1924.

BHAGWAT SINGH v. KING-EMPEROR.

prepared to hold that where the accused refuses to answer a question, the Magistrate is bound to go on asking questions especially where a written statement is put in at the time meeting the points of the prosecution.

ADAMI, J

I can see no reason to hold that in the present case the trial has been vitiated by the fact that the Magistrate did not continue asking questions after the accused had refused to answer.

Finally, Sir *Ali Imam* has moved for a reduction of the sentences passed against the petitioners on the ground that this was not a case of wanton aggression. I have held, however, above, that the petitioners had no justification for their action and that it cannot be held that they had a *bonâ fide* belief that they had a right to attack the Itarha people and break down the *bandh*. The sentences are, in my mind, not excessive, and I see no reason to reduce them.

On the grounds I have given above, I see no reason to interfere and would reject the application.

BUCKNILL, J.—I agree.

Petition rejected.

PRIVY COUNCIL.

SATYA NIRANJAN CHAKRAVARTI

v.

RAM LAL KAVIRAJ AND OTHERS.*

1924.

Nov. 25.

Minerals—Patni *tenure*—*Right of* patnidar *to minerals*—*Construction of deed of* patni *Settlement*—*Express grant*—*Implied grant of right to work*—*Limitation*—*Limitation Act* (*IX of* 1908), *Schedule I*, *Articles* 120, 144

A *zamindar* granted in 1852 a deed of *patni* settlement of a *mauza*. The deed, as officially translated from Bengali, provided that the grantee should have possession of all the lands appertaining to the *mauza*, the various customary rights

* PRESENT: Lord Dunedin, Lord Atkinson, Mr. Ameer Ali, and Lord Salvesen.

being particularized, "and all rights and interests appertaining to all such things lying within the four boundaries and above and below (the surface)." The words "above and below" in the original were "adha, urdha". In 1915 the *zamindars* sued the *patnidars* for a declaration that the plaintiffs "are entitled to and are in possession of the underground rights of the said *mauza*"; they also claimed damages and an injunction. The defendants had worked coal mines under the *mauza* on a large scale since 1894, and to the knowledge of the plaintiffs since 1898.

Held, that the suit was barred by the Limitation Act, 1908, Schedule I; if it was to be regarded as a suit for possession it was barred by Article 144, if as one for a declaration, it was barred by Article 120.

Held, further, that upon the true construction of the deed it conveyed all the *zamindari* rights, including the subjacent minerals, and that as against the grantor a grant of the right to work the minerals should be inferred. Their Lordships observed, however, that the question whether a *patni* grant carried subjacent minerals without express words is not concluded by the decision of the Board in *Giradhari Singh* v. *Megh Lal Pandey*(1) nor by any other decision of the Board and that question is still open.

Judgment of the High Court [*Ram Lal Kaviraj* v. *Raja Maharaj Kumar Satya Niranjan Chakarvarty*(2)], affirmed.

Appeal (no. 64 of 1923) from a decree of the High Court (June 16, 1920) reversing a decree of the Subordinate Judge of Jamtara.

In 1852 the *zamindars* granted a deed of *patni* settlement in respect of *mauza* Sultanpur which was within their *zamindari*. The material portions of the deed as translated from Bengali appear from the judgment of the Judicial Committee. It appeared from the judgment of Jwala Prasad, J., that the Bengali words translated "within the four boundaries and above and below" were '*adha urdha hadud mahdud*', after which occurred the words '*hak hakuk*'.

(1) (1917) L. R. 44 I. A. 246. (2) (1920) 5 Pat. L. J. 563.

1924.

SATYA NIRANJAN CHAKRAVARTI v. RAM LAL KAVIRAJ AND OTHERS

In 1915 the appellants, who with certain *pro-forma* defendants were holders of the *zamindari*, instituted a suit against the *patnidars* and *darpatnidars* of the *mauza* (the present respondents nos. 1 to 10) alleging that the defendants were raising and appropriating large quantities of coal from the *mauza*. The plaintiffs prayed for a declaration :

> " that the plaintiffs are entitled to and are in possession of the underground rights of the said *mauza*, and that the defendants had no right or interest in the sub-soil of the said *mauza* " ;

they also claimed damages and an injunction.

