

The Midnapore Zemindary Co. Ltd. - - - - *Appellant*

*v.*

Kumar Narendra Nath Roy 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 7TH MAY, 1945

---

*Present at the Hearing :*

LORD WRIGHT

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by* SIR MADHAVAN NAIR]

---

This is an appeal from a decree of the High Court of Judicature at Fort William in Bengal, dated 19th July, 1939, which varied the decree of the Subordinate Judge of Nadia, dated 17th May, 1937, and decreed the suit of the original respondent (hereinafter referred to as "the respondent") in part.

The appellant before the Board is the defendant, the Midnapore Zemindary Co. Ltd., and the respondents are the sons of the deceased respondent and his heirs.

The main question in the appeal relates to the respective titles of the parties to the suit properties.

The appeal arises out of a suit instituted by "the respondent" for a declaration of his Zemindary title to the properties set out in the schedules to the plaint, for cancellation of the tenures described therein, and for possession of the lands described in the four schedules attached thereto, by evicting the appellant company, and for mesne profits.

The suit properties are comprised in Estate Tauzi No. 491. This estate has land in various mouzas in different parts of Nadia district and in two mouzas of the neighbouring district of Murshedabad and pays an annual revenue of Rs.18,263.14.9. The estate belongs to 14 co-sharers who had opened separate accounts under section 10 of the Bengal Land Revenue Sales Act (Act XI of 1859). Of these, separate account No. 7 represents the interest of one Bhupendra Nath Mustafi. This interest had been mortgaged to "the respondent" and a further charge on the same had also been created in his favour. On these transactions he obtained a mortgage decree for the amount due to him and also for an additional sum paid by him as revenue. In 1934-35, separate account No. 7 fell into arrears with respect to some kists of revenue due to Government. There is another account, No. 13, which had also fallen into arrears. These were put up for sale by the collector, but no bids were offered. He therefore stopped the sale and, following the procedure laid down in Act XI of 1859, put up

the entire estate No. 491 for sale. "The respondent" offered the highest bid in his own name and was declared purchaser of the estate by the collector who issued him the sale certificate. It is stated in the plaint that the collector put him in symbolical possession of the properties but when he went to take actual possession he was resisted by the appellant company which claimed to hold them under certain tenures which were protected by being registered in the "common register" under the Bengal Revenue Sales Act. The properties claimed in the suit were originally included in three schedules, but afterwards the plaint was amended and schedule 4 was added to it. To appreciate the arguments before the Board their Lordships think it is necessary to refer to the properties in the schedules which run as follows:—

Schedule 1. Tenures held by the defendant Company Estate bearing Touzi No. 491 of Nadia Collectorate of which the disputed property is a portion and are comprised in, Mouza No. 23 known as Sadipur situate lying within the jurisdiction of Karimpur Thana, District Nadia, including Habrapara and Ajlampur and Mouza No. 63 known as Rajapur within the Tehatta Thana District Nadia.

Schedule 2. Tenures held by the defendant Company Estate bearing Touzi No. 491 of Nadia Collectorate of which the disputed property is a portion and are comprised in the resumed Chakaran Khas Khamar land formerly belonging to Thakur Das Roy and others in Mouza No. 24 known as Topla within the jurisdiction of Karimpur thana District Nadia.

Schedules 3. Tenures held by the defendant Company Estate bearing Touzi No. 491 of Nadia Collectorate of which the disputed property is a portion and are comprised in Mouza Dear Kartikpur *alias* Moktarpur (stated as Char Moktarpur No. 17 in "A" Register) within the jurisdiction of Karimpur thana, District Nadia and Moktarpur within the jurisdiction of Naoda thana, District Murshedabad being No. 22 in Register "C".

Schedule 4. Tenure held by the defendant Company in Mouza Joyrampur No. 64, Mrigi Mouza No. 69, Pratapnagar No. 65, Kanainagar No. 62, Sreerampur No. 61, Nasirpur No. 66, situated within (?) the limits P.S. Tehatta and Mehishkhala No. 27, Chack Ajlampur No. 25, situated in P.S. Karimpur, Pardiari No. 59 in "C" Register, are all situated in the District Nadia except Pardiari which is in the District of Murshedabad and lying within the Estate bearing Touzi No. 491 of Nadia Collectorate.

