Privy Council Appeal No. 26 of 1915.

Bengal Appeal No. 2 of 1912.

Sashi Bhushan Misra and others - - - - *Appellants.*

v.

Raja Jyoti Prashad Singh Deo and others - - *Respondents.*

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 8TH DECEMBER, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD ATKINSON.
LORD WRENBURY.
MR. AMEER ALI.

[*Delivered by* THE LORD CHANCELLOR.]

The appellants in this case are the descendants and representatives of certain Brahmins to whom, at a date uncertain, but antecedent to 1790, the then Raja of Pachete made a Mokurari grant of the village known as Mouzah Panchgachia; the question raised in this appeal is whether this grant carried with it the mineral rights in the soil.

In considering the question it is important to avoid giving to words used in connection with legal transactions in India the special and technical meaning that they possess in this country. According to our law, the word "grant" is strictly applicable to the conveyance at common law of remainders, reversions, and incorporeal hereditaments, which do not lie in livery, or of which livery could not be given. But in connection with the present dispute, the word has no such meaning, and it is important at the outset to bear this in mind.

The grant under which the appellants claim cannot be found, nor is there any copy in existence, nor any record of its literal contents. It is, however, admitted that the grant was a Talabi Brahmattar grant.

Such a grant is defined in Wilson's Glossary as "land

granted rent free to Brahmins for their support and that of their descendants, probably as a reward for their sanctity of living or to enable them to devote themselves to religious duties and education."

If after the words "rent free" be added the words "or at a fixed rent," this statement may be accepted as an accurate description of the origin of the grant, but in itself it contains no definition of the characteristics of the tenure. It has, however, been found in the present case that the tenure of the lands in dispute is permanent and heritable, and confers upon the holder for the time being full rights of alienation; but even these findings, though they invest the tenure with attributes of absolute ownership, afford little assistance in determining what it was that the grant passed.

Now, by the permanent settlement of 1793, all the mineral rights were confirmed to the Zemmindars, and the first respondent to this appeal represents their interest in the estate. If such rights were already possessed and recognised at the date of the settlement this confirmation would hardly have been needed, and this suggests that up to that date the rights enjoyed and granted in the lands were not considered as including the minerals; if this were so, as the grant in question could have created no rights in the property which the grantor did not possess, no right to the minerals could have been conferred. However that may be, there is certainly nothing in the permanent settlement to which the appellants can turn in support of their contention. Indeed, apart from the evidence furnished from the Sarsikal Jumma, and the facts that have been stated as to the well-recognised attributes of a Brahmattar grant, the appellants have been unable to furnish any evidence at all in support of the view that the grant conveyed the minerals; their case really depends upon the assumption that the character of the grant itself is sufficient to establish their claim.

This question has been the subject of much controversy in the Indian Courts, and the appellants can certainly point to some powerful and well-reasoned judgments in support of their view. But, in their Lordships' opinion, the matter has been set at rest by the decision of the Judicial Committee. In the case of *Kumar Hari Narayan Singh Deo Bahadur* v. *Sriram Chakravarti* (37 Indian Appeals, p. 136) a question arose as to the ownership of the minerals underlying a certain village called Petena which had been granted to an idol of whom the Goswamis were the priests. In that case, as in this, the grant was not forthcoming, but it was held in the High Court that the tenure of the Goswamis gave them permanent, heritable, and transferable rights and, upon this finding, the High Court decided that the minerals had passed under the original gift. Upon appeal to the Privy Council this judgment was questioned upon two grounds. First, that there was no evidence that the tenure carried with it permanent, heritable, and transferable rights; and secondly that, even if this contention were wrong, in the absence of

express evidence that the creation of the tenure was accompanied with the grant of the minerals, the minerals did not pass. The Judicial Committee decided in favour of the appellants' contention, and the material part of the judgment is to be found on p. 145 of the report. The two points are there dealt with, and upon the first Lord Collins, in delivering the judgment of the Board, made this statement :—

"On this meagre foundation of fact the two Judges who constituted the High Court, have built up the theory that the Goswamis were tenure-holders having permanent, heritable, and transferable rights."

He then proceeds to deal with the judgment of Mr. Justice Pargiter, who took the view that the creation of such a grant carried with it the mineral rights ; and he expresses disagreement with this view of the law, stating that it appeared to ignore the distinction between the mere tenure-holder and the Zemmindar ; the judgment concludes by saying that the Zemmindar must be presumed to be the owner of the ground rights in the absence of evidence that he ever parted with them. The Counsel for the appellants has strongly urged that the whole of this judgment depends upon their Lordships' refusing to accept the view that the tenure in that case was permanent, transferable, and heritable, and that the judgment only applies to an estate lacking those qualities. Their Lordships realise that the judgment, in the absence of the argument, might be open to this construction; but, read in the light of the then appellants' contention, they think that the two passages referred to dealt with the two separate points which were raised by the appellants, and that the latter part of the judgment was really independent of the statement which expressed dissatisfaction with the conclusion drawn as to the character of the tenure. Their Lordships would have felt more uncertainty about this view had it not been for a second judgment in a subsequent case *Raja Sri Sri Durga Prasad Singh* v. *Braja North Bose*, reported in 39 Indian Appeals, p. 133.

In that case also the nature of the grant was not identical with that of the grant in the present case. It was the grant to the holders of an office—the office of Digwar, and it was permanent only in the sense that, so long as that office continued to be held by members of the same family, the rights created by the grant would be assured to the holders for the time being of the office. In that case the High Court followed the decision of the High Court in the former case, which had not then been reversed, and Lord Macnaghten, in giving the judgment reversing the High Court, referred to that fact in the following terms :—

"The learned Judges on appeal seem to have been misled by a decision of the High Court in the case of *Kumar Hari Narayan Singh Deo Bahadur* v. *Sriram Chakravarti*, which was afterwards reversed by this Board, and is reported in L.R. 37 Ind. App. 136. There certain persons, called Goswamis or Gossains, priests of a Hindu idol to which a certain village had been assigned on a permanent debottar tenure at a small annual rent, granted a lease of the underlying minerals. The High Court held that the

mineral rights were vested in the Gossains. But it was laid down by this tribunal that it must be presumed that the mineral rights remained in the Zemmindar in the absence of proof that he had parted with them."

It is plain from this statement by Lord Macnaghten, who was one of the members of the Board in the former case, that the earlier decision was intended to apply to a permanent debottar tenure. In other words, that the doubt that was thrown in the former case as to the sufficiency of the evidence on which the tenure had been held to be permanent, heritable, and transferable, did not affect the main judgment in the case, which was based upon the hypothesis that these attributes of the tenure had been established.

These decisions, therefore, have laid down a principle, which applies to and concludes the present dispute. They establish that when a grant is made by a Zemmindar of a tenure at a fixed rent, although the tenure may be permanent, heritable, and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect.

It is admitted in the present instance that the only evidence that can be relied on arises from the characteristics of the tenure and the statement as to the object and purpose for which the grant was made as stated in Wilson's Glossary. For reasons that have already been given, this affords no evidence necessary for the purpose, and their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

In conclusion their Lordships desire once more to call attention to the tedious protraction of Indian litigation. It can only be a misfortune that a dispute such as the present, which affects a matter so important as the right of mining—a right of great value for the development and prosperity of any country —should have been in abeyance for a period which, from the commencement of the present dispute until the day of hearing of this appeal, has exceeded twelve years.

In the Privy Council.

SASHI BHUSHAN MISRA AND OTHERS

v.

RAJA JYOTI PRASHAD SINGH DEO AND OTHERS.

DELIVERED BY
THE LORD CHANCELLOR.

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