Privy Council Appeal No. 95 *of* 1916.

Bengal Appeal No. 81 *of* 1913.

Rani Hemanta Kumari Debi and Others - *Appellants,*

v.

Maharajah Jagadindra Nath Roy Bahadur - *Respondent.*

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 19TH APRIL, 1918.

Present at the Hearing:

VISCOUNT HALDANE.
LORD DUNEDIN.
LORD SUMNER.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* MR. AMEER ALI.]

This is an appeal from a judgment and decree of the High Court of Calcutta, dated the 2nd June, 1913, which, in affirmance of the order of the Trial Judge, dismissed the plaintiffs' suit. The history of this litigation goes back to the end of the 18th century. The Pukhuria estate belonged about that time to the well-known Nattore family. Sometime prior to the decennial settlement of Bengal under Lord Cornwallis the then holder of the zemindari, Rani Bhabi Debi, carved out of the estate in favour of her daughter a talook, now called talook or taraf, Balasuti Digar. The grantee subsequently made a gift of this property to a nephew, which was affirmed on the Rani's death by the full owner of the estate. Since then the talook has remained in the possession of people deriving title under the donee. In 1793 the zemindari was sold for arrears of revenue, and was purchased by the predecessors in title of the present plaintiffs, appellants. Litigation at once commenced between the purchasers of the zemindari and the owners of the talook, which has gone on with little inter-

ruption until now, when it is to be hoped it has reached its final stage. There was a number of proceedings between the parties between the years 1793 and 1805, the main endeavour on the part of the purchasers being to reduce Balasuti to the status of a dependent talook, which the talookdar vigorously opposed on the ground that it was an "independent" talook. The distinction between these two classes of property is pointed out in Regulation VIII of 1793. The status of an independent talookdar is defined in section 5, and such talookdars are declared entitled to obtain by process of law separation of the lands "composing the talooks" from the zemindari within which they lay. By Regulation I of 1801, section 14, the right to apply for separation was limited to a year from the date of the passing of the statute. It is not disputed that the talookdar of Balasuti applied for separation within the period fixed by law.

In 1805 certain rent proceedings came up on "special" appeal to the Sudder Dewany Adaulat of Calcutta, which then occupied the position of the final Court of Appeal on all matters arising in all civil suits in Bengal outside the limits of Calcutta, and that Court, realising the undesirability of allowing a continuance of conditions which gave rise to constant litigation between the parties, made an order, the material part of which, so far as their Lordships' judgment is concerned, runs as follows;—

"But as this is a suit simply on account of the excess jumma of 1206 B.S., therefore it is not proper to pass any order in the decision of this suit with respect to the payment of the balance of the aforesaid jumma. From the deeds of sale and documents filed by the respondent talook Balasuti and others, the property of the respondent, is fit to be separated from the zemindari of the appellant, according to the provisions of section 5, Regulation VIII of 1793. The respondent has, within the time prescribed by section 14, Regulation I of 1801, filed a petition for the separation before the collector of the district, therefore it is necessary that, according to the order of the Collector of 2nd Magh 1208 B.S., the respondent do file before the collector all the documents relating to his talook with a copy of this decision, so that the said collector do in future deduct, according to the provisions of section 10, Regulation I of 1793, and section 8, Regulation I of 1801, the sudder jumma of the talook of the respondent from the sudder jumma of the zemindari of the appellants, and separate the talooks of the respondent from the zemindari of the appellants."

The talookdar appears to have continued his efforts to obtain a separation of his property from the zemindari, for in 1808 an order was made by the Board of Revenue, bearing date the 30th of December, in the following terms :—

"The Board having perused the decree passed by the Sudder Dewany Adaulat in a Pukhuria cause, observe that the substance, as stated in your letter, is correct. The talookdar of Balasuti is entitled to have his talook separated from the entire estate of Pukhuria, and the jumma to be allotted on it must bear the same proportion to its actual produce as the jumma of the entire estate bears to the produce

of the entire estate: and until this can be ascertained the talookdar must pay to the zemindari an annual jumma of Rs. 16,369 : 8 : 11."

The separation, however, was, as appears from the record, hung up by a series of proceedings, which lasted intermittently until 1853. In that year the talookdar made a fresh attempt to get his talook separated from the zemindari, but the Revenue Courts refused his application on the ground that certain suits in relation to the estate were still pending.

In 1882 the zemindar started a suit in the Court of the Subordinate Judge of Mymensingh for the enhancement of the rent of the talook, which the talookdar strenuously resisted.

The claim for enhancement was dismissed by the Trial Judge, whose decree was affirmed by the High Court, and on an appeal to Her Majesty in Council by the Judicial Committee on the 12th of June, 1894.

