Privy Council Appeal No. 64 *of* 1923.

Patna Appeal No. 40 *of* 1920.

Raja Maharaj Kumar Satya Niranjan Chakravarti and others - *Appellants*

v.

Ram Lal Kaviraj and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH NOVEMBER, 1924.

Present at the Hearing:

LORD DUNEDIN.
LORD ATKINSON.
MR. AMEER ALI.
LORD SALVESEN.

[*Delivered by* LORD DUNEDIN.]

The present action is as to the right to the minerals in a Mauza at Sultanpur. The plaintiffs are the Zamindars of a Zamindari within the bounds of which the said Mauza lies. The defendants are the putnidars and darputnidars of the said Mauza. The defendants are working, and, as the High Court have found—as to which finding no dispute has been raised before this Board—have worked the mines on a large scale since 1894 and to the knowledge of the plaintiffs since 1898.

The present suit was raised in 1915. The defendants rely upon three separate defences. First, they say that being putnidars they are in right of all the Zamindari rights appertaining to the territory embraced in the putni lease unless exception has been expressed, and that no exception of minerals was expressed. Secondly, they say that the putni lease gives them the right to the

minerals in express terms. Thirdly, they say that the suit is barred either under article 120 or article 144 of the schedule to the Limitation Act. The learned Subordinate Judge decided all three questions against the defendants and gave decree. On appeal the High Court of Patna affirmed the view of the Subordinate Judge on the first question, but reversed him on the second. It is somewhat difficult to say whether they affirmed or reversed on the third, but, as they were in favour of the defendants on the second, they dismissed the suit.

On appeal to this Board all these questions have been argued at great length, and it has been urged that the first question is one of very general importance. Their Lordships, however, think that the case may be disposed of on the second and third questions. To take the third question first, the relief asked by the plaintiffs was at once possessory and declaratory, for they ask "that it should be declared that the plaintiffs are entitled to and are in possession of the underground rights of the said Mauza." Their Lordships think that they are placed in this dilemma. The suit is admittedly raised more than 12 years after the working of the minerals on a large scale, that is to say, a proper working of the field. It must be assumed for the purposes of this plea that the plaintiffs are right on the first and second points. The working by the defendants was, therefore, working not under a lease but by a mere trespasser. If, therefore, the suit is possessory, then it is barred under article 144 of schedule 1, for more than 12 years have elapsed since the possession became adverse. If, on the other hand, the suit is declaratory, it is barred under article 120, for more than 6 years have elapsed since the right to sue the declaration emerged. Further, their Lordships agree with the High Court on the second question. This depends on the document of title. It runs as follows :—

DEED OF PATNI SETTLEMENT.

"We let out to you in Mofussali Patni settlement the Mauza Sultanpur, as per boundaries given in the Thakbasta papers, appertaining to Taraf Afzalpur and comprised in our Zamindari share, amounting to 4 annas in Tappa Kuntahit Karaya, excluding the Chakran Jaigir, Debotar, Brahmotar and other extra lands, etc., and the Katai Jungles included in Tikish (?) at an annual rental of Rs. 25 in Company's coin and a premium of Rs. 45 in Company's coin. You will hold possession of all the lands appertaining thereto from a very long time, such as Mal, Khamar, Hasil, Patit, Bil, Jhil, Khal, Kandar, Pahar and Parbat, Jalkar, Falkar, the fruit-bearing and non-fruit-bearing trees and the Jungles and all rights and interests appertaining to all such things lying within the four boundaries and above and below (the surfaces). You will not be ousted from the Zamindari."

There have been a series of cases before this Board in which Their Lordships have held, in the case of leases of Mokurari and other tenures, that, in order to pass minerals to the lessee, express words must be used. They are *Tituram Mukerji and others* v. *Cohen and others*, 32 I.A. 185 ; *Kumar Hari Narayan Singh Deo Bahadur and another* v. *Sriram Chakravarti and others*, 37 I.A. 136 ; *Raja Sri Sri Durga Prasad Singh* v. *Braja Nath Bose and others*, 39 I.A. 133 ; *Sashi Bhushan Misra and others* v. *Jyoti Prashad Singh Deo and*

others, 44 I.A. 46 ; *Giridhari Singh* v. *Megh Lal Pandey and others*, 44 I.A. 246 ; *Raghunath Roy Marwari and others* v. *Raja of Jheria and others*, 46 I.A. 158. Both the Subordinate Judge and the Judges of the High Court have decided that these cases equally apply to putni tenures. Without so deciding. this must be assumed for the purpose of deciding the second question. The Subordinate Judge thought that such words as " adha " " urdha " " Hadud Mahdud " were mere words of style commonly used by writers of deeds without a proper understanding of their meaning, and, therefore, refused to give any effect to them. This seems a mistaken view. Common words of style used in conveyances of any sort may be, and often are, words of surplusage, but when they are not words of surplusage, they must be given the proper effect of their own meaning. This view was taken by the High Court. They thought that, looking to the anxious expression of the generality of the grant as evidenced by the long category of things conveyed, the words " adha " and " urdha " made it plain that there was every intention to convey all below the surface as well as all on it or above it. With this view their Lordships agree.