Schedule 4 refers to lands described in the suit as "chit lands" of Mouza Sadipur. The parties are agreed that "chit" means detached, and the term is used to denote portions of a revenue paying Mouza which have been detached from the parent Mouza and included within the boundaries of other revenue paying Mouzas, the title remaining with the owner of the parent Mouza. Sadipur is the parent Mouza of lands described in schedule 4, the lands lying detached in six of the neighbouring villages named in the schedule.

Before setting out the case of the appellant company it will be advantageous if their Lordships refer to section 37 of the Bengal Revenue Sales Act, 1859, and also the details of the title under which the appellant company claims to hold the properties. Its title is based upon exception 3, of section 37. The section, so far as it is relevant for the appeal, states:—

"The purchaser of an entire estate in the permanently-settled districts of Bengal (Bihar and Orissa), sold under this Act for the recovery of arrears due on account of the same shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants" with certain exceptions. Exception 3, relied upon by the appellant company is as follows:—

"Thirdly.—Talukdari and other similar tenures created since the time of settlement and held immediately of the proprietors

of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act."

In the original written statement the appellant company raised various pleas besides setting out its title to the lands. As none of these pleas, which were all found against the appellant company by the Appellate Court, though found in its favour by the Subordinate Judge, are now raised before the Board, their Lordships will only refer to them in passing before setting out the details of the appellant's title. It was alleged by the appellant company that the sale of the entire estate by the collector was illegal and *ultra vires* and was brought about by fraud on the part of "the respondent", that he prevented the company from bidding at the revenue sale, that he had no title to sue, and that he was estopped from claiming that he had purchased the estate free from encumbrances. As stated already these questions are not now before the Board as the appellant company has elected not to contest the findings though the validity of them had been raised in the grounds of appeal. The scope of the appeal is therefore much reduced. The only question which their Lordships have got to deal with in this appeal is confined to the plea of title set forth by the appellant company in the written statement. Their Lordships will now refer to the details of this title and the findings thereon by the Courts below. The appellant company claims title to these properties as purchasers from the Bengal Indigo Company of its interests in them. The following extract from the High Court's Judgment sets forth succinctly and clearly the details of the title of the Bengal Indigo Company.

On the 25th March, 1860, two of the proprietors of Estate No. 491 Lakshmidas Mustafi and Sarbeswara Mustafi, executed two Patni Pottas in favour of J. B. Mackintosh, Manager of the Patikabari concern of the Bengal Indigo Company (Exhibits H and Ex. H (1)—B18 and 23). The grant was taken by Mackintosh for the said Indigo Company. The two Pottas are in the same terms. By the first Potta (Exhibit H) Lakshmidas created in favour of Mackintosh 3 Patni Taluks, namely:—

(i) a Patni Taluk in respect of his 4as. undivided share in four Mouzas and one *Para*, namely, Nij Mouza Sadipore, Rajapore, Azlampore, and Haitapara including Jannagar at an annual rental of Rs.456-8;

(ii) a Patni Taluk in respect of his undivided 4as. 8gds. 3k. 5d. share in a resumed Chakran called Khaskhamar Topla at an annual rental of Rs.13; and

(iii) a Patni Taluk in respect of his undivided 4as. 17gds. 3k. 1d. share in Diar Kartikpur *alias* Muktarpur at an annual rental of Rs.373.

By the said second Potta (Exhibit H1) Sarbeswar who had the same share in the estate as Lakshmidas had created 3 similar Patni Taluks in favour of the said Company. The net result was that the Bengal Indigo Company had a Patni Taluk covering 8as. share of the four Mouzas, viz., Nij Sadipore, Rajapore, Azlampore and Haitapara. This Patni goes by the name of Patni Mehal Sadipore. Another Patni Taluk covering 8as. 17gds. 2 Karas odd share in Topla and a third Patni Taluk covering 9as. 15gds. 2 K-O-2d. share in the Diar Kartikpore *alias* Muktarpore. On the 19th July, 1862, the said company applied for registration of the said tenures under section 40 of Act XI of 1859 and the said tenures were registered on the 11th November, 1862, by the Collector in the Common Register (B211, B200 to 205). The appellant company has purchased the interest of Bengal Indigo Company in these Patni Taluks.

