

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rani Surut Soondari Debya v. Prangobind Mozoomdar and others, from the High Court of Judicature at Fort William in Bengal; delivered 21st May 1879.*

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Present :

SIR JAMES COLVILLE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE SMITH.  
SIR ROBERT COLLIER.

THIS was a suit brought in the Court of the Subordinate Judge of Mymensing by Rani Surut Soondari Debya, who is the Zemindar of a 10 annas share of a pergunnah called Pook-hooria, against the Respondents who are the talookdars of a dependent talook which has the name of Gopalpore, and consists of eight mouzahs. The suit was brought to recover rent for a year from the 12th April 1871 to the 11th April 1872, at the enhanced rate of Rs. 8,124 and a fraction. The plaint refers to a decree in previous proceedings, by which the talook was declared to be held at an enhanceable rent; but instead of relying simply upon the amount of rent which was found to be the enhanced rent in that former suit, takes the form of a plaint for a fresh enhancement. It also refers to a previous notice which more distinctly refers to the former suit than does the plaint, and more directly bases the claim upon the decree in that suit. The Subordinate Judge entered into an original inquiry as to the rates payable for adjacent lands, and the judgment of the High Court upon the appeal from

him turned entirely upon the effect of the evidence taken upon that inquiry, without reference—and it may be said without due reference—to the previous suits.

The previous litigation had extended over a long period of years, and cannot be regarded by their Lordships without extreme regret. It is to be regretted that to settle a question of rent between the Zemindar and the talookdar the lengthy proceedings found in this Record should have taken place, and that one of the former suits should have endured for a period of upwards of 20 years.

The history of the case is found in the previous litigation. It appears that at one time this talook was held at a rent of Rs. 1,662. A suit was brought by Rani Bhoobunmoyi, who was the mother of the then Zemindar of the pergunnah, to enhance that rent, in which a decree was made on the 9th February 1821. It appears from the proceedings in that suit that a rufunamah or deed of compromise was put in, by which the rent was agreed to be raised from Rs. 1,662 by Rs. 400, and a decree was given for the enhanced rent of Rs. 2,000. It seems that the pergunnah, or the share of the pergunnah which embraced the villages in question, was sold at a Government sale and purchased by the Government. During the time it was in the hands of the Government there was again a successful suit to enhance the rent, so that, if the case had rested there, the decree in 1821 and this subsequent suit would afford clear evidence that this talook was not held at a fixed and unvaried rent. It seems that after the decree passed in its favour, the Government parted with the pergunnah, which came again into the family of the Plaintiff's ancestors. We find it in the possession of Rajah Horendro Narain Roy, who is the Plaintiff in

the most important of the former suits to which reference will now be made.

Rajah Horandro Narain Roy commenced this suit in 1849 against the predecessor of the Defendants to enhance the rent, and the Defendant in that suit contended that the talook was not liable to enhancement. He also set up the deed of compromise which had been come to by the widow Zemindar in the former suit. After two decrees of the Principal Sudder Ameen adverse to the Plaintiff, and two remands on appeal, a decree was passed by the Principal Sudder Ameen on the 13th November 1856, by which it was determined that the talook was subject to enhancement, and that the deed of compromise was not binding upon the Plaintiff; that the lady who made it had only a limited estate, and could not bind her successors. There was an appeal from the decree to the Zillah Judge, who affirmed it; and upon further appeal to the Sudder Dewanny Adawlut, that Court passed a decree on the 25th March 1862, dismissing the appeal, and by that decree the liability of the talook to enhancement was finally established. There was great delay in making the measurements, in consequence of some dispute apparently about the measuring rod, which it is stated lasted for a considerable time. The report of the Ameen was not made until the 26th September 1867. The Ameen appears to have taken evidence and gone minutely into the rates; the various qualities of land and the values are set out in his report, and he fixes the rent which was properly payable by the talookdar at the sum of Rs. 8,124.

The rent which had been claimed in the notice served prior to the suit of 1849 was a sum of Rs. 3,200. The Judge of Mymensingh, upon cross-appeals, held that he could give judgment for the rent recoverable in the suit only at that rate,

but that for the future the rent would be payable according to the rates found by the Ameen. His decree is to be found at page 121 of the Record, and is of the date of the 20th August 1869. It is as follows: "That the cross-appeal be dismissed; that this (Plaintiff's appeal) be admitted; that the orders of the Lower Court be modified; that the Appellant do get, in her share of that property, the rent of Rs. 3,200 a year, with interest at 12 per cent. up to the day of payment of the rent of the time prior to the institution of the suit. The Appellant shall be entitled to demand rent from the 1st Bysack 1276," that is, from 1869, at the rate of rent fixed by the Ameen, after deduction of 15 per cent., being the judgment debtor's profit and collection charges; that unless barred by some law, the Appellant shall be entitled to recover rent at Rs. 3,200 by means of suits."

