Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Sri Sri Sri Krishna Deva Maharajulungaru v. Sri Sri Sri Ramachendra Deva Maharajulungaru, from the High Court of Judicature at Madras; delivered 25th July, 1870.

Present:—

Lord Cairns.
Sir James W. Colvile.
Sir Joseph Napier.

Sir Lawrence Peel.

THE Respondent is the Zemindar of Jeypoor, apparently a very large estate, in the nature of a principality, situated in the northern cirkars, which was permanently settled with his grandfather, Ramachendra Deo, in 1803, under Regulation XXV. of 1802 of the Madras Code. The Deed of Permanent Property, which is dated the 21st of October, 1803, by which the property in the zemindary was then assured to Ramachendra Deo, subject to the revenue permanently assessed upon it, is one of the exhibits in the cause. It shows on the face of it that the zemindary then included Pergunnah Singapuram, and the original statement of the Respondent, at page 2, seems to admit that a specific sum of money was then assessed upon that Pergunnah, as part of the Government revenue payable in respect of the whole zemindary.

The Appellant is the holder of six taluks, constituting or forming part of Pergunnah Singapuram; and the suit has been brought by the Appellant, as Zemindar, against the Respondent, treating him as under-tenant, to enhance the rent of those taluks.

The first decision of the Governor's Agent, who appears to exercise judicial functions in the dis-

trict where the property is situated, was in favour of the Respondent. Against this the Appellant appealed to the High Court of Madras, and on the 6th of November, 1865, that Court remanded the case for re-trial upon the issues stated at page 6 of the Record, directing the Governor's Agent to return to the Court his findings upon those issues, with the evidence upon which they were founded, the Court in the meantime reserving its final judgment upon the Appeal.

The issues are the following:—"(1.) Has the "family of Defendant held these six taluks under "a claim of ownership, and consequently by a pos- "session hostile to the family of Plaintiff ever since "the permanent settlement? (2.) Were the taluks "at the period of the permanent settlement in "possession of the Defendant's family on such "claim of right? (3.) What rights of ownership "have the Plaintiff's family exercised over the "taluks? (4.) Has the possession of Defendant "been for any, and if so, for what period, adverse?"

It seems to have been assumed that the burden of establishing the affirmative of at least the first, second, and fourth of these issues lay upon the Appellant; and their Lordships conceive that that assumption was correct, because, after it appeared that the zemindary included the Pergunnah amongst its mâl assets, or revenue-paying lands, it lay upon the Appellant as Defendant in the suit to establish the grounds on which he disputed the Zemindar's claim to an enhanced rent.

The Appellant accordingly filed an additional statement on the 20th of February, 1866, to which on the following day the Respondent put in his Answer; both of which documents are at page 8 of the Record. The Appellant's case was, that he and his ancestors had enjoyed the Singapuram Pergunnah as a mehaul separated from the rest of the zemindary, and as lakhiraj from a period anterior to the permanent settlement; that his great-grandfather, Lala Krishna Deo, being Rajah both of Singapuram and Jeyapuram, had bestowed the whole of his possessions, with the exception of Pergunnah Singapuram, upon his younger brother, Vickrama Deo, the grandfather of the Respondent; that the Appellant and his ancestors for four generations had since enjoyed Singapuram without

disturbance; and that, therefore, the Respondent was not at liberty to bring such a suit for the possessions enjoyed by a member of his family.

The Respondent's case was that before and since the permanent settlement, Pergunnah Singapuram had been enjoyed by the Respondent and his ancestors as part of the zemindary; that the Appellant's title to the taluks originated with his father, Mukhunda Devu, to whom, about forty years before, the then Maharajah Vikrama (the Respondent's father) had granted them to be held partly on a money rent, partly on service; that Mukhunda had paid rent for them; that on his death, his widow and his son, the Appellant, being in distress, were allowed for some time to discontinue the payment of rent, but that in 1860 the Appellant himself had acknowledged the Respondent's title, and made some payment in recognition of it. The nature of the payment it will be more convenient afterwards to consider.

Both parties went into evidence. The Governor-General's Agent found all the issues in favour of the Respondent, and there was then an appeal to the High Court, which Court adopted, after argument, the findings which were sent up; it then proceeded to consider the original appeal, and dismissed that, confirming the original decree in the Respondent's favour.

It lies on the Appellant to satisfy their Lordships that these decisions are erroneous, and I need not repeat what has been so often stated at this Board, that their Lordships will not take upon themselves to disturb the concurrent findings of two Indian Courts upon issues of fact, unless they are clearly satisfied that there has been some very grave miscarriage, either in the trial of the cause or in the appreciation of the evidence.

In the present case the Appellant labours under the additional disadvantage of having set up and undertaken to prove a case which it is almost impossible to reconcile with the uncontroverted and incontrovertible facts of the Settlement of 1803. His case is that when his ancestor made over the rest of the zemindary to his younger brother, he retained Singapuram as the separate property of his (the elder) branch of the family, by which it has ever since been enjoyed rent free.

Now it may be admitted that both the Appellant and the Respondent descend from a common ancestor, and that the Appellant belongs to the elder branch of the family. It may be further admitted, for that fact seems to have been found by the Governor's Agent, that at one period the whole of the zemindary was in the Appellant's ancestor Lala Krishna Deo; but there is not the slightest proof of the alleged transfer by Lala Krishna Deo, or of the alleged retention (when the whole zemindary passed from one branch to the other) of Pergunnah Singapuram, whilst on the other hand the deed of Permanent Settlement (a document which is clearly above suspicion) establishes that the settlement was made with and the property confirmed to the Plaintiff's grandfather, as the person then in possession of the whole zemindary, and that the zemindary then included Pergunnah Singapuram. It is also found by the Governor's agent, who can hardly be mistaken upon such a fact, and it is indeed admitted by the Appellant, in his first written statement, that the permanent revenue of Rs. 1,050 per annum, or upwards, was assessed specifically on Singapuram on the occasion of the settlement.

