

Privy Council Appeal No. 44 of 1927.
Bengal Appeal Nos. 16-23 of 1925.

Rampati Chatterjee and others - - - - - *Appellants*

v.

Ramani Mohan Sen and others - - - - - *Respondents*
and 7 connected Appeals.

(Consolidated Appeals)

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 10TH APRIL, 1930.

Present at the Hearing :

LORD MACMILLAN.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* SIR GEORGE LOWNDES.]

The respondents in this appeal are the *putnidars* of Mouzahs Panuhat and Ekaihat. They filed a series of rent suits against the appellants as *dar-putnidars* holding lands under them in these *mouzahs*. The appellants defended the suits, claiming abatements of **rent on** various grounds, and also filed cross suits alleging that they had been deprived by the respondents of certain lands included in their *dar-putni* leases, and claiming on this account an entire suspension of rent, or in the alternative an abatement in respect thereof. The respondents denied that these lands and certain other lands in respect of which the appellants claimed an abatement on the ground of diluvion (all of which will be referred to for convenience as "the disputed lands") were included in the *dar-putnis*. The claim for suspension was negatived by both Courts in India, and has been abandoned before

this Board, leaving the question of abatements of rent for decision here. All the suits were tried together before the Subordinate Judge of Burdwan, who allowed abatements under various heads, including the claim to the disputed lands, which he held were included in the *dar-putnis*. On appeal the High Court disagreed with the Subordinate Judge as to the disputed lands and reduced the abatements accordingly.

The question as to these lands arises as follows. Mouzahs Panuhat and Ekaihat lie in an area which is from time to time subjected to diluvion by the action of the Bagirathi (Ganges). Lands are constantly being washed away and constantly reforming on one side or the other of the river, and the boundaries at any given time are in consequence difficult of identification. The earliest maps available are those of the Thak survey of 1855, three sheets of which are involved in the ascertainment of the two *mouzahs*. Sheet No. 80 delineates an area, the residue of which, excluding certain *chakran* plots, is shown as appertaining to Panuhat. The residuary area of Sheet No. 5 in the same way is shown as Ekaihat. There is no dispute that all the residuary lands so shown on these two sheets are included in the respective *dar-putnis* of the two *mouzahs*. The dispute begins with the third sheet which is headed "*Thakbust map No. 3 of the accreted chur of the River Bagirathi . . . in district Burdwan, Police Station and munsif Catchary Katwa . . .*" It shows two *chaks* or parcels, numbered 6 and 15, which belong to Panuhat, and two *chaks* Nos. 18 and 19 and a residuary *chak* which belong to Ekaihat. This appears to be the case of both parties, the dispute being whether the whole or only portions of the lands so shown on Map No. 3 were included in the *dar-putni* leases. The Subordinate Judge says that before him the *putnidars* (respondents) urged that *chaks* 6, 15, 18 and 19 were excluded from the *dar-putnis*, the dispute therefore covering all the lands on Map No. 3. Before this Board (and apparently also in the High Court), the respondents have confined their contentions to such portions of Nos. 15, 18 and 19 and the residuary *chak* as were in 1886, when the *dar-putnis* were created, either under the river as it then ran, or left or reformed on the far side of it from the lands shown on sheets 5 and 80, and it is only with these lands that their Lordships have to deal.

In 1886 the *putnidars* were the Land Mortgage Bank of India Ltd. who in that year executed *dar-putni pottahs* of both *mouzahs* in favour of the predecessor in title of the appellants, and in 1893 sold the *putni* rights in both *mouzahs* to the predecessor in title of the respondents. The respondents admit that the disputed lands were included in the bank's *putni* and claim title to them under their transfer from the bank, but they deny that they were included in the preceding *dar-putnis* created by the bank on the ground that they were then either totally submerged or cut off by the river from the rest of the *mouzahs*.

It is manifest that this question must depend primarily on the terms of *pottahs* and *kabuliyats* upon which the appellants hold, and it is really upon this point that the two courts have differed, as will appear from the following quotation from the judgment of the High Court :—

“ The decision of this question primarily depends upon a proper construction of the two leases. The Subordinate Judge in his judgment observes : ‘ Though the *Kabuliyats* do not contain the area or boundaries, they still contain the significant condition to the effect that the area of the lands of which *Dur-putni* settlements were granted would be according to the *Thak* and Survey Map.’ He then proceeds to find that certain *Chaks* in the *Thak* maps of different *Mouzahs* contiguous to the two *Mouzahs* in question were according to the statements on those *Thak* maps parts of the *Mouzahs* *Panuhah* and *Ekaihat* as *Chitta* lands appertaining to those two *Mouzahs* and thereupon holds that those lands must be considered to have been demised under the *Putni* leases. In my opinion, if his premises were correct, his conclusion would be also correct and unassailable. The whole difficulty is that there is no mention in the *Kabuliyats* that the areas of the lands would be according to the *Thak* maps.”

