

Privy Council Appeal No. 68 of 1919.

Sunderlal and others - - - - - *Appellants*
c.
Ramjilal and others - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 23RD MARCH, 1920.

Present at the Hearing :

VISCOUNT CAVE.
LORD MOULTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[Delivered by MR. AMEER ALI.]

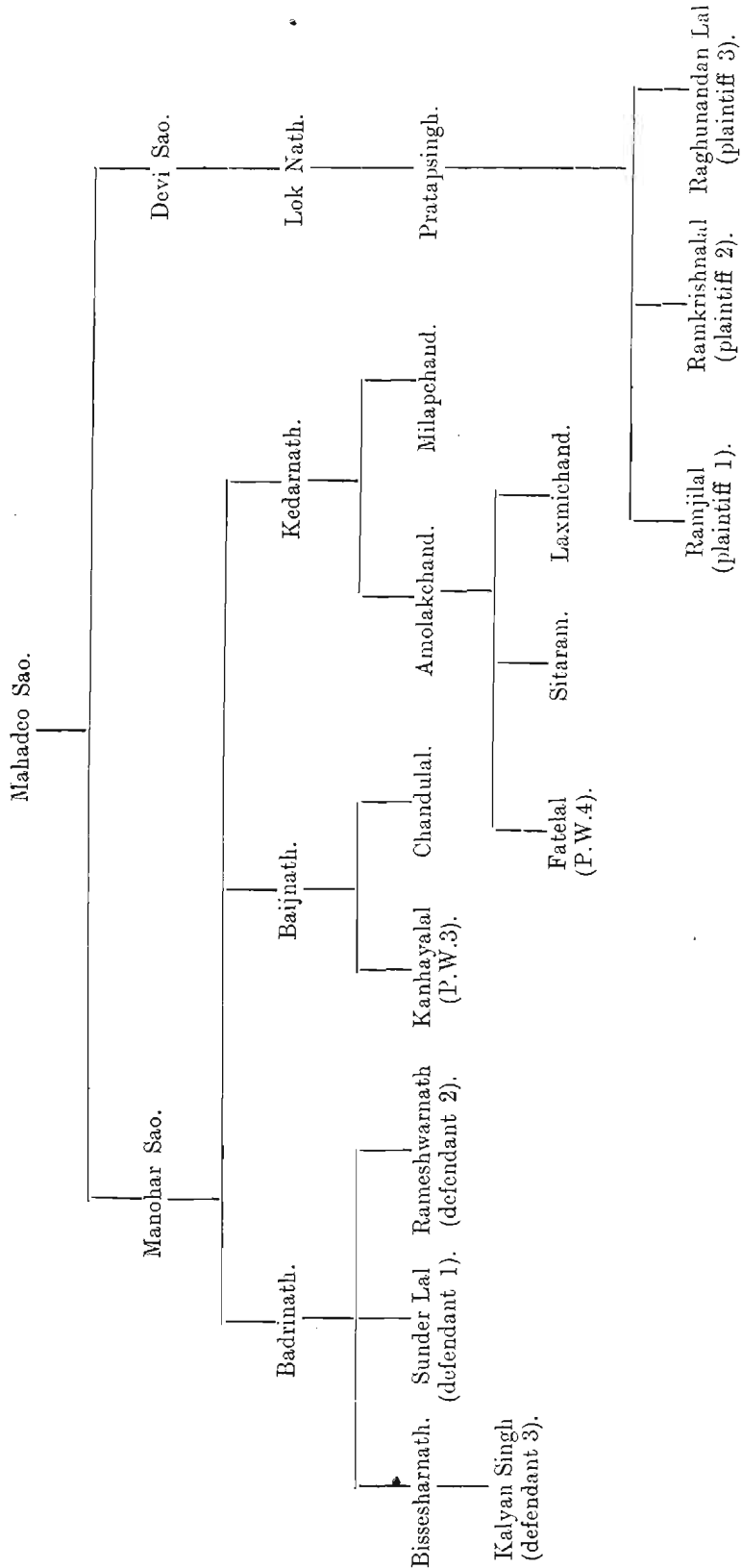
The suit which has given rise to this appeal relates to the Taluka of Tarenga in the Bilaspur District of the Central Provinces, and forms the sequel to a dispute which began between the ancestors of the parties so long ago as 1860. Another question connected with this Taluka was the subject of an appeal to His Majesty in Council in the year 1899, and in the judgment of the Board in that case the history of the Tarenga Taluka is set out in detail. It is necessary, however, in order to understand the nature of the present contentions to state the salient facts.