The principal defendants, who were in possession by purchase, pleaded among other things that their predecessors in interest were entitled to the minerals underlying the mauza by the terms of the *patni* grant; they also relied upon the long period during which they had worked the minerals to the knowledge of the plaintiffs and their predecessors in title, and they pleaded that the suit was barred by limitation.

The Subordinate Judge held that the *patni* deed did not convey to the grantees any right in the minerals; also that the suit was not barred by limitation or any estoppel. He accordingly made a decree for the plaintiffs.

Upon appeal to the High Court the decree was reversed and the suit dismissed

Jwala Prasad, J., with whose judgment Adami, J., concurred, was of opinion that as the effect of the inclusion of the words ' *adha* ' and ' *urdha* ' in the deed there was a conveyance of the underground rights, including a right to work the mines; though in his view, having regard to the decision of the Board in *Giridhari Singh* v. *Megh Lal Pandey* (1), the minerals would not have been conveyed had the words ' *hak hakuk* ' stood alone. Upon the evidence it was found that the defendants and their lessee had worked the mines continuously since 1894, and that they had done so with the knowledge of the *zamindars* since 1898 or

(1) (1917) L. R. 44 I. A. 246.

earlier. No decision was given upon the question of limitation, but the view was expressed that the delay in bringing the suit showed that the plaintiffs understood that the minerals were included in the grant.

1924, October 23, 24, 27. Upjohn, K. C., Dunne, K. C., and *Dube*, for the appellants. A series of decisions of the Board establish that the grant of 1852 did not include the subjacent minerals in the absence of express words. [Reference was made to the six decisions mentioned in the judgment of their Lordships]. The grant did not by its terms show a clear intention to convey the underground rights. [Reference was made to Wilson's Glossary, s.s. '*adha*', '*adhi*']. The grantor of 1852 not knowing that there was any underlying minerals could not have intended to grant them. In any case there was no right to open new mines and work the coal: *see* Transfer of Property Act, 1882, sections 105, 108(D). That right could not be acquired by prescription; *Lord-Advocate* v. *Wemyss* (1), *Glyn* v. *Howell* (2).

De Gruyther, K.C. and *Kenworthy Brown*, for the respondents nos. 1 to 10. The decisions of the Board relied on by the appellants do not apply to a *patni* grant. A *patni* is a *taluk* and a *patnidar* holds, as by substitution, all the *zamindari* rights, there is no reversion in the *zamindar*: *Tarini Churn Gangooly* v. *Watson & Co.* (3), *Joykishen Mookerjee* v. *Collector of East Burdwan* (4), *Ali Quader Hossein* v. *Jogendra Narain Roy* (5), *Ranjit Singh* v. *Kali Dasi Debi* (6); Bengal Regulation VIII of 1819, sections 3, 11; Field's Introduction to the Bengal Regulations, p. 37; Harington's Analysis, vol. 3, pp. 247, 248. But in any case the deed upon its true construction contained an express grant of the underground rights; the official translation cannot be questioned, nor is any ground shown for doubting its correctness. The grant should

(1) (1900) A. C. 68.
(2) (1908) A. C. 666.
(3) (1869) 12 W. R. 413, 416.
(4) (1864) 10 Moo. I. A. 16.
(5) (1889) 16 Cal. L. J. 7.
(6) (1917) I. L. R. 44 Cal. 841; L. R. 44 I. A. 117.

1924.

SATYA NIRANJAN CHAKRAVARTI v. RAM LAL KAVIRAJ AND OTHERS.

be construed in favour of the grantee; *Neil* v. *Duke of Devonshire* (1). Further, the suit is barred by limitation. If the suit is treated, as it was below, as one for possession, it is barred by the Limitation Act, 1908; Schedule I, Article 144. If the suit is to be treated as one for a declaration it is barred by Article 120; *Kodoth Ambu Nair* v. *Secretary of State for India* (2), *Waziran* v. *Bafu Lal* (3).

Upjohn, K.C., in reply. The suit is not barred by limitation. The findings do not touch the question of possession of the unworked coal. Having regard to section 23 of the Indian Limitation Act, 1908, a fresh cause of action arose each time that coal was removed. The decisions of the Board already referred to cover the case of a *patni* grant having regard to the observations in *Sashi Bhushan Misra* v. *Jyoti Prasad Singh Deo* (4) and *Giridhari Singh* v. *Megh Lal Pandey* (5). The decision in *Ali Quader Hossein* v. *Jogendra Narain Roy* (6) turned upon the language of the grant; the observations as to the effect of a *patni* grant were obiter, and are not of authority having regard to the decisions of the Board already cited. The Bengal Regulations show that there are independent and dependent *talukdars*; a *patnidar* is not a *talukdar* in the sense that a "proprietor" is: Bengal Regulation I of 1793, Bengal Regulation VIII of 1793, sections 5, 7. Reference was made also to *Secretary of State for India* v. *Shrinavasa Chariar* (7).