This, however, did not put an end to the litigation between the parties, and it was only in 1906 that the defendant talookdar presented a fresh application to the Collector of Mymensingh for giving effect to the order made in favour of his predecessor in the year 1805. This petition bears date the 23rd of March, 1906, and recites at considerable length the history of the talook and the circumstances which conduced to delay its separation from the zemindari for such a long period of time. The last paragraph of the petition deserves attention, as one of the contentions of the appellant zemindar is based on an allegation of laches on the part of the talookdar diligently to prosecute his claim. It states :—

"that all the resumption suits and all the suits for the enhancement of the rents of the talooks are now finally disposed of and there remains none of the objections upon which the separation of his talook was postponed. And the result of these suits has not in any way affected the assets of the talook as found by the Butwara deputy collector in 1844."

On the 8th of April, 1908, the Collector recommended to the Board of Revenue "that the separation of the talook should be effected at once." His order contains a complete résumé of the facts leading up to the application before him. After stating the object of the petition that it was "for the separation of an independent talook taraf Balasuti Digar from the zemindari of pergunnah Pukhuria," he goes on to say :—

"It was established by a decree of the Sudder Dewany Adaulat in 1805 that it is an independent talook within the definition of Section 5 of Regulation VIII of 1793, and the collector was ordered to separate it from the zemindari. But there had been an extraordinary delay of over 100 years in carrying that order into effect. Up to 1813 the talookdar was pressing for the separation, and the collector was doing his best to separate it. But in that year the talookdar died, and from then to 1830 the right to the talook was disputed, and separation could not be made till one or other of the disputants was registered as proprietor. From 1834 to 1844 the zemindari was under partition, and the collector, who had become the proprietor of 4 annas of the

estate on behalf of Government by an auction sale, tried to effect the separation simultaneously with the partition. But difficulties arose in ascertaining the assets of the talook, owing to some suits about enhancement of certain dependent talooks and resumption of certain lands, and the separation was postponed by order of the Commissioner till those suits were decided. In 1853 the talookdar again applied for separation, but his petition was dismissed on the ground that the suits were not yet decided. The suits then pending were finally decided in 1873, but in the meantime other suits of the same nature had been instituted which have lasted almost to the present day. And in 1882, while the talookdar was still a minor, the zemindar filed a suit denying that the talook was independent, and demanding increased rent from it. This was dismissed by the Subordinate Judge in 1888. The Subordinate Judge held that the talook was an independent one, that the decree of the Sudder Dewany Adaulat was binding on the parties, and that the right of the talookdar to obtain separation was not barred by limitation and still subsisted. The High Court affirmed this decree in 1890, and held that the petition for separation had been filed within the time allowed by Regulation I of 1801, that the talookdar had been prevented by unusual objections from getting the benefit of the decree of 1805, and that no blame for the delay rested with him. The decision was confirmed by the Privy Council in 1894. In 1896 the talookdar, after waiting for the disposal of certain title suits, renewed his petition for separation before this Court.

"The right of the talookdar to separation was never denied by the zemindar till 1844 (when the question of limitation was raised), was recognised by all revenue authorities, including the Board of Revenue, up to 1853, and has never been denied by them since, was affirmed by the Subordinate Judge, High Court, and Privy Council up to 1894, and has again been recognised by the Commissioner in March of the present year in a case about Chur Gazali, an accretion to the talook. Yet in the face of all these decisions the objector still persists in denying that the talook is independent, on the ground that the petition for separation was not filed in time; that, if it was, it is barred by limitation, and that in any case the petitioner has forfeited his claim to relief by repeated laches."

And the Collector concludes his order by the following recommendation :—

"For these reasons I refer the case to the Board of Revenue with a strong recommendation that the separation of the talook from the zemindari should be effected at once, and that the jumma of the two should be assessed at Rs. 17,460 : 13 : 8 and Rs. 57,784 : 11 : 4 respectively on the basis of the proportion between their assets ascertained in 1795, since, though the figures ascertained in 1808 and again in 1844 by detailed enquiry are much more in favour of the petitioner, the petitioner consents to the larger jumma in order to end this scandalously protracted case and to avoid the expense of measurement of a whole pergunnah."

From this order the zemindar appealed to the Commissioner, who agreed with the collector as to the propriety of effecting an immediate separation of the talook, but differed from him with regard to the basis on which the revenue was to be assessed. The talookdar thereupon appealed to the Board of Revenue,

which approved and affirmed the view taken by the collector respecting the question of assessment. The order of the Board which bears date the 20th March, 1909, is as follows :—

"The order of the Board on the reference is that the collector do with effect from the 1st day of April in this year enter the talook as a separate estate on his towzi, with a revenue of Rs. 17,460 : 13 : 8, and do from that date make a reduction to this amount in the revenue demand against the estates numbered on this towzi as Nos. 122, 5513, 4806, and 6100, which represent respectively the 10, 2, 2, and 2 annas shares of the zemindari Pukhuria Joyenshahi in proportion to these respective shares."

