

Privy Council Appeal No. 45 of 1928.

Bengal Appeal No. 43 of 1926.

Amiruddi Gazi and others - - - - - *Appellants*

v.

Makhan Lal Chatterjee and others - - - - - *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 5TH DECEMBER, 1929.

Present at the Hearing :

LORD BUCKMASTER.

VISCOUNT DUNEDIN.

LORD TOMLIN.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* LORD BUCKMASTER.]

The dispute out of which this appeal has arisen has its immediate origin in the fact that the present appellants on the 8th May, 1915, obtained a decree against a man named Kedar Nath Ghose for payment of rent in respect of certain lands in Mouza Dudli, in Chakley Dhuliapur.

The respondent No. 1, Makhan Lal Chatterjee, claimed that these lands were included in a purchase made by his father at an auction sale on the 25th February, 1907, and accordingly instituted the proceedings which have culminated in this appeal against the appellants, and Kedar Nath Ghose claiming that the appellants had no interest in the lands and that he was entitled to rent from the tenant.

The Subordinate Judge dismissed the suit; on appeal to the Additional District Judge this decree was set aside and the plaintiffs' claim granted, and an appeal from the District Judge

to the High Court of Calcutta was dismissed, chiefly upon the ground that the question in issue was really one of fact upon which the decision of the District Judge was final. The whole of the relevant evidence in the matter is, however, documentary, the documents themselves constitute the foundation of the rights claimed by respondent No. 1, and in their Lordships' view the simple and attractive solution which not unnaturally commended itself to the High Court cannot be accepted and the matter must be again examined throughout.

The story begins on the 6th April, 1843, when the Special Deputy Collector of Nadia made an order in resumption proceedings declaring 301 *bighas* of land belonging to one Kalibar Adhikary to be *Lakhiraj* lands.

Kalibar Adhikary died childless in or about 1881, leaving two widows, who adopted appellant No. 3 to their deceased husband. The survivor of these widows died in 1905, and was succeeded by appellant No. 3, through whom appellants No. 1 and No. 2 derive their claim.

The lands specified in the order of the 6th April, 1843, included lands in 9 *mouzas*, the first being Mouza Badaghata and the sixth Mouza Dudli.

By the Act VII of 1876 it is provided that a register must be kept of all revenue or *Lakhiraj* lands, and by sec. 10 (g) (II) of that Act it is expressly stated that the name of each *mouza* containing the land must be stated in the register. The information before the Board with regard to this register is not complete ; they do not know the dates when each entry was made and there is no evidence as to the method by which the register is kept.

Certain entries from the register relating to the matter are, however, extracted, and it is the meaning of these on which the dispute really depends.

One referred to as Ex. 2 contains in its first column the number " 13," and its second, which provides for the name of the property, the word " Badaghata " alone. The area is stated to be 301 *bighas*, and the order which recognised the land as revenue free is set out as that of the 6th April, 1843. There is a special column for the names of the *mouzas*, but in this " Badaghata " alone appears. This register is stated to be that of Khulna, but this appears to be a mistake for the 24 *Pergunnahs*' register, for to the former register the entries were transferred at a date equally unknown. The later register changes the number to 50 and states the area as B 301 *bighas* ; it has no other material alteration. " Badaghata " again appears as the sole name of the *mouza* in the appropriate column.

Were there no other entries these entries might well be taken to cover all the 9 *mouzas* which made up the 301 *bighas* referred to in the order of the 6th April, 1843, even although there would have been a serious breach of the statute requiring all the *mouzas* to be named.

This, however, is not the case. The register contains another and a most important entry, which appears to have been made after the other. The reference number here is 16. The name

of the property is "Badaghata, &c." the order declaring the land revenue-free is stated to be made in proceedings No. 1523 on the 16th April (not the 6th April), 1843, and in the column for the names of the *mouzas* all the nine *mouzas* are given. The area is not filled up, and a statement appears that the whole entry has been transferred from another register. In both entries the names of the proprietors are the same, namely, the two widows of Kalibar Adhikari. These properties, though revenue-free, were subject to road cess and this was separately assessed against the appellant No. 3 in respect of the properties appearing in both entries, but for widely different amounts, that for the No. 13 or No. 50 entry being only a comparatively small sum of rupees.

