

*Privy Council Appeal No. 1 of 1929.*

*Patna Appeal No. 35 of 1927.*

Mahanth Krishna Dayal Gir - - - - - *Appellant*

*v.*

Rani Bhubneshwari Kuar and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 17TH APRIL, 1931.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD ATKIN.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

SIR DINSHAH MULLA.

[*Delivered by* SIR DINSHAH MULLA.]

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This is an appeal from a decree of the High Court at Patna, dated June 28th, 1927, which reversed a decree of the Subordinate Judge of Gaya dated June 11th, 1923.

The dispute between the parties is as to the exact area of the lands demised under a *mokurari putta* made in 1835 by the 7 annas Tikari Raj, now represented by the plaintiff-respondent, to Sib Dayal Gir, the then *mohant* of a *math* at Mahodah, and the predecessor in title of the defendant-appellant. The lands are situated in *Mauza Bodh Gaya*, also known as Mahabodh. The appellant contends that the area was 300 *bighas*, while the plaintiff-respondent admits only 200 *bighas*, or at the most 231. Neither the *putta* nor the *kabulyat* is forthcoming, and it is this that has caused the difficulty of the case.

The *math* at Mahodah was subordinate to another *math* situated at Bodh Gaya. It has been alleged by the appellant

that the last *mohant* of the *math* at Mahodah was Rangpal Gir, that he died without a *chela* to succeed him, and that on his death the *math* at Mahodah with all properties appertaining to it, including the *mokurari* lands, passed to him as the *mohant* of the *math* at Bodh Gaya.

A large body of evidence, both oral and documentary, was adduced before the Subordinate Judge of Gaya, in whose Court the present suit was instituted. The decision of this appeal, in their Lordships' opinion, turns mainly upon a consideration of the documents exhibited in the case, being records of proceedings in suits brought by and against the appellant and his predecessors in title in respect of the lands in dispute and certain public documents, to be presently referred to. It is therefore necessary to see what those proceedings and documents are.

It appears that one Gulab Gir, under a claim of mohantship to the *math* at Mahodah, mortgaged the *mokurari* lands in Bodh Gaya to Bishunath Singh. Bishunath Singh obtained a decree on his mortgage, purchased the lands at the execution sale, and obtained possession thereof on April 18th, 1888. It further appears that in November, 1892, Bishunath Singh sold a 4 annas share of the lands to Altaf Khan. In October, 1893, Rangpal Gir instituted a suit in the Court of the Subordinate Judge of Gaya, being suit No. 238 of 1893, against Altaf Khan and the sons of Bishunath Singh (who was then dead) for possession of the lands under section 9 of the Specific Relief Act, 1877. In the plaint in the suit the area of the *mokurari* lands at Bodh Gaya was stated to be 200 *bighas*. Rangpal Gir died pending the suit, and the appellant was brought on the record as his successor. On October 26th, 1895, a consent decree was made between the appellant and the sons of Bishunath, under which the latter delivered possession of the 12 annas share in their possession to the appellant, while the suit as to the remaining 4 annas in the possession of Altaf Khan was dismissed. Subsequently, on February 25th, 1897, the appellant brought another suit in the same Court against Altaf Khan, being suit No. 70 of 1897, to establish his title to the 4 annas share, and obtained a decree against him on April 18th, 1898. In the plaint in that suit also the area of the *mokurari* lands was stated to be 200 *bighas*.

In the meantime, on March 29th, 1897, one Kali Charan and others, alleging that they were joint with Bishunath Singh and his sons, and that the consent decree in suit No. 238 of 1893 was obtained by collusion and behind their back, brought a suit in the Court of the Subordinate Judge of Gaya, being suit No. 20 of 1897, against the appellant and the sons of Bishunath Singh for recovery of their share of the lands. In his written statement in that suit the appellant again stated that the area of the *mokurari* lands was 200 *bighas*. The suit was dismissed on April 13th, 1898.

While this litigation was proceeding the appellant obtained on April 12th, 1896, a *zarpeshgi* lease from the Raj of the entire *Mauza* Bodh Gaya for a term of 20 years, the consideration for the lease being an advance of Rs. 70,000 made by the appellant to the Raj. Thenceforward the appellant held portions of *Mauza* Bodh Gaya as *mokuraridar* and the entire *mauza* as *zarpeshgidar*.

In or about 1903 the Collector of the district issued a proclamation under section 14 of the Bengal Cess Act, 1880, requiring every holder of an estate or tenure liable to pay Government revenue or rent to lodge at his office "a return of all lands comprised in his estate or tenure." The appellant filed a return of the *mokurari* lands at Bodh Gaya, in which he showed the area as being 225 *bighas* and 6 *khatas*. The return is dated January 19th, 1904.