Two more contentions of the appellants must, however, be stated in order to be set aside. Their counsel argued that section 108 (*o*) of the Transfer of Property Act settled the question. Their Lordships consider this an impossible contention. The meaning of the section is clear enough. It is obviously dealing with the ordinary rights of a lessee in an ordinary lease, but it would be nothing less than an absurdity to hold that its terms cut down the right to work a mineral field expressly conveyed. Even if the words " with leave to work " were added, the words of the section, if taken literally and as of universal application, would prevail, because an Act of the legislature must prevail against private paction. They further argued that a right to the minerals does not infer a right to work. It is a general principle of all grants *quando aliquid conceditur id etiam conceditur sine quo res ipsa non esse potest*. This is always true as between grantor and grantee, but it does not necessarily apply as against third parties. If the grantor has granted the surface to A and the minerals to B, it may well be that the mere grant of the minerals will not include a right to bring down or otherwise injure the surface in the process of winning the minerals. But here there is no question of that sort. The grantee of the minerals is also the grantee of the surface. Their Lordships have, therefore, no hesitation in saying that this grant of the minerals, in a question with the grantor, which is the only question here, includes the right to work. Such being their Lordship's views, which directly lead to an affirmance of the judgment of the High Court, they would, in ordinary circumstances, have said no more as to the first and general question of whether a putni tenure, without more said, transfers as has been contended by the respondents all the rights of the Zamindari, including the right to the minerals.

There is admittedly conflicting authority on the point, but the learned Subordinate Judge, and also the Judges of the High Court, considered that the authorities in favour of the putnidar were overruled by the decisions of the Board in the series of cases mentioned above. Their Lordships cannot agree with that view. *Tituram Mukerji and others* v. *Cohen and others*, 32 I.A. 185, was the case of a maintenance grant. This was held not to include minerals. *Kumar Hari Narayan Singh Deo Bahadur and another* v. *Sriram Chakravarti and others* 37 I.A. 136 was Debottar tenure. *Raja Sri Sri Durga Prasad Singh* v. *Braja Nath Bose and others*, 39 I.A. 133, was the case of lease held as the appanage to the office of Digwar. *Sashi Bhushan Misra and others* v. *Jyoti Prashad Singh Deo and others*, 44 I.A. 46, was the case of a Brahmottar tenure, which means that that was a grant to Brahmins for their support. *Giridhari Singh* v. *Megh Lal Pandey and others*, 44 I.A. 246, was an ordinary Mokurari lease. *Raghunath Roy Marwari and others* v. *Raja of Jheria and others*, 46 I.A. 158, was again a case of Brahmottar tenure. Not one of these was the tenure of a putni taluk in the hands of a putnidar. In their opinion the question, so far as direct decision of this Board is concerned, is still open. It really turns on what is the true nature of a putni tenure. Their Lordships think that the learned Judges have been misled by a wrong view of expressions used by Lord Shaw in *Giridhari Singh* v. *Megh Lal Pandey and others*, 44 I.A. at p. 249, when quoting the judgment of Lord Buckmaster. His Lordship says :—

> " The decisions establish that when a grant is made by a Zamindar 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."

But that only means that the mere fact of a lease being permanent, transferable, and heritable does not necessarily carry with it the result that the lessee has all Zamindari rights. His Lordship was dealing with a contention founded on Mokurari leases. The passing of a Mokurari lease does not, says he, have the effect that all the rights of a Zamindar go with it, but his Lordship did not mean to say and did not say " because a permanent lease does not entail that effect, therefore, inasmuch as a putni lease is a permanent lease, it does not entail that effect." That question was not before him and was not decided. Their Lordships do not decide it now as it is not necessary for the judgment, nor do they wish to express any opinion on the matter save one, viz. : that they do not agree with the dictum of the High Court which says that the judgment of Prinsep and Hill JJ. in the case of *Nawab Sir Ali Quader Syed Hossein Ally Mirza Bahadur* v. *Rai Jogendra Narain Roy*, 16 C.L.J. 7 (1889) has been overruled by the decisions of this Board above cited. That decision is in conflict with the decisions of other Courts in India, and whether it or those other decisions are right must remain for settlement on another occasion.

Their Lordships will humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

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v.

RAM LAL KAVIRAJ AND OTHERS.

DELIVERED BY LORD DUNEDIN.

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