On the issue of title, as also as on the other issues as already stated, the Subordinate Judge found in favour of the appellant company and dismissed "the respondent's" suit. It is not necessary for the purposes of this appeal to notice in detail the learned judge's findings on the appellant company's title, but it may be stated as summarised by the High Court that he held that "the tenures of the defendants had been validly registered in the common register of the tenures. In any event the legality of the registration cannot be questioned in the Civil Court more than a year after their registration. The *chit* lands of Sadipore in Mouzas Sreerampore,

Mirjoy, Joyrampore, Kanainagore, and the two Azlampore chaks, as also char Muktapore in the District of Murshedabad and small areas in Protapnagore and Nazirpore are included in the defendant company's tenures and from them also the said company cannot be ejected".

Reversing the findings of the Trial Court and on their construction of the title deeds the High Court decreed the suit in part. To ascertain the extent of the relief granted to the respondent and also the exact scope of the appeal before the Board, their Lordships may refer to the decree passed by the High Court, the relevant portions of which run as follows:—

" It is ordered and decreed that the decree of the court below be varied in the manner following, namely, (a) the plaintiff's Zemindary right is declared to the lands in suit except Mouza Pardiari; (b) the plaintiff and the defendant company be in joint possession in respect of 1 anna 6 Gandas 2 Kara and 2 Kranti share of Nij Mouza Sadipur, Mouza Rajapore, Mouza Azlampore and Mouza Hayetpara including Jannagore, that is, in respect of the lands described in schedule 1 of the plaint; (c) the plaintiff be put into Khas possession of after ejecting the defendant from the Chit lands of the Mouzas mentioned in (b) above, that is, the land mentioned in schedule 4 of the plaint including the lands in Mouza Mirgay but excluding the lands in Mouza Pardiari. . . . "

The respondent has not preferred any cross appeal with respect to the relief which has been refused to him.

It will be noticed that in the order portion of the judgment of the High Court and in the decree which followed it, Mouza Muktarpur J.L. No. 22 within Naoda P.S. in District Murshedabad appearing in schedule 3 of the plaint is not mentioned as among the land to which Khas possession is declared. That this was due to an oversight has been now admitted. Having regard to the above decree, it is admitted by the parties that no question now arises before the Board with regard to their title to lands in schedule 1 of the plaint, nor does any question arise with regard to the land in schedule 2, or the lands in schedule 3, except as regards Muktarpur within the jurisdiction of Murshedabad district being No. 22 in Register " C. " The substantial question that now arises really relates only to the title to the lands in schedule 4, and to Muktarpur No. 22 in Register " C ", in schedule 3. As regards the lands in schedule 4, however, the appellant company does not press its case with respect to lands Nos. 65 and 66; and " the respondent " has given up his case with respect to Pardiari No. 59.

The two questions therefore that the Board have to consider are:—

- (1) Has the appellant company made out a title to the lands in schedule 4, omitting those mentioned above, and to
- (2) Muktarpur 22 in Register " C " in schedule 3.

Such lands in schedule 4 are as already stated the chit lands of Mouza Sadipur.

Both parties averred in the High Court that the documents Exhibits H and H1 on which the appellant company's title depends have not been correctly translated. The learned judges of the High Court translated for themselves the relevant portion of the documents which are identical in terms as follows:—" I having notified that I would grant Patni settlement of my four annas share in Nij Mouza Sadipur and Mouza Rajapur and Mouza Ajlampore and Mouza Hayetpara including Jannagore—four Mouzas and one Para included in the aforesaid Dihi including Khas Khamars and of my 4as. 8gds. 3k. 5d. share in Khas Khamar Tapla, the resumed Chakran formerly of Thakur Das Roy and others, and of my 4as. 8gds. 3k. 5d. share of Diar Kartickpur otherwise called Muktarpur which is beyond the limit of the river Kharia (*Kharia Nadir hoddapar*) ".

In view of the above terms the learned judges held that in regard to Sadipur the documents indicated clearly that the grants covered the grantors' share in *Nij Mouza* Sadipur. They did not qualify the other three Mouzas by the word " Nij ". They therefore held that the grantors did not include in the grants the chit lands of Mouza Sadipore in other