In or about 1915 proceedings were commenced under the Bengal Tenancy Act, 1885, for the preparation of a record of rights. In those proceedings the appellant claimed before the Attestation Officer 300 *bighas* as the area of the *mokurari* lands on the strength of a *farkhati* (receipt) dated August 16th, 1849, purporting to have been passed by a predecessor of the plaintiff-respondent for rent of the *mokurari* lands, and in which this area appeared. The respondent admitted only 200 *bighas*. The Attestation Officer, while not doubting the genuineness of the *farkhati*—no objection on that score having apparently been taken before him—adopted the road cess return as the basis which showed 225 *bighas* and 6 *khatas* to which he added a few more *bighas* to make up for the difference in the standard of measurement, and allotted to the appellant a compact plot of 231 *bighas*, being the portion marked yellow on the survey map (Exhibit No. 25), in lieu of scattered plots as shown in the road cess return. The appellant's agent accepted this arrangement on the hypothesis that the area to which the appellant was entitled was no more than 231 *bighas*. Subsequently the appellant filed objections under section 103A of the Act before the Assistant Settlement Officer, but they were disallowed, and an order was made on June 13th, 1916, directing that the entry as recorded by the Attestation Officer should stand. In his decision the Settlement Officer said that the areas in the *farkhati* of 1849 appeared to him to have been subsequently interpolated.

In the meantime the *zarpeshgi* lease expired in April, 1916. The appellant refused to give up possession of the plots in respect of which his claim was rejected in the Survey and Settlement proceedings, with the result that criminal proceedings were instituted under section 145 of the Criminal Procedure Code. The Magistrate, however, confirmed the possession of the appellant.

Thereupon, on March 19th, 1921, the plaintiff-respondent instituted the present suit in the Court of the Subordinate Judge of Gaya against the appellant and some of his *ryats* for a declaration that the area comprised in the *mokurari* lease was not more than 200 *bighas*, or in the alternative that it did not exceed 231 *bighas*

being the area recorded in the record of rights, and for possession of the excess lands with mesne profits. The appellant filed a written statement, basing his claim on title and adverse possession. The claim on the footing of adverse possession has not been pressed before their Lordships, and it is unnecessary to refer to it further. The lands claimed by the appellant as comprised in the lease are those marked yellow and blue on the survey map.

In the course of his judgment the Subordinate Judge observed that the area varied from 225 to 310 *bighas*, but he thought it was fruitless to ascertain the exact area, as he was satisfied that the standard of measurement had varied since the *putta* was granted. He based his decision on the evidence as to the boundaries of the *mokurari* lands which he held included the disputed area. He held it established that the entry in the record of rights was incorrect and dismissed the suit.

Against this decree the plaintiff-respondent appealed to the High Court. The learned Judges, after a careful examination of the evidence, came to the conclusion that oral evidence in a case of this kind was of little value unless it was supported by documentary evidence. They held that it was not possible to ascertain the boundaries with reasonable certainty, that the *mohant* was not in any case entitled to more than 231 *bighas*, being the area specified in the record of rights, and they passed a decree for the plaintiff in respect of the excess over 231 *bighas*. From this decree the defendant has appealed to His Majesty in Council.

Their Lordships agree with the conclusions arrived at by the High Court.

Under section 103 of the Bengal Tenancy Act the entry in the record of rights "shall be presumed to be correct until it is proved by evidence to be incorrect." The entry in the present case is based upon the road cess return, which by section 95 of the Bengal Cess Act is admissible in evidence against the appellant. Their Lordships think, therefore, that a very strong case would be required to rebut the presumption.

The appellant relied mainly upon the *farkhati* of 1849, and an alleged copy of a decree in a suit brought by a predecessor of the plaintiff-respondent for arrears of rent in respect of the *mokurari* lands. The copy decree was not certified, and the Subordinate Judge was not prepared to accept it as genuine. He expressed no opinion as to the *farkhati*. The learned Judges of the High Court considered both these documents to be of doubtful authenticity, and their Lordships see no reason to disagree with them. On their own examination of the evidence they are unable to hold that the entry in the record of rights has been proved to be incorrect, and they are of opinion that the appeal fails and should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

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MAHANTH KRISHNA DAYAL GIR

vs.

RANI BHUBNESHWARI KUAR AND OTHERS.

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DELIVERED BY SIR DINSHAH MULLA.

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