On the 11th May, 1909, the appellants instituted this suit in the Court of the Subordinate Judge to have it declared that the order of the Board of Revenue was "*ultra vires*, illegal, and wholly injurious to the plaintiffs" for reasons set out at great length and with extraordinary circumlocution in the plaint. They also prayed for a declaration that the talook in suit had "become a dependent talook by operation of law." The prayer *Kha* on which the main argument before this Board turned is in these terms :—

"That if the Court finds that the said talook taraf Balasuti is fit to be separated, then for a declaration that the said Bajey talook cannot be separated from the plaintiffs' zemindari at the sudder-jumma of Rs. 17,460 : 13 : 8, unless the sudder-jumma is assessed in the same proportion as the present produce and lands of the defendants' Bajey talook bear to those of the zemindari possessed by the plaintiffs."

The Subordinate Judge in a well-considered judgment held on all the points against the plaintiffs. He was of opinion that the order of the Board of Revenue was not *ultra vires*, even if the Civil Court had jurisdiction to determine that question; that the mode of assessing the Government revenue on the talook was in accordance with law; and that the talook had not ceased to be an independent talook by any act or laches on the part of the defendant or his predecessors. He accordingly dismissed the plaintiffs' suit, and his decree has been affirmed by the High Court of Calcutta.

The plaintiffs have appealed to His Majesty in Council, and the same arguments which were discussed in the Courts in India have been urged with great vigour before their Lordships. In whatever other respects the plaintiffs' case may be wanting, it cannot be said that it lacks pertinacity.

With regard to the status of the defendant and the character of the talook he holds, their Lordships are in complete agreement with the Courts in India and with the Revenue Courts which have had to deal with the question. There was an express declaration in 1805 that the defendant's estate was an independent talook within the meaning of the Regulations; and that declaration was reaffirmed in the suit brought by the plaintiffs for enhancement of rent, by the Subordinate Judge, by the High Court, and finally by this Board in 1894.

This ought to have given the quietus to the persistent endeavour on the part of the plaintiffs and their predecessors to reduce the defendant's status to that of a dependent talookdar. Their Lordships further agree with the Courts in India that he has not lost that status by any laches in the affirmation of his right to obtain the separation of his talook, or by any declaration of the collector in 1854, or of any other Court. His application for separation was made in accordance with the provisions of Regulation I of 1801, within the year from the passing of the Act. There has been no want of diligence on his part in seeking the relief to which he is clearly entitled. His applications have always been hung up by the opposition of the zemindar or by the action of the Revenue authorities. Considerable stress is laid on the order of the Collector in 1854, which purported to "dismiss" the talookdar's application. The same point was urged before the Courts in the enhancement suit, and was disposed of against the plaintiffs' contention; but it is revived again in the present proceedings. Their Lordships desire to quote here a passage from the judgment of the High Court in the suit of 1882 (for enhancement of rent), with which they entirely agree. The learned Judges dealing with these very contentions, said as follows:—

"We think, further, that the whole course of those proceedings shows that the talookdar, so far from abandoning his right, had made his petition within the time allowed him by Regulation I of 1801, and had been prevented, by what appear to us unusual objections, from getting the benefit of the relief given to him by the decree of 1805. Certainly, if blame there be attachable to either party for not carrying out that decree, none appears to rest with the talookdar."

In their Lordships' opinion there is no substance in the plaintiffs' contentions, which are purely vexatious, designed to prolong litigation.

The objection to the principle on which the revenue has been assessed rests on a better foundation. The Revenue Courts have accepted the assets of the estate about the time when the regulation was passed for assessing the due proportion of the revenue respectively payable by the zemindari and the talook. The plaintiffs contend that this principle is wrong, that the proper standard on which the jumma should be apportioned is to take into consideration the assets at the time when the separation is being effected.

Section 8 of Regulation I of 1801 provides:—

"The assessment upon the portion of the estate to be separated shall bear the same proportion to its actual produce as the fixed assessment upon the whole estate may bear to its actual produce . . . . . and it is hereby explained that by the term 'actual produce' is to be understood the neat annual rent, or other neat produce receivable by the proprietor, after deducting from the gross rent, or or other gross produce, the actual expense of collection and other usual charges of management, inclusive of poolbundy, or the expense of embankments, and similar incidental expenses, where such may be paid by the proprietor from his gross receipts."

Their Lordships are of opinion that "the actual produce" on which the assessment of revenue was to be based was "the actual produce" at the time when proceedings were instituted for the separation of the talook. They think the Legislature could never have intended to lay down an ambulatory standard, which would vary according to the period or time when separation was being carried into effect. On the whole their Lordships are of opinion that the judgment of the High Court is right, and that this appeal should be dismissed with costs. And they will humbly advise His Majesty accordingly.

In the Privy Council.

RANI HEMANTA KUMARI DEBI AND OTHERS.

v.

MAHARAJAH JAGADINDRA NATH ROY BAHADUR.

DELIVERED BY MR. AMEER ALI.

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