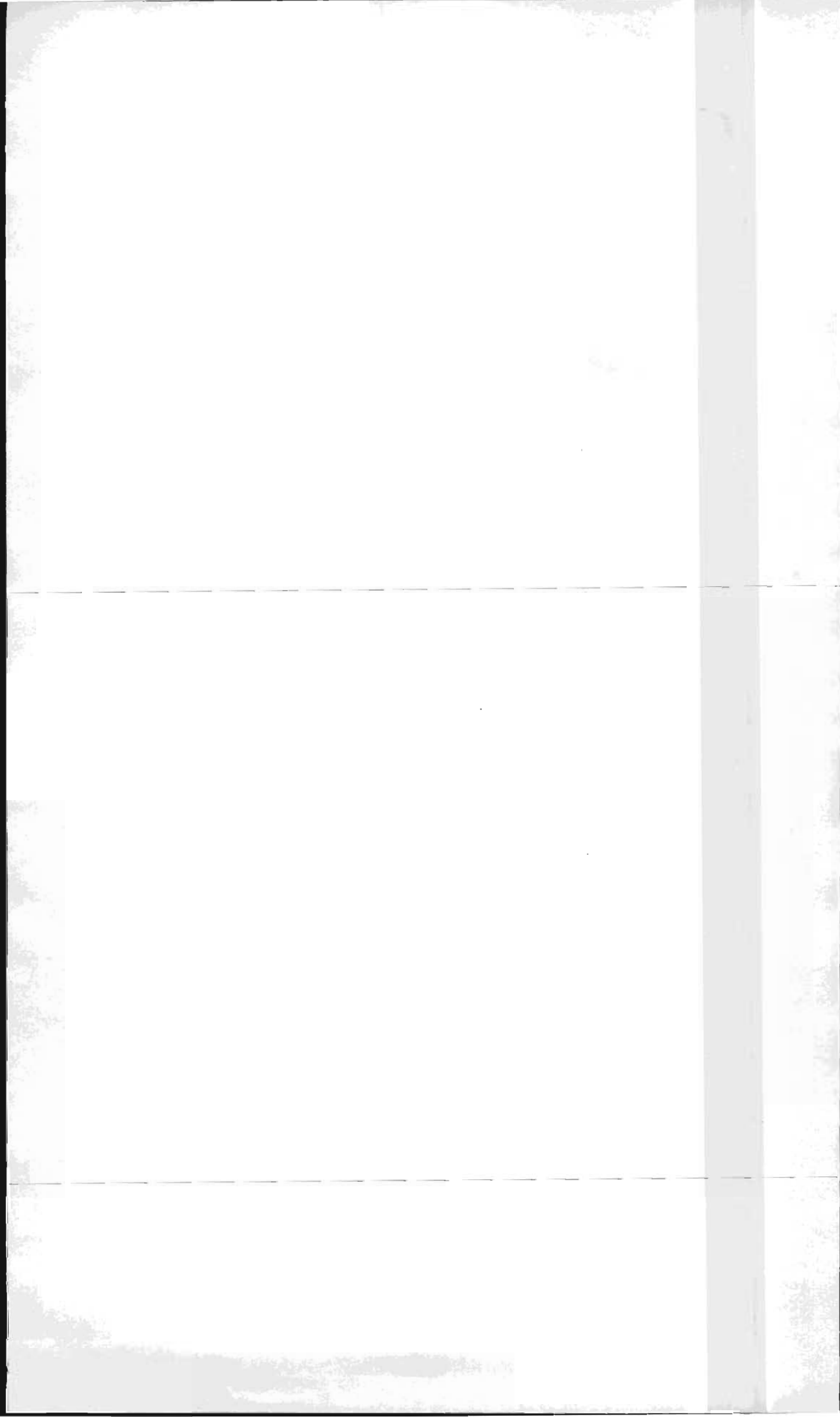


villages. The question whether the grants include these chit lands therefore depends on the meaning of the word *Nij*. The significance of this word in the light of the circumstances of the case was the main argument advanced in connection with the title to these lands. Except saying that the use of this word indicates that the chit lands of Sadipur in other villages are not included in the grant, the learned judges have not explained the meaning of the word. No light is thrown on its meaning by the judgment of the Subordinate Judge for it does not mention the word at all as appearing before Sadipur. The appellant company's learned Counsel says it indicates that the chit lands are included in Sadipur, the word being a word of "inclusion", while the respondent's learned Counsel asserts that it is a word of "exclusion" and excludes the chit lands. Their Lordships would have been in a better position to decide the question if the learned judges of the High Court, both of whom know the Bengalee language, had given their interpretation of the term, but they have not done so. Their Lordships must, therefore, decide it on the materials available to them. In Wilson's Glossary the word is stated to mean "own, peculiar", used sometimes in the sense of *nij-jot* and *nij-jot* is stated to mean "lands cultivated by the proprietors or revenue payers by themselves, and for their own benefit; also, land allowed to be set apart for the private maintenance of a Zamindar, on which, before the decennial settlement in Bengal, no revenue was assessed". This explanation is followed by the word *Nij-taluk* which is stated to mean "Own taluk or estate: in Bengal, a portion of land of which the proprietor or rentpayer collects the rent from the cultivators direct without any intermediate agency; also the private lands of a Zamindar, or those cultivated by himself for his own benefit". These interpretations suggest to their Lordships that the word "Nij" when it appears as qualifying the tenure in a village as in the present case, would limit the scope of the grant to the village alone, thereby excluding its appurtenant lands if any. The translation of the word appearing in the official translation of the documents is "proper" which would show that what was granted was Sadipur proper. The boundaries of Mouza Sadipur and Rajpur, etc., given in column 6 of Exhibit M.M. (1), extract from the common register of the Nadia Collectorate in respect of Tauzi No. 491 show that Sadipur is a definite and distinct block of land. The land was described with reference to its boundaries by the appellant company's predecessors when they applied for registration. Their Lordships must infer that what was granted to them was Sadipur included in the boundaries. If the chit lands attached to it had been given some indication of it would have appeared in the common register. Exhibit Y.Y.2, Revenue Survey Map of Mouza Sadipur, etc., shows Sadipur with boundaries similar to that given in M.M.1. In Map No. 1, also Sadipur appears as a distinct entity by itself. A careful consideration of the boundaries of the Mouza and its situation appearing in the