Privy Council Appeal Nos. 126 *of* 1911 *and* 4 *of* 1912 ;
Bengal Appeals Nos. 38 *and* 57 *of* 1908.

The Secretary of State for India in Council - *Appellant,*

v.

Maharaja Radha Kishore Manikya Bahadur, since deceased - - - - *Respondent.*

Maharaja Radha Kishore Manikya Bahadur, since deceased (now represented by Maharaja Birendra Kishore Manikya Bahadur) - - - - - *Appellant,*

v.

The Secretary of State for India in Council and others - - - - *Respondents.*

(Consolidated Appeals)

FROM

THE HIGH COURT OF JUDICTURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST AUGUST 1916.

Present at the Hearing:

LORD DUNEDIN. SIR JOHN EDGE.
LORD MOULTON. MR. AMEER ALI.

[*Delivered by* LORD DUNEDIN.]

The present suit was instituted by the Maharajah of Tippera to regain possession of certain plots of land in Southern Sylhet. The defendants are the Secretary of State for India and certain Tea Companies, who in virtue of leases granted by the Government are at present in possession of the lands in dispute.

[85] J 319 135—8/1916 E & S

There were several plots in controversy, but the judgment of the Court below has been so far acquiesced in that the only ones still in controversy before this Board were those known as plots 2, 3, and 4.

The Maharajah of Tippera is an independent chief whose territory borders upon and adjoins the district of Sylhet. The configuration of the country is that there are several parallel ranges or spurs of hills going northward from the higher ground of independent Tippera, and forming valleys between the spurs. Originally the Rajahs of Tippera claimed that all the hill country to the end of the spurs was independent territory. Owing to this claim, Lieutenant Fisher was sent by the Government in 1821 to survey the ground and delimit the boundary. The outcome of his proceedings is preserved in a map and report. On the map he drew a line from west to east, which excluded from Tippera and incorporated in Bengal the spurs in question. His survey was so far as some parts of this line and the country adjoining admittedly incomplete, as the country was wild and covered by jungle; and difficulties were created by the opposition of hill men known as Kukis, who acknowledged the supremacy of the Rajah of Tippera. This claim to an extension of independent Tippera seems to have been more or less persisted in by the Maharajah and his successors till 1861, when Mr. Reynolds, of the Survey Office, was sent to finally delineate on the ground the boundary line which Fisher had only drawn on the map. Since 1861 the line thus laid down has been acknowledged as authoritatively settling the boundary.

The plots of ground in question are all situated to the north of this boundary line, and are therefore admittedly no part of the independent territory.

The position of the lands may be generally described as being in the southern portion of the land lying to the east of the westmost of the spurs of hills before mentioned. The land to the west of the said spur is known as the Pergunnah Bijura, while the land to the east of the same spur is known as the Pergunnah Taraf, in the southern portion of which lies the Tuppa Bishgaon. The Tuppa is sometimes also itself called a Pergunnah. These names existed at the time of Lord Cornwallis's settlement in 1793, and are to be found so marked in Fisher's map in 1821.

The plaintiff is admittedly owner of two Taluks in Tuppa Bishgaon. He acquired them from persons who had bought them at a Government sale in 1799. It is common ground that these were and are settled lands.

The plaintiff accordingly framed his claims alternatively, and pleaded that the plots in question were either part of the settled taluks of Tuppa Bishgaon or otherwise that he had had 60 years' adverse possession of them.

The defence, on behalf of the Secretary of State, alleged that the plots in question were parts of a certain mahal of Halabadi lands in the Pergunnah Bijura.