The Tarenga Taluka originated in the grant by Government in the early part of the nineteenth century of a large tract of waste land to one Mahadeo Sao from whom both of the contending parties derive their descent.

By 1860 this tract appears to have been for the most part reclaimed and covered with villages. At that time it contained some 143 villages. The family of Mahadeo Sao interested in the Taluka consisted then of one, Badrinath, who represented the eldest branch, and was recognised as the Talukdar or Tahuddar (two

convertible terms), his younger brothers, Baijnath and Kedarnath, and a cousin named Lokenath, the son of Mahadeo's second son.

The following table will show the relationship in which the parties stand to each other.



In 1860 Lokenath sued Badrinath in the Revenue Court to establish his right to a half share of the rents and issues of the Taluka. The ground on which he based his claim was that it was joint family property, subject to the ordinary incidents of Hindu Law, and that he was entitled to a moiety of the estate.

He succeeded in obtaining a decree which was put into execution. In the course of the subsequent proceedings, the parties came to an arrangement and the dispute was referred to arbitration. Under the award of the arbitrators, which was made a decree of Court on the 29th October, 1864, Lokenath obtained in settlement of his claim eleven villages free from all liability for revenue. The terms of the award directed to this point will be referred to later in the course of this judgment. Lokenath, however, does not appear to have been satisfied with the result of the settlement, and attempted to resile from the compromise. The judgment of Mr. Chisholm, the settlement officer, on the 31st October, 1867, finally concluded that dispute. After an examination of the history of the Taluka and the circumstances that led up to the arrangement of 1864, he made his decree in the following terms :—

“ I therefore confer the proprietary right in the Tarenga Taluka on Badrinath Talukdar as head of the Tarenga family now in possession. The junior members of the family will be entitled to adequate maintenance, the nature of which in each case will be recorded in the Tarenga *Wajib-ul-Arz*. Lokenath will hold the villages he now does free of rent.” The rest of the order is immaterial for the purposes of this judgment. Mr. Chisholm’s decision was affirmed on appeal, and there does not seem to have been any dispute in respect of the settlement of 1864 until 1892. Badrinath died in 1887, and was succeeded by his son, Bissesharnath. About that time the Government had made a general enhancement of the revenue, with the result that the Tarenga Talukdar became liable to pay a much heavier revenue for the villages that had been granted to Lokenath in lieu of maintenance. Bissesharnath claimed that the additional revenue assessed on those villages should be borne by Lokenath himself, Bissesharnath’s contention being that his obligation as Talukdar to pay the Government revenue assessed on Lokenath’s villages was limited to the assessment in force in 1864. Bissesharnath brought in 1892 a suit in the Court of the Subordinate of Bilaspur against Lokenath to assert his right to contribution, and the matter in dispute was only settled in 1899 by the decision of this Board (L.R. 26 L.A. 268). Their Lordships overruled the contention of Bissesharnath, and made a declaration in the following terms :—

“ That the Taluk is vested in the plaintiff [Bissesharnath], subject to the right of the defendant to hold possession of the eleven villages on the terms specified in Chapter I. of the *Wajib-ul-Arz* of the 24th May, 1867, and that as between the plaintiff and the defendant the plaintiff is liable for the Government *jama* and the defendant for the local rates and cesses levied on such villages or on the Taluk in respect of them.”

