Privy Council Appeal No. 123 *of* 1921.

Oudh Appeal No. 12 *of* 1919.

Pirthipal Singh - - - - - - - - *Appellant*

v.

Ganesh Din Singh and another - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 31ST OCTOBER, 1922.

Present at the Hearing:

LORD BUCKMASTER.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.
LORD SALVESEN.

[*Delivered by* LORD BUCKMASTER.]

The appellant in this case is the Taluqdar of the Surajpur Estate, and in this capacity he sued to obtain a declaration against the respondents that they had no proprietary or under-proprietary rights in a village known as Mauza Kusehti, which forms part of the estate. The Subordinate Judge, before whom the matter first came for hearing, decided in his favour; the Judicial Commissioners have reversed that decree and from the Judicial Commissioners this appeal is brought.

The difficulty arises in this way: In the settlement that was made in 1867 there is no doubt that the Taluqdar of this estate was clothed with rights which excluded the predecessors of the defendants from claiming to have any greater interest in the village than that of Thekadars; in other words, it excluded them from proprietary or under-proprietary rights. A dispute having arisen early with regard to their claims, a decree was passed

on the 7th April, 1868, which declared that the rights possessed were Thekadari and not Pukhtadari rights.

It must be remembered that it was not that decree that created or affected the rights; it was a decree which declared what they were, but it was undoubtedly binding between the parties and but for subsequent events would have been the clearest possible proof of the appellant's title. The subsequent events are very interesting. From that time until shortly before the institution of these proceedings everything that has taken place has been upon the footing that the defendants really possessed the rights which the appellant now says that they cannot enjoy. The wajib-ul-arz, the khewat and every public document relating to this estate to which the attention of their Lordships has been directed proceed upon that footing. Further, it is found that in 1887 proceedings of rather a remarkable character were taken, in which this right once more came in dispute. What the exact character of those proceedings was it is not easy to determine, but it appears that a decree holder was seeking to issue execution against the Rani Chhbraj Kuar, who is described as the wife of the Taluqdar of Surajpur, the defendant judgment debtor. At any rate, this makes plain that the Taluqdar of Surajpur, the person who then held the exact estate that is now held by the appellant was himself the subject of proceedings from which the execution proceeded. The Rani, who may have succeeded to the estate in some capacity or other, appeared before the Court for the purpose of determining what her interests were, and in those proceedings the occupants claimed once more that they had under-proprietary rights and that claim was allowed.

It has been urged in both the Courts that there is nothing to show that the Rajah or Rani was in fact the predecessor of the present appellant, and that is true. This case is singularly destitute of any verbal evidence at all, but at least it is impossible to overlook the fact that the decree which is in evidence is one in which the character of the person attacked has the exact character of the person who is the present appellant. Their Lordships merely mention this because they think it may be that in both the Courts insufficient weight has been attached to those proceedings; but it is not upon those proceedings that they base the opinion that they have formed, and the advice that they will tender to His Majesty. Their view is this: That in spite of the decree, from 1869 down to the institution of these proceedings, there has never been any occasion on which the rights now claimed by the defendants have not been upheld. One of the most critical of these occasions was when the original settlement came to an end. It appears from the judgment of the Subordinate Judge that that must have happened somewhere about 1897, or possibly in 1898, but when that settlement ended once more the question as to the determination of what were to be the rights of the parties arose; the proceedings were public, and another settlement was effected upon the footing that the defendants' predecessors were under-proprietors. Further, following upon the

settlement, proceedings were taken on behalf of the Court of Wards, on behalf of the then Taluqdar, against these under-proprietors on the 2nd June, 1899, for the purpose of obtaining rent, and they are definitely sued there as Pukhtadars. In other words, it is plain that whatever may have been the original effect of the decree, from that time down till now this estate has been regulated upon the footing that the defendants possessed the rights that they claimed to enjoy.

Their Lordships think it unnecessary to examine more closely in detail the circumstances of the evidence furnished by the documents. They have been set out with great care and accuracy by the judgments of all the learned Judges before whom the case has been heard, and there is nothing which they desire to add. They think that a title so long recognised cannot now be overthrown, and for this reason they think that this appeal should be dismissed, and they will humbly advise His Majesty accordingly.

In the Privy Council.

PIRTHIPAL SINGH

v.

GANESH DIN SINGH AND ANOTHER.

DELIVERED BY LORD BUCKMASTER.

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