Small as it was it was unpaid, although the larger payment for the other entry was satisfied, and accordingly the authorities took steps to realise the property.

The order for the proclamation of the sale was on the 22nd December, 1908, and in accordance with the usual practice this directed that the order should be proclaimed "by beat of drum on each of the properties mentioned in the schedule," and the schedule is in these terms :—

"Schedule of Property.

In Kismat Badaghata village, under Thana Kaliganj, valid revenue-free Mahal No. 50B—the right, title and interest of the judgment-debtor in the above property.

	Amount.
Cesses	11 1 6
Interest	0 6 6
Costs	2 14 0
	14 6 0

Sd. N. R. Misra,
C. O.

Sd. A. M. G."

On the back of this there is an entry stating that the drum was beaten in Badaghata, but this is attempted to be extended by the evidence to all the other *mouzas* as well.

The auction sale was duly held on the 25th February, 1907, and the property was bought for 15 Rs. by Rajaedra Nath Chatterjee, through whom, the respondent No. 3 claims, and on the 1st February, 1908, an order was made directing the Nazir of the Court to put the purchaser in possession of the property. The description of the property in this order is important, and it is as follows :—

"Schedule.

The right, title and interest of the judgment-debtor in the valid revenue-free Mahal No. 50B in village Kismat Badaghata under Thana Kaliganj.

H. C. Bose,
C. O."

The contention which the High Court adopted is that this property included all the nine *mouzas* and as one, the Mouza Dudli (B 306—2487)T

out of which the dispute arose. What has been the dealing with the other *mouzas* is not disclosed.

The District Judge found as a fact that this description included all the nine but as has been pointed out, in the true legal sense that is not a finding of fact at all but an interpretation of the various documents to which reference has been made.

Much discussion took place over the true meaning of the word "Kismat," which it was asserted meant an estate and was inapplicable to a village. Whether that be so or not the property sold was No. 50B, and it is essential to determine what that was.

It is not an easy question to answer. The register No. 13 or 50 has distinctly disregarded the statutory provisions as to the entry of the *mouzas*, but the entry in the register, No. 16, complies with them.

It may be as stated by the learned District Judge that Badaghata alone was used in No. 13 and 50 as the descriptive name and represented an estate which embraced the other *mouzas*. The subsequent entry made in respect of the same proprietors enters all the nine *mouzas* including Badaghata, refers to the same deed, if the 16th April be taken as a mistake for the 6th April, but gives no area, and no explanation has been offered of why this was done if the properties were identical in whole or in part. The form provided for registration has not been followed in either case. In one the names of the *mouzas* are omitted and in the other the area.

Disobedience to the Act, however, does not appear to invalidate the registration. The property entered under No. 50 has been sold. Of what does it consist?

In their Lordships' opinion it includes all the property that was subject to the order of the 6th April, 1843, and whose extent was 301 *bighas*, and therefore includes the land in dispute. It was the first land put upon the register and it was placed there in respect of the proprietors of the whole 301 *bighas*, nor can any reason be suggested why they should have allowed part only of their *Lakhiraj* lands to be registered and given the area of the whole.

The entry under No. 16 is either a re-registration which was needless, or it is, as the District Judge suggests, a registration of other property in the same *mouzas*. This last view has support in the fact that according to the appellants' own statement in the *kabala* executed in 1909, the area of these lands was 786 *bighas*, and it is impossible to reconcile this with the 301 *bighas* which was the area of the estate first registered.

Whatever be the true explanation none has been afforded, and in these circumstances their Lordships can see no sufficient reason to differ from the judgments that have been delivered and are unanimous.

Upon the whole, therefore, their Lordships think that the judgment appealed from should be affirmed and the appeal dismissed with costs, and they will humbly advise His Majesty accordingly.

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In the Privy Council.

AMIRUDDI GAZI AND OTHERS

MAKHAN LAL CHATTERJEE AND OTHERS.

DELIVERED BY LORD BUCKMASTER.

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