The learned Subordinate Judge after receiving a report from a Commissioner to whom he remitted the task of examining the lands and comparing them with the various maps, and after considering evidence, oral and documentary, found that the said lands were parts of the settled lands of Tuppa Bishgaon. On appeal the Secretary of State altered his line of argument. It had become apparent in the progress of the case that it was impossible to assert with success that the plots were within Pergunnah Bijura, and that consequently it was very difficult, if not impossible, to assert that they were part of

the Halabadi lands which undoubtedly were situate in Pergunnah Bijura. He therefore pinned himself to the negative attitude that at any rate they were not shown to be part of Tuppa Bishgaon. To this negative attitude the Court of Appeal agreed, but they held that none the less the plaintiff had shown that the plots had been in the possession of the Rajahs for a period of upwards of 60 years, and that that possession had been adverse to all other claimants. Both Courts held that the dispossession complained of had happened within the period of 12 years before suit, so that the Act of Limitation did not apply. In the result therefore they dismissed the Appeal.

Their Lordships do not propose to examine in detail the evidence which is very voluminous; they will however set forth a few of the salient points which they consider have been established.

1. Pergunnah Taraf was not originally in the district of Sylhet, but in the district of Dacca. That district, unlike the district of Sylhet, was settled without survey. It is accordingly noticeable that while Pergunnah Bijura undoubtedly contains Ilam and Halabadi lands, Pergunnah Taraf does not seem to contain any such.

2. Pergunnah Bijura is undoubtedly to the west of the ridge of hills now called the Raghunandan Hills.

3. Until such evidence as is afforded by the revenue survey of 1859, there is no trace of any territory as existing between Pergunnah Bijura and Pergunnah Taraf.

4. Fisher's report discloses two important facts. The hills immediately adjoining Bijura were at the time in the possession of the Rajah. Bishgaon had been purchased by the Rajah, and his influence in Bishgaon is described as even greater than his influence at Balisira. Now his

influence at Balisira had consisted in this, that, having purchased certain Pergunnahs, he asserted that the hill land which was properly attached to the Pergunnahs, and in respect of which Jumka-Jumma had been paid by the proprietor of the settled Pergunnahs, was his as independent property.

5. There are concurrent findings of fact by the two Courts that the lands in question were *de facto* in the possession of the plaintiff and his predecessors since the beginning of the 19th century. It is probable that, if asked, the Rajah would have sought to ascribe his possession to his independent territory, so long as the boundary was not conclusively settled against him. But that does not alter the fact of possession: and it is to be remembered that the testimony given by Fisher as to the practical occupation is given at the very moment that he decides that these lands do not form part of the independent Raj. This testimony is reiterated by Reynolds. In the circumstances, and taking the concurrent findings of fact as to possession as the basis of their judgment, their Lordships have come to the conclusion that it is fair to ascribe this possession to the property which the Rajah undoubtedly had in Tuppa Bishgaon.

The only circumstance which, in their Lordship's opinion, led the Court of Appeal to prefer to rest their judgment on 60 years' possession and not upon the Pergunnah title, was the fact that in the revenue survey of 1859 the various mouzahs which undoubtedly form part of Pergunnah Bishgaon are not shown as extending as far as these lands: and that there is shown a tract of unoccupied territory, to which the name of the Raghunandan hills is given, extending from the boundary of the mouzahs to the ridge of hills which bounds Bijura. Their Lordships have always given great weight to the accuracy

of the survey maps. They are not conclusive, but in the absence of evidence to the contrary they will be presumed to be accurate. The present case, however, is somewhat peculiar. The Raghunandan hills were admittedly not surveyed : and their Lordships do not think that there was material before the surveyor in 1859 to settle the extent of possession held in connection with Tuppa Bishgaon in 1793–1840 and onwards.

The fact of possession as found by the two Courts in this particular case and for these particular plots, therefore, seems to their Lordships to overweigh what may be called the negative evidence of the map.

This disposes of the case as against the Secretary of State on the general question, there being a concurrent finding of fact as to possession within 12 years so as to exclude the plea on limitation. But there remains a special plea affecting plot 3. This plot was undoubtedly sold by the Government as waste land, and the sale was not in any way stopped or interfered with by the Rajah. In these circumstances the Defendants rely on Section 18 of the Waste Lands Act, No. 23 of 1863, which provides that no claim to any land or to compensation or damages in respect of any land sold or otherwise dealt with on account (of) Government as waste land shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser or otherwise dealt with. The suit here is admittedly more than three years after delivery.

