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the meaning of the rules in the Indian Succession Act, because from his evidence one can draw no conclusion as to the order in which the signatures were affixed to the will. He merely says, "Soonder Jana signed it, I attested it. I put a mark as my signature."

The appeal is allowed, and the order of the lower Court reversed.

Appeal allowed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

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July 4.

THE SECRETARY OF STATE (DEFENDANT) *v.* PORAN SINGH (PLAINTIFF).*

Ghatwali Tenure — Misconduct of Ghatwal — Forfeiture of Tenure on dismissal.

The dismissal of a ghatwal will carry with it the forfeiture of his tenure.

IN this case the plaintiff, a sirdar ghatwal in the district of Bankura, was, owing to misconduct, dismissed on the 22nd February 1873. This dismissal was confirmed by the Magistrate, and finally upheld by the Commissioner on appeal. The plaintiff was deprived of the lands which he had held as such sirdar ghatwal, and these lands, on his dismissal, were handed over to his successor. The present suit was thereupon instituted by the plaintiff in the Court of the District Judge of Bankura (making the Secretary of State and the ghatwa appointed to succeed the plaintiff, co-defendants) to recover the lands thus taken from him. In his plaint the plaintiff claimed to hold the lands in suit by virtue of an ancient hereditary tenure held on payment of a certain punchakit rent to the zemindar, and further contended that such lands were held by him irrespective of any service imposed upon him in his character of sirdar

* Regular Appeal, No. 215 of 1876, from a decision passed by the Officiating Judge of West Burdwan, dated the 17th April 1876.

† Cesses imposed in some of the Bengal districts, formerly, in addition to the revenue and other regular imposts. . . . . In some places the term appears to denote lands originally rent-free, but subject to a small quit-rent. — *Wilson's Glossary of Indian Terms.*

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ghatwal. The defendants denied that the plaintiff possessed any hereditary right to these lands; they contended that his interest therein existed only by virtue of his service as a ghatwal; that he held such situation not by any hereditary right, but through his appointment by the Magistrate; that his dismissal necessarily carried with it the forfeiture of the service-tenure; and that the Civil Court had, therefore, no jurisdiction to entertain this suit. It was further contended that the plaintiff had wrongly included in his suit not only the lands formerly held by himself, but likewise lands held by a number of other ghatwals subordinate to him or paying a quit-rent through him.

The Court of first instance, with one exception, decided all the issues in the suit substantially in favour of the plaintiff, the only finding against the plaintiff was on the seventh issue, which raised the point, whether a Government officer could dismiss a ghatwal from his situation and eviet him from the lands for misconduct. Although the Court decided this issue in favour of the contention of the first defendant, yet, in the enumeration of the duties the plaintiff as ghatwal was bound to perform, and the orders he could legally refuse to obey, the Court so qualified the force of the decision on this point, that the plaintiff was in no way prejudiced by the decision arrived at on this issue. The plaintiff obtained a decree for possession of the lands in suit to be held by him in ghatwali estate, but the plaintiff was prohibited from performing any of the duties of ghatwali tenure until called upon to do so by the Magistrate. The first defendant appealed to the High Court.

Baboo *Annoda Persaud Bannerjee* for the appellant.

Baboo *Sreenath Dass* and Baboo *Bhowany Churn Dutt* for the respondent.

The judgment of the Court (JACKSON and TOTTENHAM, JJ.) was delivered by

JACKSON, J. (who, after stating the facts of the case, proceeded as follows):—The only substantial point for decision in this case seems to be, whether the plaintiff, as sirdar

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ghatwal, is liable to be ejected from the ghatwali tenure by the Magistrate, on being dismissed from the post of ghatwal, for the authority of the Magistrate to dismiss is not directly raised in the plaint, while his authority to allow the plaintiff to perform the duties of ghatwal or to prohibit him is directly reserved to the Magistrate by the Judge's decree.

In regard to the point before us, it is to be observed that the plaintiff alleges himself to be an irremoveable tenant at a quit-rent, with the option of performing certain services if required to perform them, but apparently not liable to any forfeiture for refusal. His theory seems to be, that the service is an appendage to his tenure, and not that the tenure is conditional on the performance of the service. The plaintiff has no title-deeds whatever, or any documentary evidence of any description, to show that he has any title independent of service as ghatwal to hold the lands in suit; and the very name 'ghatwali' indicates that the tenure is held by virtue of the office of ghatwal.