plans referred to, leads their Lordships to the conclusion that the learned judges of the High Court were right in holding that the chit lands, though they may be attached to the parent Mouza, were not actually given by the grantors under the Title Deeds; and their Lordships therefore hold that the chit lands of Sadipur were not granted to the predecessors of the appellant company. The other passage in the title deeds referred to by the High Court, to which a passing reference was made by the learned Counsel, does not also advance the case of the appellant on this point.

The next question is whether Muktapore No. 22 in register "C" was included in the grants. What was granted under the Deeds to the appellant company's predecessor was "Diar Kartickpur, otherwise called Muktarpur which is beyond the limit of the river Kharia". There are two Muktarpurs, Muktarpur No. 17 lying east of the river Jellangi (Kharia) in the district of Nadia, and Muktarpur No. 22 lying west of it in the district of Murshedabad. Muktarpur No. 17 has been found to belong to the appellant company. The question with respect to Muktarpur No. 22 turns upon the interpretation of the expression "Kharia Nadir hoddapar". The learned judges relying on the meaning of the word *Hodd*, *Hadd* or *Hudd* which means boundary (see Wilson's Glossary, page 192) and the word *Para*, or *Par*, which means "river bank", came to the conclusion that the

grant was of land on one side of the river only and that the word *hoddapar* was used for the purpose of excluding from the grant the bank of the river. The boundaries given by the patnidar in his application for registration under section 40 of Act XI of 1859, in column 6 of the common register are the boundaries of Char Muktapore which has now been found to belong to them. This is a definite indication that only Char Muktapore No. 17 was granted to the predecessors of the appellant company. Apart from this consideration, looking at the plan Exhibit 10 (a) Settlement Map of Revenue Thana Naoda District Murshedabad, their Lordships find that Muktarpur No. 22 lies on the west separated from the river by a tract of land of some size. Two Muktarpurs lying in this situation, not contiguous with the river, would hardly be described as lands on both sides of the river. Their Lordships have no doubt that Muktarpur No. 22 was never granted to the predecessors of the appellant company.

There are no other questions for decision in this appeal as the other questions raised have not been pressed by the appellant company. The result is that this appeal will be dismissed with costs, but the decree passed by the High Court which their Lordships now confirm will also include in the decretal portion a provision which the High Court inadvertently omitted, viz., that the plaintiff be put into khas possession of Muktarpur Mouza J.L. No. 22 in district Murshedabad within the jurisdiction of Naoda thana District Murshedabad being No. 22 in register "C" referred to, mentioned in schedule 3. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council

---

THE MIDNAPORE ZEMINDARY CO. LTD.

vs.

KUMAR NARENDRA NATH ROY  
AND OTHERS

---

DELIVERED BY SIR MADHAVAN NAIR