Bissesharnath died in 1903, and was succeeded in the possession of the Taluka by his son, Kalyan Singh. In 1910 there appears to have been some dispute between Kalyan Singh and his two uncles, Sunder Lal and Rameshwarnath, which was referred to arbitration. Under the award of the arbitrators, which bears date the 1st December, 1910, Sunder Lal and

Rameshwarnath received respectively a number of villages for their exclusive enjoyment, subject to the liability of each paying a certain specified share towards the payment of the Government revenue by Kalyan Singh as Talukdar and Lambardar. In terms of this award Sunder Lal and Rameshwarnath obtained the registration of their names on the Revenue Register, despite the opposition of the grandsons of Lokenath. Failing to obtain from the executive authorities a reversal of the registration order, they brought this suit in the Court of the District Judge of Raipur on the 23rd December, 1915, against Sunder Lal, Rameshwarnath and Kalyan Singh, the present Talukdar.

In their plaint they set out at great length the facts to which their Lordships have referred above. The gravamen of their charge against the defendants is contained in paras. 21 and 22 of the plaint. In para. 21 they say as follows :—

“ 21. That, for the above reason, it became necessary for the plaintiffs to file this suit. Plaintiffs state that the award and mutation proceedings are all improper and illegal, and have been instituted in order to injure the rights of the plaintiffs. The plaintiffs fully believe that if these proceedings are to remain in force, the villages in the Taluka will be sold and gifted away, and it would be difficult for Kalyansingh, defendant No. 3, who is Tahutdar of the entire *illaka*, to pay up the Jama of plaintiffs' villages, and for want of recovery of the Government Jama of plaintiffs' villages, the Government will recover the same from the plaintiffs. All the three defendants are indebted as well. Defendant No. 3 has had a talk to give one *mouza*, called Bhatpara, to Government also. It is also suspected that even the other defendants will transfer their villages to other persons.”

In para. 22 is embodied in substance the contention on which the suit is brought :—

“ 22. The plaintiffs contend that when Tarenga *illaka* is impartible, only one person, the eldest son of the former Tahutdar, should be the Tahutdar, and he alone would be the sole proprietor of 'Tarenga Taluka,' whereas other persons of the family would be entitled to mere maintenance. According to that order, final settlement was arrived at and arrangement made, for maintenance of the plaintiffs and other brothers of Badrinath Tahutdar, and it is still in force. The same should remain in force for ever. That the defendants cannot alter it by any act of theirs. If the award is considered as valid, the plaintiffs allege that they are entitled to get half of the property in Tarenga Taluka partitioned through Revenue Courts, by virtue of decree passed by the Court of Mr. Dennys, the Deputy Commissioner, Raipur, in the year 1860, declaring Loknath Daoo entitled to a half share in the entire Tarenga Taluk.”

And they asked for a decree in the following terms :—

“(1) That Kalyansingh, defendant No. 3, is the sole proprietor of the entire Tarenga Taluqa, containing 143 villages, and liable to pay for ever the Land Revenue with cesses of each and all the villages of Tarenga Taluqa, including plaintiffs' eleven villages named in the plaint, and that Sunderlal and Rameshwarnath, defendants 1 and 2, have not under the award acquired any right, releasing their villages from the charge of Government revenue with cesses of the plaintiffs' land in the entire Tarenga Taluqa.

“(2) If the first relief cannot be granted, it may be declared that the plaintiffs are entitled, under the terms of the decree in suit No. 1, decided

on the 16th September, 1862, to have half share of Tarenga Taluqa separately partitioned through a Revenue Court."

On the 16th July, 1916, they filed an amended plaint in which the prayers are amplified, and are as follows :

"(1) It may be declared that 'Tarenga Taluka,' containing 143 villages, in Tahsil Baroda Bazar, is an impartible estate, and Kalyansingh, defendant No. 3, is the sole proprietor and Talukedar of the entire *illaka*, and that he alone, in the capacity of Tahutdar of Tarenga, is liable to pay the Government revenue of plaintiffs' eleven villages, the names of which are entered in the plaint.

"(2) It may also be declared that the charge of payment of revenue of the plaintiffs' eleven villages which subsists on the villages of Tarenga Taluka, that are, or hereafter will be, in possession of defendants Sunderlal and Rameshwar Nath or their heirs, is not removed by the award, dated the 1st December, 1910.