The original *pottahs* and copies of the *kabuliyats* were produced at the trial. The *pottahs*, which were old and somewhat tattered documents, were returned to the appellants. This was no doubt in accordance with the usual practice, but their Lordships think that care should always be taken in such cases to retain certified copies on the record. The failure to take this precaution in the present case has added materially to the expense and prolongation of this unfortunate litigation. The copies of the *kabuliyats*, which were produced by the respondents, and which were no doubt translated for the use of the High Court, were it is now admitted, defective. The Board have before them correct translations of the *pottahs* and of the registration copies of the *kabuliyats*. These have not been objected to by the respondents, and it is upon them that the decision must be come to, and their Lordships have no doubt that the Subordinate Judge was right in his interpretation of them. In each case, the *dar-putni* purports to be of the *mouzah* as owned and held by the bank without any reservation. *Ekaihat* being said to include “ the *chur* reformed after diluvion,” and in each case it is provided that the *dar-putnidar* is to “ maintain intact the area of the said *mouzah* as ascertained in bighas in the *Thak* survey and the limits and boundaries as laid down in the survey map.” It is admitted that “ survey map ” in this connection means the *Thakbust* maps above referred to.

It is, in their Lordships’ opinion, clear from these provisions that the *dar-putni* leases of 1886 covered all that is shown upon the three maps as appertaining to *Panuhah* and *Ekaihat*, and this, as stated above, admittedly includes the disputed lands. In coming to this conclusion, their Lordships have the satisfaction of knowing, from the passage quoted above from the High Court’s judgment, that if the learned Judges of that Court had had the

proper materials before them they would have concurred with the judgment of the Subordinate Judge upon this question.

One other point only need be referred to in this connection. It is stated in the judgment of the High Court that the disputed lands "are not situated within the sub-division Cutwa (Katwa), or within the district of Burdwan," and that they "appear not to have been in the possession of the *putnidar* at the time when the leases were granted." Their Lordships do not think that in any case, these considerations could outweigh or that the learned Judges (if they had had the *pottahs* and true copies of the *kabuliyats* before them) would have held them to outweigh, the clear terms of the documents. But it is at least possible that this misdescription—if it was in fact a misdescription in 1886, though this has not been established before their Lordships—was taken from the heading of Thak Map No. 3. With regard to the question of possession, their Lordships would be unable to hold that the mere submergence of the land would put an end to the bank's possession: see *Kumar Basanta Roy v. Secretary of State for India*, 44 I.A. 104.

It has been suggested on behalf of the appellants that the question of inclusion or non-inclusion of the disputed lands in the *dar-putni* leases is the only question outstanding between the parties, and that it would follow from its decision in the appellants' favour that the decrees of the Subordinate Judge in all the suits should be restored. It is true that this is the only point discussed in the judgment of the High Court, but their Lordships are not satisfied that the passage quoted above from that judgment necessarily carries the implication for which the appellants' counsel contends. Mr. de Gruyther, for the respondents, has raised other questions of considerable complexity which in his submission must be decided before a final determination of this appeal can be reached, but in view of the conclusion to which their Lordships have come upon this part of the case it is only necessary to refer to them shortly.

The *pottahs* and *kabuliyats* fix a consolidated rent for each *mouzah*, which was arrived at after verification of the gross collections, and they provide for a triennial revision on which the *dar-putnidars* will be entitled to remission of rent of any area found to have been washed away, and will be bound to pay additional rent for any area found to have accreted. Upon these provisions it is argued that before any abatement can be allowed on account of diluvion it must be shown that the diluviated area either was part of the rent-producing area in 1886, or upon subsequent accretion has been assessed to additional rent, and this, it is said, has not been established in respect of any part of the disputed lands, the whole of which according to Mr. de Gruyther's contention were submerged in 1886.

The larger part at all events of the disputed lands, in respect of which the Subordinate Judge has allowed abatement of rent on account of dispossession is reformed land falling under the

residuary *chak* of Mouzah Ekaihat shown on Map No. 3. This *chur* land was taken possession of by third parties, known as the Banerjees, but whether by dispossession of the appellants or not is left in uncertainty. The respondents filed a suit against the Banerjees asserting their title to the *chur* as being included in their *putni* holding. They subsequently compromised the suit on the terms that the Banerjees were maintained in possession paying rent for the land to the respondents. As between the appellants and the respondents their Lordships have held that these lands are included in the appellant's holding, and it is clear that they have been deprived of their use by the action of the respondents. But it is now contended on behalf of the respondents that the only remedy open to the appellants in respect of this deprivation is by a suit for recovery of possession, and that their claim for abatement of rent on this head is wholly misconceived.

It has not been made clear to their Lordships that these contentions were formulated before either of the Courts in India ; they certainly are not dealt with by the High Court, or even referred to in their judgment, and it may well be that they are not now open to the respondents. They are, however, questions of some importance and possibly of considerable difficulty, and their Lordships think that they ought not to dispose of them without their having been submitted to the judgment of the High Court, and in this view Counsel on both sides concur. Their Lordships greatly regret that this further prolongation of an already protracted litigation should be necessary, but they feel that under the circumstances it is unavoidable. They will, therefore, humbly advise His Majesty that the decrees of the High Court in all the suits should be set aside, and that the case should be remitted to the High Court for the consideration of the following questions if in the opinion of the High Court they are properly open to the respondents, viz. :—

- (1) Whether it is established that the lands in respect of which abatement of rent was decreed by the Subordinate Judge were not taken into account in fixing the rents to be paid under the *dar-putni* leases, and if so whether no such abatement should be allowed ; and
- (2) Whether the appellants having been dispossessed of part of their holding abatement of rent can be awarded to them in respect thereof ;

and to pass such decrees in the said suits as may be just and proper.

The respondents must pay the costs of this appeal. The costs of the appeals in the High Court will be dealt with by that Court after the further hearing.

In the Privy Council.

RAMPATI CHATTERJEE AND OTHERS

v.

RAMANI MOHAN SEN AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY SIR GEORGE LOWNDES.

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