, estimated in Rasis, from a peg identified as one of those placed by Mr. Latour. No superficial areas were measured or the contents ascertained. In the order made by Mr. Bell on the 11th of March 1840 it is recited, amongst other things, that the boundaries of the Khas Mahal were taken by Mr. Latour by fixing pegs in certain places, and measuring from these pegs in certain directions, but that several of these pegs had been swept away, that at the time of Mr. Latour's settlement the River Bhagirathi

flowed below and to the west of a certain palm tree treated by Latour as a landmark for the purpose of his measurements, namely the Panchatara palm tree at Dhoka, that there was Majh Dearah to the west of this river, and to the west again of that Majh Dearah the River Ganges flowed, that all the lands of this Majh Dearah were diluviated, that the two rivers became united, and the former bed of the latter river became Dearah. The physical features of the Khas Mahal thus became altogether changed. In addition, the question of this alleged excess in the survey was elaborately dealt with in the proceedings instituted in the Court of the Thakbast Deputy Collector of the district of Bhagalpur and Maldah in reference to disputes arising between the owners of the neighbouring Mouza of Sherpur Bhandar, and Ram Chandra Roy and others, as owners of this Mouza Shyampur Paharpur touching the boundaries between these mouzas. In the order made by the Deputy Collector on the 11th May 1848, the proceedings before Latour and Bell, respectively, are cited at length, the alleged excess is dealt with, and it is ordered that the Hadbast of the whole of this property in dispute should be made within the circuit of Shyampur Paharpur, that a perwana should be written to Syed Ata Hossein Peshkar, directing him to make the Hadbast thereof, and that a copy of the proceedings shall be forwarded to the Superintendent of Thakbast for final orders with respect to the excess lands. In pursuance of this order the case came before the Superintendent of Surveys for re-trial, and by his order, dated the 6th of March 1849, reciting again at length the proceedings before Messrs. Latour and Bell, and stating the cause to which this excess was due, it was ordered that the appellant's objections

should be disallowed, and that the lands which the Deputy Collector considered to be excess lands should be held to be intrinsically the land of Shampur Paharpur Government Khas Mahal belonging to Chandra Chatterji, the respondent in that case, and that the Thak prepared by the said officer should be maintained and confirmed. These last proceedings, like those preceding them, are in truth determinations by public officials of the matters in dispute, all the parties interested being given the opportunity of making their claims, raising their objections, and producing their evidence. The parties to them are, no doubt, not estopped by the decisions arrived at, as they would be in regular proceedings in courts of law, but these determinations are obviously of high authority, and when acquiesced in by all the parties interested for a length of time, and made the basis of important transactions, should not be disturbed unless upon the clearest proof that they are erroneous. Their Lordships have not found that the comparison of Bell's map with the survey map is sufficient to lead them to the conclusion that the latter is, save possibly in one respect, erroneous, nor have they discovered anything in any of the proceedings subsequent to the year 1848 to lead them to think so. The bed of the Ganges is apparently included in the mahal according to the survey map, but this does not form part of the lands in dispute, and if it belonged to the Crown, as it is contended it did, it would be vested in the purchaser by the settlement of the 27th of September 1859. The finding of both courts that the survey formed the basis of the settlement has not been impeached, and their Lordships, on full consideration of all the evidence, find themselves unable to come to the conclusion that the other concurrent finding of fact, namely,

that the survey map is accurate, was clearly wrong. They are, therefore, of opinion that the judgment and decree appealed from should stand, and that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

MAHARAJA SURJA KANTA ACHARJYA BAHADUR, since deceased (now represented by **MAHARAJKUMAR SASHI KANTA ACHARJYA**)

v.

SARAT CHANDRA ROY CHOWDHURI.

DELIVERED BY LORD ATKINSON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.