

Privy Council Appeal No. 72 of 1918.
Bengal Appeal No. 55 of 1916.

Debendra Nath Ghosh and others - - - - *Appellants*

v.

New Tetturya Coal Company, Limited - - - - *Respondents*

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 17TH FEBRUARY, 1920.

Present at the Hearing :

VISCOUNT CAVE.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD MOULTON.]

In this suit Debendra Nath Ghosh, Nagendra Nath Ghosh and Jatindra Nath Ghosh, the appellants, sue the New Tetturya Coal Company, Limited, the respondents, for an alleged encroachment on the lands under which the defendants have the rights of mining the coal and for removing coal therefrom. The amount of the damages for the alleged trespass is not before the Board, and the position of the defendants' underground workings is not in dispute, so that the sole question is as to the boundary line between the coal lands held by the plaintiffs and those held by the defendants.

The titles of the plaintiffs and of the defendants to their respective areas are derived from Gobardhan Pandey and others (hereinafter referred to as the Pandeys) who were the owners of the surface and sub-soil rights in Mouza Petturya in the district of Manbhum. By a *mokurari pottah*, dated the 28th January, 1895, the Pandeys leased the minerals under a plot of land in the above named mouza, containing 212 bighas, to Nobin Chandra

Pal and Krishna Behari Sen. This plot was carefully described in the schedule to the *pottah* and marked on a plan annexed thereto and there is no dispute as to the identification of the plot thus leased.

At some date prior to the year 1900 the lessees of the above plot surrendered all their rights in it to the Pandeys, who subsequently by a *pottah* dated 8th February, 1906, granted a *mokurari* lease of both the surface and the underground rights in this plot for a term of 999 years to Henry Harvey Bathe. The defendants acquired and now hold all the rights of Mr. Bathe under the said lease. The terms of the lease make it clear that it relates to the identical plot leased to Nobin Chandra Pal and Krishna Behari Sen. The above-mentioned leases were duly registered, and the ownership of the said plot is vested in the defendants who are now working it, and the alleged encroachment consists in the extension of those workings into lands which the plaintiffs claim.

By another *pottah*, dated the 17th April, 1895, the Pandeys leased the coal mining rights in another plot of land in the said village containing 175 bighas to Nagendra Chandra Mitra. The boundaries of this plot are set out in the *pottah*, the only one that is material in this action being the eastern boundary, which is described as "lands settled" with Krishna Behari Sen Gupta, and Nobin Chandra Pal. It is not in dispute therefore that the western boundary of the plot containing 212 bighas was the eastern boundary of the plot containing 175 bighas. This *pottah* was also duly registered.

By a sub-lease, dated the 20th March, 1906, the plaintiffs acquired the coal mining rights of the said Nagendra Chandra Mitra. The terms of the sub-lease make it perfectly clear that it relates to the same plot as had been leased by the *pottah* of the 17th April, 1895. This sub-lease was also duly registered. The plaintiffs therefore are entitled to the mining rights of the plot of 175 bighas leased by the Pandeys in 1895 to Nagendra Chandra Mitra and to have as their eastern boundary the western boundary line of the plot of 212 bighas in the possession of the defendants. This line is clearly identified by the map annexed to the original lease of 1895 of that plot and has been marked out on a plan made by a Commissioner appointed in this suit by the Court of First Instance for that purpose, the correctness of which is hardly contested. Their Lordships are of opinion that the Commissioner's map correctly shows this boundary.

The plaintiffs therefore have a registered title to a plot of 175 bighas bounded on the east by this line. The workings complained of admittedly cross this line and extend to a considerable extent to the west of it—and are thus encroachments on land to which the plaintiffs have a valid title under leases duly registered.

The attempted answer to this case rests on the deposition of a witness named Tara Pada, who states that in the year 1900 he was directed by the Pandeys to divide the land of the mouza

(which by this time had been entirely leased to various proprietors) amongst certain persons among whom were the lessees Nobin Chandra Pal and Nagendra Chandra Mitra. No papers or maps were given to him except the Revenue Survey Map of the mouza. He did not see any documents or verify the boundaries given in any document or ascertain any boundaries according to possession. It is abundantly evident from his evidence that he was employed by the Pandeyes to divide up the surface land of the mouza in his own discretion among the existing lessees, guided only by information as to the areas of the respective plots to be marked out by him and without reference to the rights given them under their leases. There is a contest as to the extent to which pillars were erected on the boundaries of the plots so marked out by him, but their Lordships think that it is not necessary to decide as to the correctness of the contentions of the respective parties with regard to this.

The Subordinate Judge rejected the whole of the evidence of Tara Pada as unworthy of credence, but the High Court accepted it. Their Lordships are of opinion that it is not necessary to decide whether or no this evidence should be accepted as it falls far short of establishing any defence to the plaintiffs' claim. There is no evidence that the then lessees of the various plots in the mouza were informed that the alleged partition made by Tara Pada was an arbitrary parcelling out of the land of the mouza according to the acreages leased without regard to the boundaries prescribed in the leases already granted and this alone would suffice to render the evidence immaterial as to the rights of the parties. In order to affect those rights it would have to be shown that all the then lessees entered into an agreement that the plots so marked out should be substituted for those granted under the respective leases and it is admitted by the respondents that there is no evidence of any such agreement or indeed of any agreement at all. Their whole case consists of attempts to trace copies of the map made by Tara Pada into the possession of the plaintiffs or their lessor and to proving that the boundaries laid down by Tara Pada were marked by pillars. Such evidence is wholly insufficient to affect the title of the plaintiffs, which is a registered title to a plot the relevant boundary of which was fixed in 1895 and could not therefore be affected by any events happening in 1900.

Their Lordships are therefore of opinion that the plaintiffs' case has been established and accordingly they will humbly advise His Majesty that the decree of the High Court should be reversed and that of the Subordinate Judge be restored except as to the amount of the damages due from the defendants to the plaintiffs, and that as to that issue the case be remitted to the High Court to hear and decide the cross-appeals between the parties; and that the respondents should pay the costs in both Courts and also the costs of this appeal.

In the Privy Council.

DEBENDRA NATH GHOSH AND OTHERS

v.

NEW TETTURVA COAL COMPANY, LIMITED

DELIVERED BY LORD MOULTON.