"(3) Government revenue of plaintiffs' eleven villages may be declared a charge for ever, according to law, on every village and all villages of Tarenga Taluka, which are and hereafter will be in possession of the defendants."

Although the defendants filed separate written statements, all three pleaded that the plaint "disclosed no valid cause of action." Sunder Lal and Rameshwarnath denied in their amended statements that any liability attached to them for the payment of the Government revenue in respect of the plaintiffs' villages. They asserted that it was a personal liability of the Talukdar but was not a charge on the estate or any part thereof.

Kalyan Singh's statements in his defence are material to the consideration of the case. In para. 7 he traverses the allegation of the plaintiffs with regard to the mutation of names in the Collector's Register in favour of the defendants that they were all registered on an identical basis. He states that "his name was recorded as proprietor and Lambardar of all the 143 villages, and that the first and second defendants have simply been described as sub- or inferior proprietors and sub-Lambardars of the villages given to them by the Award of 1910."

In para. 9 he admits that he is "personally liable" for the land revenue in respect of the eleven villages in the plaintiffs' possession under the Award of 1864, and states that :—

"He has never denied his liability in this respect, and has always regularly paid the said Land Revenue, along with the Land Revenue of the rest of the villages of the Taluka in accordance with his engagement with the Government."

In para. 11 he contends that the plaintiffs are precluded by the terms of the Award of 1864 and the decision of this Board from claiming a partition of the family property, and in para. 12 he denies that the land revenue in respect of the plaintiffs "constitutes a charge on the rest of the villages of the Taluka in his possession and in the possession of the other two defendants."

In view of this state of facts, the main question for determination that arose in the Courts below was whether the revenue assessed on the villages in the possession of the plaintiffs was a

charge, as they claimed, on the rest of the villages of the Taluka. Two other questions have been discussed before this Board, to which their Lordships will refer in the course of their judgment.

The District Judge dismissed the suit, holding that the revenue payable for the eleven villages in the possession of the plaintiffs was not a charge on the Taluka as they contended. The Judicial Commissioners on appeal came to a contrary conclusion.

They accordingly reversed the order of the First Court and decreed the plaintiffs' claim. The reason of their decision is summarised in the following passage of the judgment. The learned Judges say :—

“ We are clear that the covenant of Badrinath to pay the revenue of the eleven villages allotted to Loknath is a covenant that runs with the land, and that the liability created by it attaches to the proprietary right over each and all of the remaining villages of the Talook other than those which had already been assigned revenue-free to others before the covenant was made. This liability binds the senior branch of the family at least until it is novated by a general partition among the whole family ; and the defendants cannot alter it by any arrangement made between themselves behind the backs of the plaintiffs. We also think that upon a proper interpretation of the arrangement of 1864 as expounded by the Privy Council, the liability accepted by the Tahutdar amounts to a charge on the estate possessed by him as Tahutdar as long as the arrangement of 1864 stands in force.”

And the decree they have awarded is in the following terms :—

“(1) That the plaintiffs are not bound in any way by the agreements and award made between the defendants *inter se* in 1910, nor by any mutation or other proceedings based thereon ; and that the rights of the plaintiffs in the Tarenga Talook stand unimpaired as if those Agreements, Award and Proceedings, had never taken place ; and

“(2) That the liability of the Tahutdar to pay the revenue of the eleven villages held by the plaintiffs, which was imposed by the compromise made between Badrinath and Loknath in 1864—as affirmed by the Proprietary Rights Award in 1867 and by the final judgment of the Privy Council in 1899—is a liability attached to the proprietary right in every village of the Tarenga Talook other than the said eleven villages and any other village which had been assigned by the Tahutdar revenue-free to others before the compromise of 1864 was made ; and further that such liability amounts to a charge on every village so affected.”

