APPELLATE CIVIL.

Before Fletcher and Richardson JJ.

1914

May 7.

KUNJA BEHARI SEAL

v.

DURGA PRASAD SINGH.*

Mineral Rights—Moghali Brahmottar—Grant.

Moghali Brahmottar grant of a mauza does not pass the minerals under it to the grantee.

Hari Narayan Singh Deo v. *Sriram Chakravarti* (1) and *Jyoti Prasad Singh* v. *Lachipur Coal Co.* (2) followed.

Sonet Kooer v. *Himmut Bahadoor* (3) distinguished.

APPEAL by the plaintiff, Kunja Behari Seal.

This appeal arose out of a suit for a declaration of title and recovery or confirmation of a share of the subsoil in the property in suit. The ancestor of the defendant, Raja Durga Prasad Singh, granted mauza Jitpur as a *Moghali brahmottar* to the ancestor of the Tewari defendants but subject to the payment by him of an annual sum of Rs. 16 which the Raja had to pay to the Government as revenue for the said mauza. By various conveyances from the heirs of the above grantee, the present plaintiff became entitled to a 15 annas, 2 gandas, 1 kora share of the subsoil of the said mauza and he brought this suit for declaration of his title thereto and for recovery or confirmation of his possession therein.

* Appeal from Original Decree, No. 197 of 1911, against the decree of Advaita Prasad Dey, Subordinate Judge of Manbhum, dated March 11, 1911.

(1) (1910) I. L. R. 37 Calc. 723. (2) (1911) I. L. R. 38 Calc. 845.
(3) (1876) I. L. R. 1 Calc. 391.

The zemindar defendant and other defendants claiming the subsoil under him contended that the Tewaris were merely temporary *ijaradars* and not *brahmottardars;* that their interest in the mauza was sold in execution of decrees for arrears of rent and purchased by others to whom the subsoil rights were subsequently conveyed by the zemindar.

The Subordinate Judge came to the conclusion that the Tewaris were not *ijaradars* but *brahmottardars;* that though ordinarily the grant of a *brahmottar* meant a gift to a Brahmin of the entire rights of the donor, there may, indeed, be limited grants, and that where, as in the present case, a rent, however small or permanent was reserved, the donor did not cease to be the owner, and the grant was not a gift but a lease or a permanent tenure and that, therefore, such a grant could not and did not convey to the grantee the right to the mines unopened at the time of the grant.

Mr. B. Chakravarti, Babu Shib Chandra Palit and *Babu Hira Lal Sanyal*, for the appellant.

Babu Mahendra Nath Roy, Babu Lalit Mohan Ghose and *Babu Tarkeshwar Pal Chowdhry*, for the respondents.

Cur. adv. vult.

FLETCHER J. The only question arising for our decision in the present appeal is whether the minerals lying beneath the mauza Jitpur in the pargana of Jheria passed to the ancestor of the Tewari defendants by a *Moghali brahmottar* grant at a rent of Rs. 16 a year by the ancestor of the defendant No. 1. The plaintiff has acquired a 15 annas, 2¼ gandas share in the subsoil of the mauza from the Tewaris and brought the suit for the declaration of his title to such share. His claim was resisted by the contesting defendants on various grounds, the only one of which

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it is now material to consider is the defence that the *brahmottar* granted by the ancestor of the defendant No. 1 to the ancestor of the Tewari defendants did not pass the minerals to the grantee. The evidence before us is small and the case largely depends upon what are the proper inferences of fact to be drawn from certain admitted facts.

There is no document evidencing the grant of the *brahmottar*, although it would appear that it was granted more than 100 years ago. At that time it is not probable that any one thought of there being coal under these lands. In an attempt to prove the origin of the *brahmottar* grant the plaintiff called the defendant No. 17 to prove the origin of the grant His statement was that he heard from his grandmother, that his ancestor had become degraded for some spiritual services rendered to the ancestor of the defendant No. 1, and, therefore, the former Raja made a gift of the whole of his rights in the mauza. The learned Judge very properly refused to accept this statement as proving the origin of the grant.

The only facts proved are, *first*, that the grant was a *Moghali brahmottar* grant; and, *secondly*, that it has been held for more than 100 years at the same rent of Rs. 16. From these facts the learned Judge drew the inference, that the *brahmottar* was a permanent tenure held at a rent of Rs. 16 a year. He, however, came to the conclusion that such a grant did not transfer the minerals to the grantee. It is not suggested in the present case that there were any mines opened on the property at the date of the grant, nor that the plaintiff or the persons from whom he derives title have a prescriptive right to work any of the minerals under the property. The learned Judge, therefore, came to the conclusion that the plaintiff had not shown that the former Raja parted with the

minerals when he made the *brahmottar* grant to the Brahmin, Behari Tewari.

I think the learned Judge in this view was correct. The present case appears to me to be covered by authority.

The first case to which we have been referred is the case of *Hari Narayan Singh Deo* v. *Sriram Chakravarti* (1), which is a decision of the Judicial Committee of the Privy Council. The contest in that case was between the zemindar and certain Goswamis, the *shebaits* of an idol. Lord Collins in delivering the opinion of their Lordships made the following remarks:—"On the whole, it seems to their Lordships that the title of the zemindar Raja to the village Petena as part of his zemindari before the arrival of the Goswamis on the scene being established, as it has been, he must be presumed to be the owner of the underground rights thereto appertaining in the absence of evidence that he ever parted with them, and no such evidence has been produced." I think that decision covers the case now before us. There can be little, if any, distinction between the case of a *Moghali debutter* and a *Moghali brahmottar* grant. It has, however, been argued before us that that decision does not apply to the present case, having regard to certain remarks made by Lord Collins in an earlier portion of the judgment. But a perusal of the judgment convinces me that in using the expression "occupancy right", their Lordships were not considering whether the idol was a tenure-holder, or a raiyat with an occupancy right or a raiyat with a non-occupancy right. It seems manifest to me that their Lordships were using this expression as opposed to the right of the zemindar who had the proprietary interest.

(1) (1910) I. L. R. 37 Calc. 723.

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The next case that was cited to us was that of *Jyoti Prasad Singh* v. *Lachipur Coal Co.*(1). The facts in that case are indistinguishable from the present. The grant in that case was a *Moghali brahmottar* grant. The learned Judges held that such a grant, even though permanent, did not pass the mines unopened at the date of the grant. Next comes the case of *Durga Prasad Singh* v. *Braja Nath Bose* (2), which was also a decision of the Judicial Committee of the Privy Council. The contest in that case was between the persons claiming title from a Digwar and the zemindar, and it was held that the minerals were vested in the zemindar. Against these decisions the appellant relies on the case of *Sonet Kooer* v. *Himmut Bahadoor*(3). But the only point decided in that case was that on the failure of heirs of a person to whom a permanent tenure had been granted the escheat was to the Crown and not to the zemindar. But that case has nothing to do with the question of what was granted to the tenure-holder in the first instance. I think, therefore, that the learned Subordinate Judge came to a correct conclusion when he held that the *Moghali brahmottar* grant to the ancestor of the Tewari defendants did not pass the minerals under the mauza.

Accordingly the present appeal fails and must be dismissed with costs. We allow only one set of costs to be divided between the different sets of respondents who have appeared. The respondents are not entitled to the paper-book costs incurred by them.

RICHARDSON J. I agree that the case is covered by authority and that the appeal must be dismissed.

S. K. B. *Appeal dismissed.*

(1) (1911) I. L. R. 38 Calc. 845. (2) (1912) I. L. R. 39 Calc. 696.
(3) (1876) I. L. R. 1 Calc. 391.