

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Ranee Khujooroonissa v. the Collector of  
Purneah and others, from the High Court of  
Judicature at Fort William in Bengal ;  
delivered 23rd November 1875.*

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Present :

SIR JAMES W. COLVILLE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

THIS suit was brought by Euayet Hossein, whom the Ranee, the present Appellant, represents, and also by Synd Ahmed Reza, who is not represented at the present hearing, against the Collector of Purneah and Emritnauth Jha, and others, to recover possession of 3,700 beegahs of land in Pergunnah Soorjapore. The Government was made a Defendant because it had resumed the land as being lakheraj land in the possession of the other Defendant Emritnauth Jha, and settled it with him. The suit, besides praying to have the right of the Plaintiff to the land declared, and possession, sought to rescind the decision come to on the resumption proceedings. It appears that the Plaintiffs are the proprietors of a zemindary in Pergunnah Soorjapore, and Emritnauth Jha and his ancestors claimed to hold within that Pergunnah, as lakheraj land, 3,965 beegahs. The Government thought they were entitled to resume the land, and inquiry was instituted at their instance. On the first inquiry it appeared that 265 beegahs were held as lakheraj by Emritnauth Jha or by the ancestors of

Emritnauth Jha. The Government thought that was too small an amount to resume, but in the course of the inquiry the Collector found reason to suppose that there was a much larger quantity of lakheraj land within the pergunnah, and a new investigation was directed. Upon that investigation it was found that there was the large quantity, including the 265 beegahs, of 3,965 beegahs. In the proceedings which took place to resume the land on the part of the Government, the Plaintiffs intervened, claiming the land as part of their settled zemindary, and evidence was gone into on the part of the Government and of the ancestors of the present Appellant and the Respondent in support of their respective claims. The result of the proceedings was that the Government resumed the land—the whole 3965, beegahs—and settled it with the Respondent. The present suit was then brought, as has been already stated, to question the settlement, and for possession.

It appeared in the evidence given in the present suit, that there had been a former suit between the ancestors of the Appellant and the ancestors of the Respondent respecting this land, and a judgment of the 21st of December 1808 was given in evidence. In that suit the parties were reversed. The ancestor of the present Defendant was the Plaintiff, and the ancestors of the present Plaintiffs were the Defendants, and the Plaintiff in that suit complained that the Defendants had taken possession of 500 beegahs of his bromuttur land. The answer of the Defendants did not deny that the then Plaintiff was entitled to bromuttur, on the contrary their answer admitted that he was entitled to 3,965 beegahs of ancestral bromuttur land in the talook, but their defence was that the 500 beegahs which he then sought to

recover was not part of those 3,965 beegahs. They failed in this contention, and it was found that the Defendants were in possession of the 500 beegahs which the Plaintiff claimed. The finding was this:—"Upon trial " it has been ascertained from the papers filed " by the Ameen that 3,965 beegahs 16 bisvas " of the Plaintiff's ancestral bromuttur land, " situated in Mouzah Budeanud, &c., in the " said talook, has continuously been possessed " from time immemorial by Plaintiff's ancestors " and Plaintiff under two sunnuds and chuck- " bund dated as above." These sunnuds are described to be one of the time of the Nawab for 265 beegahs, and the other of the time of Nawab Saif Khan for 3,700 beegahs. "Now " the Defendants have dispossessed Plaintiff of " 500 beegahs in Mouzah Budeanud of land " included in the boundaries stated in the " chuckbund. Under these circumstances the " Plaintiff's suit appears true and just." There is thus a finding that the now Defendant, the Plaintiff there, was entitled to these 3,965 beegahs, and entitled to them under the two sunnuds. The Principal Sudder Ameen in the present suit did not find against the genuineness of that decision, but gave several reasons for not giving effect to it which it is not necessary now to discuss. On the case coming on appeal before the High Court, a question was raised whether such a decision had really been passed, and the High Court appear to have taken great pains to ascertain the authenticity of the judgment. They sent to the judge of Purneah to ascertain the state of the records in his office, and got a report from him. It seems also that the original book of records was sent up to them, containing the notes or copies of the decrees which were passed, and having inspected it, the judges of the High

Court came to the conclusion that this decree was a genuine decree, which had been passed by the judge in the litigation between the parties in 1808.

That being so, the question arises, what is the effect of it upon this litigation? Their Lordships entirely agree with the High Court that the effect of it is to establish that upon the trial of the issues which then took place it was found, either upon the evidence or upon the admissions of the present Plaintiffs, that 3,956 beegahs of bromuttur or lakheraj land did belong to the ancestor of the present Defendant, that land being situate in Pergunnah Soorjapore. It could not then be contended that if that decree applies to the land in dispute, full effect should not be given to it in this suit. The only answer that has been suggested to their Lordships by the learned Counsel for the Appellants is that the lands which were the subject of the decree of 1808 are not shown to be the same lands as those for which the Plaintiffs are now suing. He says that there is evidence that the Plaintiffs had been in possession of the lands for which they are now suing, and therefore it lies upon the Defendants to show the identity of the lands which are the subject of this suit with those which were in question in 1808. Without saying where the burden lies, their Lordships are perfectly satisfied upon the evidence that the lands which were referred to as the 3,965 beegahs in the suit of 1808 included those which are the subject of the present suit. It appears that the ancestor of Emritnauth Jha claimed the land in that suit under two sunnuds, the larger portion of the land, 3,700 beegahs (being the quantity sought to be recovered in this suit), under a sunnud of the Nawab Saif Khan. It appears that in the resumption proceedings, his

ancestor's claim to those 3,700 beegahs was based upon the same sunnud, and was contested by the Plaintiffs upon the ground that the sunnud was not genuine. Some proceedings in the resumption suit were referred to by Mr. Cowie, from which it clearly appears that Emritnauth Jha was in possession at the time when the Government commenced the resumption proceedings. Now the land of which he was then in possession, and which the present Plaintiffs are now seeking to recover, is identified with the land which his ancestor claimed in the suit of 1808 by the sunnud of Nawab Saif Khan, which, both in the decision of 1808 and in the resumption proceedings, is made the foundation of his claim. The resumption proceedings refer to the decision of 1808, and show that what the Government is dealing with are the lands which were included in that suit. Therefore the identity of the lands now sued for with the lands which were the subject of the decision of 1808 is satisfactorily established.

Upon a slight investigation of the evidence as to possession, it appears to be conflicting. The koboolents and the jumma wasil-bakee papers produced by the Appellants,—the papers relied on to show his possession,—although credit was given to them by the Principal Sudder Ameen, were discredited by the High Court. Without those papers the Plaintiffs have very slight evidence of having ever been in possession.

Their Lordships being of opinion that the identity is clearly made out for the reasons they have stated, will advise Her Majesty to dismiss this Appeal, and to affirm the decree of the High Court with costs.