The defendants have appealed to His Majesty in Council, and their contentions are summarised in the principal grounds on which they obtained the certificate under Section 110 of the Civil Procedure Code, viz., (1) that the plaintiffs had no cause of action, and that they were not entitled to bring a suit for a mere declaration that the liability to pay the revenue of the plaintiffs' villages is a charge on the Taluka ; and (2) that the Judicial Commissioners were wrong in holding that the liability created a charge on the estate and rendered all dealings by the defendants with the property illegal and invalid against the plaintiffs.

The judgment of the Appellate Court is elaborate, and the declarations made by the learned Judges are sweeping in character.

Their Lordships have, therefore, felt it desirable to set out the assertions and counter-assertions of the parties in some detail. There are certain passages other than those already referred to which indicate the reasons which pressed with the Judicial Commissioners in arriving at their decision. They say first :—

“ It must be remembered that each of these villages constitutes a separate *mahal*, and as between Government and the proprietor is primarily charged with the revenue assessed upon it. The proprietor of the eleven villages under the Proprietary Rights Award of Mr. Chisholm is the Tarenga Tahutdar; and to him the Government must have looked for the payment of the annual demand. In the event of his failure, Government would proceed against the particular villages on which the revenue in arrears is assessed. Government was in no way bound by the arrangement made by Badrinath and Loknath for the payment of the revenue on the villages possessed by Loknath. But if the Tahutdar's responsibility to Loknath was purely personal, as held by the Lower Court then the Tahutdar could have defeated the whole arrangement by a sale of the Talook. This was never the intention of the parties to the arrangement, or of the officers and Courts which have given effect to it; and the decision of the supreme tribunal is clearly this, that the responsibility for the revenue assessed on the eleven villages made over to Loknath attached itself to the Talook as part and parcel of the title of the Talookdar in perpetuity.

“ The word ‘perpetuity’ requires some explanation. We use it in a qualified sense. The term given to the arrangement by the *Wajib-ul-Arz* is defined by the words ‘as long as the *ilaka* is in our family.’ We cannot interpret these words to mean that the term could be ended by voluntary alienation. It contemplated a loss of the Talook by *vis major*. But one circumstance seems clear, and that is that the basis of the entire scheme and of the Privy Council Judgment, which interpreted it as permanent, was an undivided Talook held for the benefit of the family by the head of it, who by reason of that position was called the Tahutdar. Any idea of splitting up the Talook by partition was entirely foreign to the arrangement. Loknath gave up his half share as a proprietor, and accepted the arrangement which left the family head as the proprietor of the whole Talook so as to keep the estate undivided. He certainly did not accept the eleven villages as his partitioned share, leaving the rest of the family to partition the remainder of the Talook. In other words, it was the essence of the arrangement that the whole Talook should be held undivided, with the Tahutdar as the recorded proprietor. While that condition was maintained, the arrangement was permanent, and neither branch of the family could repudiate it.”

And, again, “one essential condition was this, that the Talook should remain an undivided *ilaka* in the hands of the Tahutdar.” Then they say as follows :—

“ It is not necessary for the purposes of this case to decide whether or not the Tarenga Talook is an impartible estate; and we expressly leave that question undecided. We will assume for the sake of argument that the compromise of 1864 made by Badrinath and Loknath, though based upon a stipulation that the Talook should remain undivided, did not bind their successors to maintain impartibility, and that it is open to the present representatives of the senior branch to claim partition of the estate under the ordinary law. Nevertheless any partition must necessarily put an end to all arrangements made by the family for enjoyment of the family property by co-parceners in a state of union; the partition, to be legal, must cover the entire family property except that which all the co-parceners agree

to keep joint, and all the existing co-parceners must be parties to it. While the Tarenga Talook remains undivided with the Tahutdar as the representative proprietor of the whole estate, subordinate arrangements, such as that made with Loknath, are possible. But when disruption takes place and partition according to law is resorted to, then there is an end of joint family arrangements and the whole property comes into hotch-pot for division into legal shares. The legal shares here would be one half to the plaintiffs and the other half to the defendants in the whole Talook. The Lower Court has treated the case as if the arrangement of 1864 was a partition between Loknath and Badrinath. It seems to us that that is an erroneous view, even if we apply the latest decisions of the Privy Council as to what amounts to a partition. Loknath never demanded a partition. He claimed his share of the joint income, and he compromised that claim by making an arrangement whereof the very essence was that the family property should remain undivided; and that condition has continued since. The plaintiffs do not even now seek partition. On the contrary, they claim that the Talook is impartible. The defendants have carried out a so-called partition of the whole Talook, under which they have placed the eleven villages held by the plaintiffs as *muafi* villages appertaining to the share of the defendant, Kalyan Singh. The plaintiffs were not made parties to those proceedings, and for that reason, if for no other, they are not bound by them."