Their Lordships understand this decree to determine that the Plaintiff was entitled to the rent for one year, which he had claimed as due prior to the commencement of the suit, at the rate of Rs. 3,200 a year; that in the interval between the commencement of the suit in 1849 and the decree in 1869 the rent was payable at the same rate of Rs. 3,200; and that from 1869 the rent would be payable at the rates fixed by the Ameen. The Judge thought he could not give the intermediate rent between 1849 and 1869 in the present suit, and that the Plaintiff must sue for that rent in some new proceeding, subject to the liability to be barred by limitation, if that bar could be effectually set up. The reason of the Judge for that part of his decree which relates to the rent from 1869 is thus stated in his judgment: "The judgment-debtor has by his own act allowed this case to drag very slowly along, and when the measure-

“ ment and assessment was not made until 1867.  
 “ or 17 or 18 years after the decree, it is but  
 “ fair that the decree-holder should get the  
 “ assessment fixed at what is a fair rental in  
 “ 1867, and not be compelled again to come to  
 “ the Courts to fix the rental at current rates  
 “ because he is decreed what was a fair rate  
 “ when this suit was instituted.”

The nature of the plaint in the present suit has been already commented upon. It is evidently founded in some measure upon the decree of 1869, though not resting solely upon it, but claiming a right generally to have the rent enhanced. That the Defendant, however, was perfectly alive to the importance of the decree of 1869, and of the Ameen's report upon which it is based, is plain from his answer, which in paragraph 8 states as follows:--“ The  
 “ Plaintiff in the plaint has stated that the  
 “ amount mentioned by the Ameen in his report  
 “ in the former case was the amount of the  
 “ assets of our mokurrurri talook, but that  
 “ statement is unfounded. In fact the amount  
 “ mentioned in the said report of the Ameen is  
 “ considerably greater than the assets in the  
 “ mofussil; and indeed the said report of the  
 “ Ameen was rejected in the former case. Hence  
 “ this suit for enhancement of rent on the  
 “ basis of a rejected report is in every respect  
 “ worthy of dismissal.” There seems to be no ground whatever for the allegation that the Ameen's report had been rejected; but the allegation shows that the Defendant understood that the plaint was in a great measure at least based upon the judgment which was founded upon the Ameen's report.

The course that the proceedings in the present suit took was this: issues were settled, and without going through them it may be stated that they were such as would be usually

framed in a suit for enhancement of rent. The Subordinate Judge took evidence as to the rates in the neighbouring villages, and several witnesses were examined on both sides with reference to them. It was then prayed (by which side does not very clearly appear) that the lands should be remeasured, it being suggested that there had been changes since the report of the Ameen in the suit of 1849. Accordingly a new measurement was directed, and an order given to an Ameen to proceed with it, having regard to the altered state of the lands and their culturable and rent-paying condition. The order also contained a direction that the Ameen should inquire into the prevailing rates, but pending his inquiry that part of the order was rescinded. The Ameen made his report upon the measurements, finding that there was a much less amount of land which would bear rent than existed at the time of the report of the former Ameen. The decrease of the culturable land must have been considerable, and after the adjustment of the rates by the Judge to the new measurements, the rent of Rs. 8,124, declared to be the proper rent by the decree of 1869, was reduced by him to Rs. 5,062, and his decree was given for one year's rent at that rate. His decree is: "That the suit be decreed; " that the Plaintiff obtain from the Defendants " Rs. 5,062. 15. 6, being the rent of her 10 " annas share, together with interest from this " day to the date of realization at the rate of 12 " per cent. per annum."

The Defendant appealed to the High Court, and that Court has given a judgment which passes by the previous litigation and the decree of the 20th August 1869. Having looked at the evidence as to the rates which had been given before the Subordinate Judge, the High Court came to the conclusion that that evidence was

wholly insufficient by reason of what they considered its unsatisfactory character to establish a case for enhanced rent. It does not seem to have been present to the minds of the Judges that the Plaintiff was starting upon the foundation of an enhanced rent which had been found so recently as 1869, two or three years before the commencement of this suit, and which established a *prima facie* case of the rent properly payable by the talookdar. Their Lordships cannot think, even if the case had been rested altogether on a new inquiry into the prevailing rates, that the Judges of the High Court would have been right in peremptorily dismissing from their consideration the whole of the evidence on the part of the Plaintiff as of no weight. The evidence was of that kind which would be naturally given in cases of this description. But in the present suit it was supported by what had been found as the proper rent in 1869.

Their Lordships think that the decree of the High Court cannot stand, and they see no sufficient reason for disturbing that of the Subordinate Judge, which is confined to decreeing in favour of the Plaintiff the payment of one year's rent.

In the result therefore their Lordships will humbly advise Her Majesty to reverse the decree of the High Court, and in lieu thereof to direct that the decree of the Subordinate Judge be affirmed, and that the Appeal of the Defendant to the High Court be dismissed with costs. The Appellant will have the costs of this Appeal.