In order to deal with this plea, it is necessary to consider the scheme of the Act.

It provides that when waste lands are proposed to be sold by the Government, there must be a period mentioned in the advertisement as to

the sale or disposition of the lands not less than three months within which any competing claim to the land in question must be intimated.

If such claim is intimated the sale, pending investigation, is suspended. The Collector then inquires into the claim, and either allows or rejects it. If it is rejected the claimant must, within one week of the rejection, institute an appeal; failing which institution the rejection order is final. It is then provided that in any district the Local Government shall constitute a special Court for the adjudication of such claims; that notice of such constitution shall be given by proclamation, and that, after such proclamation, the jurisdiction of all Courts other than the special Court, as to claim to the land is abolished. Then after provisions as to the procedure of the special Court comes Section 18 already partially quoted. Section 19 then provides that in any case in which land has been sold, if the Court is of opinion that the claim of the claimant has been established, the Court shall not award him possession of the lands, but shall order him to receive a sum of money from the Treasury in compensation.

The Subordinate Judge held that all this procedure only applied to lands held by the Government. The Court of Appeal hesitated to accept this view, and their Lordships think it is clearly wrong. For the very fact of providing special machinery to adjudicate on claims by other people to land which the Government are practically dealing with by means of sale, is destructive of the idea that the action is not applicable except in cases where in other Courts the Government could show it had a title.

The learned Appeal Court have treated the matter in the only way it was argued before them, viz., as a question of jurisdiction; and held that as the jurisdiction of the ordinary Courts was

only ousted on proclamation made of the constitution of the special Court, and as no technical proof had been given that any such Court was constituted, the ordinary Courts were not ousted.

Their Lordships agree that this is so, but it would scarcely be a satisfactory ground on which alone to decide the case, as the point not having been taken by the Subordinate Judge, their Lordships think that under sanction of costs the appellant might have been granted leave by the Court of Appeal to lead additional evidence to the effect that the Court had been constituted and proclamation made. There is, however, another good ground which, in their Lordships' view, is fatal to the appellant's contention. This Act is drastic in its character, and makes a great invasion on private rights. Those pleading it must therefore bring the matter strictly within its provisions. Now the whole of the provisions beginning with Section 1, as to notices to be given to the Collector, advertisements, &c., clearly point to the necessity of proper intimation being given by the Government as to the proposed sale. The notice must be clear and not misleading, for otherwise how is the true owner if such exists to realise the necessity of coming forward? Now here the notice was quite misleading, for it advertised a sale of lands in Bijura, whereas the lands in question were certainly not in Bijura, whether they were in Bishgaon or Taraf.

Their Lordships think, therefore, that as against the plaintiff the whole proceedings fail for want of proper basis. The provision as to the three years in Section 18 is clearly applicable, as the concluding words of the section show, to the proceedings before the Special Court and that Court alone.

Their Lordships will therefore humbly advise His Majesty as against the defendant the

Secretary of State in Appeal No. 126 of 1911 to dismiss his appeal with costs.

It has been intimated to their Lordships that leases of the lands in the possession of the third and fourth respondents in Appeal No. 4 of 1912 have been entered into between the Maharaja and these parties. Their rights will now be governed by the leases and it is unnecessary for their Lordships to make any recommendation to His Majesty in connection with this Appeal which will be dismissed without costs on either side.

In the Privy Council.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

MAHARAJA RADHA KISHORE MANIKYA BAHADUR, SINCE DECEASED.

MAHARAJA RADHA KISHORE MANIKYA BAHADUR, SINCE DECEASED (NOW REPRESENTED BY MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR)

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY LORD DUNEDIN.

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