In their Lordships' opinion the learned Judges are in error in supposing that the decision of this Board in 1899 had or was intended to have any such effect as they imagine, or that it declared by implication that the revenue of the eleven villages granted to Lokenath was a charge on the Taluka. The declaration in that suit was confined simply to the liability of Lokenath to contribute to the payment of the Government revenue.

It appears to their Lordships that the view the learned Judges have taken of the case proceeds upon a misconception of the relative rights of the parties. The estate or Taluka of Tarenga, as already stated, comprises 143 villages. It includes within its ambit under the Talukdar many subordinate interests. Some villages are held by "inferior proprietors" who pay their revenue through the Talukdar; others are held by what are called "protected thekadars"; others again, especially those granted for maintenance, are held by "muafidars," free from the obligation of making any contribution towards the land revenue. These villages are called *muafi*, and their holders *muafidars*, on account of their being released from that obligation. The Talukdar is liable for the aggregate *jama* or revenue, the sum total of the separate assessments on the different villages. The respective interests of the different holders are recorded in the village administration papers (the *Wajib-ul-Arz*), which form valuable evidence in the determination of their rights. The specification of these different interests will be found in the Award of 1910, the validity of which is questioned by the plaintiffs, though not the correctness of its contents.

In the Award of 1910 the position occupied by the different people who held an interest in the Taluka is clearly set out:—

"(1) There are in all 143 villages in the Tarenga Taluka, Tahsil Baloda Bazar, District Raipur, of which 30 are of inferior proprietary rights, 4 of protected status, 18 *muafi* of relations and temples, and 91 *Khalsa*

malguazari, the ancestral property of the aforesaid persons. Accordingly, the dues of superior proprietorship are received from the inferior proprietors, the *malguazari* dues from the protected *thekedars* and only the cesses in respect of the *muafi* villages except the village Khairi, which is *muafi* of the temple of Jagannathswamy situate in the old *basti* at Raipur.

“(2) Kalyansinha *alias* Mathulal is the proprietor of all the villages that are of inferior proprietary rights and protected status and are *muafi*. Kalyansinha is entitled to recover and receive the Government *jama* and the *malkana* amount, &c., that are fixed or may be fixed at each settlement hereafter, and the *jama* he may get enhanced through Court, and to eject anyone; and he is responsible for payment (of revenue) to Government. Sunderlal Sao and Rameshwarnath Sao shall have no concern therewith.”

The compromise deed of 1864 under which Lokenath obtained the eleven villages, one of which is called Datrenga, makes no reference to the creation of any “charge” apart from the liability of “the sole superior proprietor” for the payment of the land revenue. It first gives the names of the villages “awarded” to Lokenath, and then proceeds to say :—

“The plaintiff is to possess and enjoy them. The defendant has no power over these villages. The plaintiff is at liberty to possess, occupy and manage them just as he pleases. But the defendant is to pay out of his own pocket the Government revenue in respect of these villages. The plaintiff has no concern with the payment of the revenue, and will not have to pay it. The defendant shall have power over the rest of the villages in the Talud. The plaintiff shall have no power over them.”

And again :—

“The defendant shall be responsible to pay (revenue) to Government. Plaintiff shall have no concern. On settlement being finally effected, the defendant shall be responsible for payment of the revenue assessed. We, the parties, accept this decision of the arbitrators. We shall act up to the conditions above laid down.”

