*Privy Council Appeal No.* 91 *of* 1935
*Bengal Appeals Nos.* 17 *&* 18 *of* 1934

**Raja Jagadish Chandra Deo Dhabal Deb** - - - - *Appellants*

*v.*

**Gour Hari Mahato and others** - - - - - - *Respondents*

**Same** - - - - - - - - - - - *Appellant*

*v.*

**Srinibash Mahato, since deceased, and others** - - - *Respondents*

***Consolidated Appeals***

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JUNE, 1936

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*Present at the Hearing:*
LORD THANKERTON.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* LORD THANKERTON.]

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These appeals are taken against two decrees of the High Court dated 8th August, 1933. Two questions are involved, the first being the question of *res judicata*. The High Court declined to allow the appellant to go into the question of *res judicata* on the ground that it had not been properly raised by the pleadings or in the issues, particularly in the issues. It seems to their Lordships that the High Court were right in this view, because it was necessary for the appellant, if he were going to make use of the judgment in the suit of 1900 as *res judicata*, to identify the subjects in dispute in the present case with the subjects which in that case were held to belong to the Rajah and not to the tenants.

The other point is a mere matter of procedure, the question with regard to the use of exhibit 17 as secondary evidence. That does not appear to their Lordships to be a question of fact, but rather a question of procedure and the orders made by the High Court were to remit the suits to

the Court below for re-hearing after giving the plaintiffs in title suit No. 68 of 1929 an opportunity of calling for the original of exhibit 17 and considering it or, if not produced. then considering secondary evidence, if any, of the teriz; that is what exhibit 17 purports to be. Their Lordships are not satisfied that any good reason has been shown by the appellant for interfering with those orders, and accordingly the appeals will fall to be dismissed and their Lordships will humbly advise His Majesty accordingly.

(36974—3A) Wt. 8136—2 180 7/36 P. St. G. 338

In the Privy Council.

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RAJA JAGADISH CHANDRA DEO
DHABAL DEB

*v.*

GOUR HARI MAHATO AND OTHERS

SAME

*v.*

SRINIBASH MAHATO, SINCE
DECEASED, AND OTHERS

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DELIVERED BY LORD THANKERTON

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