It is admitted, indeed, that, in this instance, the ghatwal has to pay a quit-rent to the zemindar in addition to rendering service as ghatwal, but the lowness of the rent was fixed with reference to their service, and therefore the payment of some rent does not alter the character of the tenure. The oral evidence adduced by the plaintiff proves that the tenure has been in his family for at least three generations, but it does not prove any right apart from the ghatwali service, and the oral evidence on both sides distinctly shows that no ghatwal succeeds simply by right of inheritance to the office of ghatwal, but invariably the new ghatwal is appointed by the Magistrate. As a general rule, the late incumbent's heir if fit is appointed; but, as found by the lower Court, the Magistrate has the power of *veto* in respect of any candidate, and there has been no attempt to show that at any time has the ghatwali land been held by one person by right of inheritance, and the office of ghatwal by a different person by appointment or otherwise. In fact there is nothing to show, and no reason to believe, that the enjoyment of the land can be had without what the Judge terms the *reddendum*. In fact they are inseparable.

And with reference to the theory that the service is merely an appendage to the tenure, we have in this case the best possible evidence, because it is from the plaintiff himself, that possession of the land *follows* the appointment of the ghatwal, and does not vest in him beforehand. Having been cited as a witness by defendant, he states in his deposition that, after being appointed sirdar ghatwal, he was obliged to petition the Magistrate for assistance in getting possession of the service lands. And as to the *tabedars* he says, that they used to receive possession of lands after their appointments: and in regard to the lands held by the *tabedars*, which seem to be included in this suit, and in the lower Court's decree, he distinctly admits that he derives no profit from them, but that he is simply the channel through which their quit-rent is paid to the zemindar.

The petition by which plaintiff applies to be put in possession after his appointment, was filed by the defendant. In this he recited that the lands were public lands. This evidence of itself seems to settle the question as to whether the possession of the lands was a right distinct and separate from the service as ghatwal, and to settle it in the negative.

It follows, and it has in fact been so found by the lower Court, that the dismissal of a ghatwal will carry with it the forfeiture of his tenure.

There is also abundant evidence on both sides to show that the appointment of ghatwals, which must carry with it the placing them in possession of the ghatwali lands, is, and has long been, in the hands of the Magistrate. Authority for this is found in a letter, of which a copy has been produced, dated 5th July 1806, from the Secretary to Government to the Magistrate of the Jungle Mehals.

The lower Court has found that the Magistrate may, for sufficient cause, dismiss a ghatwal. It is not necessary in this appeal to go into that question, still less is it the duty of the Court to lay down what may be required and what may not be required of the ghatwals. It is enough to note here that the plaintiff, in his own deposition, in enumerating the duties of a ghatwal, mentions most of those in respect of which neglect and insubordination have been imputed to him. He

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admits many duties of which the lower Court has taken upon itself to relieve him for the future; and it seems reasonable that duties of a kindred nature to those which are now obsolete should be performed in lieu of them, since the ghatwals still enjoy their old advantages of land tenures, which have become much more valuable than they were when first fixed.

On the whole we entertain no doubt that the plaintiff has no right to be reinstated in the ghatwali land unless the executive authorities will condone his conduct and restore him to his situation. We think that, under all the circumstances, looking to the long continuance of the ghatwalship in the plaintiff's family, to the increase of duty, and the more disagreeable nature of that duty lately required of the ghatwals, and to the punishment the plaintiff has undergone, it would be consistent with the dignity and character of the Government to reinstate him on the occurrence of an opportunity or to allow some member of his family to be appointed in his place. But this is wholly a matter for the consideration of Government. We must set aside the judgment and decree of the District Judge, and order the suit to be dismissed with costs of both Courts.

Appeal allowed.

PRIVY COUNCIL.

P. C.* 1879 *Nov.* 21, 22, 26.

LEKRAJ KUAR (DEFENDANT) *v.* MAIPAL SINGH (PLAINTIFF)

AND

RAGHUBANS KUAR (DEFENDANT) *v.* MAIPAL SINGH (PLAINTIFF).

[On appeal from the Court of the Commissioner of Lucknow and the Court of the Judicial Commissioner of Oudh.]

Proof of Custom—Indian Evidence Act (I of 1872), ss. 35 and 48—Reg. VII of 1822—Admissibility of village Wajib-ul-arz.

Held, on the question whether there did or did not exist a custom in the Bahrulia clan in Oudh excluding daughters from inheriting, that the *wajib-ul-arz* of a mouza in the taluqa, stating the custom of the Bahrulia clan as to inheritance, had been properly received in evidence under s. 35 of the Indian

* *Present:*—SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.