From these facts there arises the strongest presumption against the truth of the Appellant's case; for, if, as he says, Singapuram was held in 1802 by Sundara Deo as a distinct separate property, that person would presumably have settled for it with Government, and would have taken a deed of permanent property, assuring to him that separate estate. Such would have been the natural course of things, unless the whole Pergunnah were, as between the possessor of the land and Government, lakhiraj; but this it certainly was not, since we find it clearly proved that it was treated as mâlgoozarry land, and Government revenue assessed upon it.

On the other hand, there is also a strong presumption that the zemindar of Jeyapuram would not have settled for this land as he did unless he had been in the receipt of the collections from it, or of some rent payable in respect of it.

To these very strong presumptions what does the Appellant oppose? He may be taken to have proved two copper grants of small parcels of land, one in 1747, another in 1786; but these, if treated

as acts of ownership by the owner of the zemindary, or the owner of the Pergunnah, really prove nothing with reference to the present contention, because they bear date at a time when the whole zemindary may have belonged to Lala Krishna Deo, or the other party by whom the grant purports to have been made, both being anterior to the date of the settlement at which time we find the Respondent's ancestor the undisputed possessor of the zemindary. The Governor's Agent has also treated the second grant as of little importance, even if it were inconsistent with the Respondent's case, because where small grants of land like this are made to Brahmins of repute, the alienees are generally undisturbed.

Then the learned counsel for the Appellant have referred us to several of the letters and documents, which they say are inconsistent with the Respondent's case. Amongst them are the two letters, out of which this suit is said to have originated, the letter of the Respondent to the Appellant, and the letter of the Governor's Agent; but really these establish no such inconsistency. The case now made by the Respondent is that the tenure granted to Mukhunda was granted on a small money-rent, and a considerable service-rent, the latter consisting of the obligation to keep up a number of Paiks, or armed men. This correspondence only shows that the circumstances of the country had altered in two particulars; that the Government, for some reason or another, had prevented the Zemindar from levying certain cesses or taxes which he seems theretofore to have levied, that his revenues had been thereby diminished, and that he had found it necessary to enforce his right of enhancement against the under-tenants. There is no inconsistency in that with the case made; because if the circumstances of the country no longer required those armed men to be kept up, the Zemindar would naturally say to his tenant, "If you are relieved from that service, I have a "right to enhance my money-rent, and I come into "Court for that purpose."

Again, the letter at page 57, upon which a good deal of comment has been made, seems to their Lordships to be in no degree inconsistent with the Respondent's case. It is a letter written to the

Governor's Agent after the death of Mukhunda Deo, and it describes Mukhunda Deo as "the Mokhasadar of Singapuram attached to my Zemindary," clearly treating him as a tenant, upon some terms, of the Zemindar. It alludes to the interference of another woman, Sri Kondamma Devu, the widow of another member of the elder branch, with the rights of his son and widow; and it seems to their Lordships to be just such a letter as the superior and the head of the family might, under the circumstances described, write to the Governor's Agent. It is certainly more consistent with the existence of a sub-tenure granted by the Zemindar to Mukhunda Deo, than it is with the case now set up by the Appellant.

Then a good deal has been said as to the insufficiency of the evidence; but, with the exception of the copper grants, the Governor's Agent has discredited the whole of the evidence for the Appellant, and has given particular reasons for discrediting some of his witnesses. On the other hand, he has given credit to the witnesses for the Respondent,—witnesses who, although they do not prove perhaps very satisfactorily or in detail the terms of the grant, do prove the general fact that Mukhunda Deo obtained possession of this pergunnah as an act of favour from the zemindar, and that, generally, rent and service were paid upon that footing.

There are two witnesses who prove distinctly the payment in 1860. They treat it as a payment of rent. It is entered in the accounts, which are clearly admissible as constructive evidence, as a payment of rent. The Governor's Agent finds that it was a payment of rent. Their Lordships do not find in the record any trace of any particular complaint against that finding, on the ground that it is inconsistent with the description given in the statement of the Respondent, and that the payment was rather in the nature of a nuzzur, or free-will offering, than of a payment on account of rent reserved.

Their Lordships think that it would be improper for them now to open this question on this alleged inconsistency. They also think, that where the Governor's Agent has discredited certain witnesses, and given credit to certain other witnesses,

it would be contrary to the practice of this Committee and to sound reason to say that he ought to have believed the one and disbelieved the other, unless there were far stronger grounds than any that have been here shown for the conclusion that he was wrong.

Again, with respect to the reception of evidence, their Lordships do not find that any objection was formally taken in the Court below to the reception of the accounts; and they think it would be mischievous if they were now to allow that exception to be taken in the final Court of appeal. There was, no doubt, some question raised in the High Court, and the High Court seems also to have taken this view. Their Lordships are further of opinion that, looking to the burden of proof which lay on the Appellant to make out his exemption from this increased rent, looking to the case that he made, and his utter failure to establish that case, the decision may be clearly supported without falling back upon or calling in aid these accounts.

Upon the whole case, their Lordships are of opinion not only that no sufficient ground has been made for saying that the decisions below are wrong, but that upon the evidence in this Record those decisions were right. They must, accordingly, advise Her Majesty to dismiss the Appeal.

The Respondent has not appeared; therefore, it is not necessary to say anything about costs.