Throughout this agreement there is not a word to suggest that the Talukdar Badrinath agreed to the creation of a “charge” on his estate or to hypothecate it for the revenue of the villages granted to Lokenath. The idea of a “charge” in respect of the revenue of these particular *muafidars* is fundamentally erroneous. Their status, like those of other subordinate proprietors, is contractual; and their rights must be governed and determined by their contracts. In the *Wajib-ul-Arz* of 1867 the undertaking of the Talukdar is stated thus :—

“This village has long since been in our family. Now at the present settlement inquiry in respect of rights to this village having been made, the proprietorship of the village of Tarenga along with the rest of the Talluka was conferred upon me by Order dated 31st October, 1867, and the villages of Amakoni, Tikari, Turma, Buchipar, Achanakpur, Kesla, Datrenga, Datrengi, Madhuban, Lamti and Godhi were given in lieu of Malikana to the claimant Loknath free of revenue which was made payable by me. He shall hold possession thereof so long as the village remains in my family. My real brothers, Baijnath and Kedarnath, shall get Rs. 250 each in cash. With these exceptions nobody else shall have any concern with the Talluka. I am myself the owner of the whole Talluka.”

In 1890, when the dispute arose regarding the liability of Lokenath to reimburse the Talukdar in respect of the enhanced revenue, the Government of India, in a letter from the Under-Secretary to the Chief Commissioner of the Central Provinces, placed on record its view of the arrangement. The Under-Secretary says as follows :—

“ According to the final settlement order passed by Colonel Balmain, although the Tahutdar was determined to be the sole superior proprietor, there was a distinct reservation of the petitioner's right to hold the villages in question rent free, and this is tantamount to a recognition of his status as an under-proprietor. It appears, however, from Mr. Chisholm's decision that this right was based on an agreement which had been accepted by Badrinath and Loknath and confirmed in the Court of the Deputy Commissioner in 1864, and which bound the Tahutdar to pay the whole of the revenue. So long as the agreement subsists, this obligation remains and ought not to be rendered nugatory by a subsequent order either of a settlement officer or of the Chief Commissioner.”

And the same view was enunciated by the Board in 1899. Nothing has happened since to alter the old position or to create new rights. The Judicial Commissioners speak of a “ covenant running with the land.” What is the covenant, and how is it inferred? If the estate is impartible, the Talukdar has, under the recent decisions of this Board, the right of alienation. He has certainly the right to create subordinate interests as he has done heretofore. Where is the “ covenant ” precluding him from exercising the rights which the law of India vests in him. If he alienates the estate, his transferee takes it subject to the rights created by him. It has been suggested in argument that although there is no express “ covenant ” or condition in the compromise creating a “ charge,” the Board should infer one “ from the surrounding circumstances,” whatever that may mean. And stress is laid on the decision of this Board in the case of *Raja of Ramnad v. Sundara Pandiyasami Tevar* (L.R. 46 I.A. 64), in which, it is urged, the payment of the maintenance or annuity was made a charge on the estate. That case, in their Lordships' opinion, was wholly different from the present. Here Lokenath obtained for himself and his descendants under his contract specific villages in lieu of maintenance. The present suit is not for maintenance or for the enforcement of the claim for maintenance; it is to obtain a declaration of an extraordinary character for which there is no warrant in law.

There is another question to be considered. The Talukdar defendant does not deny his liability to pay the Government revenue assessed on the plaintiffs' villages. It is not alleged that he has not ample property to carry out his undertaking; nor is it alleged that any contingency has arisen which actually jeopardises the possession of the villages by the plaintiffs. In their Lordships' judgment, the plaint discloses no cause of action. Without expressing any opinion as to whether this suit which is brought with the object of obtaining a mere declaration is maintainable in view of the provisions of Section 42

of Act 1 of 1877, their Lordships hold that this action is wholly misconceived. Their Lordships will accordingly humbly recommend to His Majesty that the judgment and decree of the Judicial Commissioners' Court should be reversed, and the suit dismissed with costs in all the Courts.

In the Privy Council.

SUNDERLAL AND OTHERS

v.

RAMJILAL AND OTHERS.

DELIVERED BY MR. AMEER ALI.

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