November 25. The judgment of their Lordships was delivered by—

LORD DUNEDIN —The present action is as to the right to the minerals in a *mauza* at Sultanpur. The plaintiffs are the *zamindars* of a *zamindari* within the bounds of which the said *mauza* lies. The defendants

(1) (1882) 8 App. Cas. 135, 142.
(2) (1924) L. R. 51 I. A. 257, 268.
(3) (1904) I. L. R. 26 All. 391.
(4) (1916) I. L. R. 44 Cal. 585; L. R. 44 I. A. 46, 51,
(5) (1916) I. L. R. 45 Cal. 87; L. R 44 I. A. 246, 250,
(6) (1889) 16 Cal. L. J. 7.
(7) (1920) I. L. R. 44 Mad. 421; L. R. 48 I. A. 56,

are the *patnidars* and *darpatnidars* of the said *mauza*. The defendants are working, and, as the High Court have found—as to which finding no dispute has been raised before this Board—have worked the mines on a large scale since 1894 and to the knowledge of the plaintiffs since 1898.

The present suit was raised in 1915. The defendants rely upon three separate defences. First, they say that being *patnidars* they are in right of all the *zamindari* rights appertaining to the territory embraced in the *patni* lease unless exception has been expressed, and that no exception of minerals was expressed. Secondly, they say that the *patni* lease gives them the right to the minerals in express terms. Thirdly, they say that the suit is barred either under article 120 or article 144 of the first schedule to the Indian Limitation Act. The learned Subordinate Judge decided all three questions against the defendants and gave decree. On appeal the High Court of Patna affirmed the view of the Subordinate Judge on the first question, but reversed him on the second. It is somewhat difficult to say whether they affirmed or reversed on the third, but, as they were in favour of the defendants on the second, they dismissed the suit.

On appeal to this Board all these questions have been argued at great length, and it has been urged that the first question is one of very general importance. Their Lordships, however, think that the case may be disposed of on the second and third questions. To take the third question first, the relief asked by the plaintiffs was at once possessory and declaratory, for they ask

> "that it should be declared that the plaintiffs are entitled to and are in possession of the underground rights of the said *mauza*."

Their Lordships think that they are placed in this dilemma. The suit is admittedly raised more than twelve years after the working of the minerals on a large scale, that is to say, a proper working of the field. It must be assumed for the purposes of this

1924.

SATYA NIRANJAN CHAKRAVARTI v. RAM LAL KAVIRAJ AND OTHERS

plea that the plaintiffs are right on the first and second points. The working by the defendants was, therefore, working not under a lease but by a mere trespasser. If, therefore, the suit is possessory, then it is barred under article 144 of schedule I, for more than twelve years have elapsed since the possession became adverse. If, on the other hand, the suit is declaratory, it is barred under article 120, for more than six years have elapsed since the right to sue for the declaration emerged.

Further, their Lordships agree with the High Court on the second question. This depends on the document of title. It runs as follows :

DEED OF *PATNI* SETTLEMENT.

"We let out to you in *mofussali patni* settlement the *mauza* Sultanpur, as per boundaries given in the *thakbasta* papers, appertaining to *taraf* Afzalpur and comprised in our *zamindari* share, amounting to 4 annas in *tappa* Kuntahit Karaya, excluding the Chakran *jaigir*, *debottar*, *brahmotar* and other extra lands, *etc.*, and the Katai *jungles* included in Tikish (?) at an annual rental of Rs. 25 in Company's coin and a premium of Rs. 45 in Company's coin. You will hold possession of all the lands appertaining thereto from a very long time, such as *mal*, *khamar*, *hasil*, *patit*, *bil*, *jhil*, *khal*, *kandar*, *pahar* and *parbat*, *jatkar*, *falkar*, the fruit-bearing and non-fruit-bearing trees and the jungles and all rights and interests appertaining to all such things lying within the four boundaries and above and below (the surfaces). You will not be ousted from the *zamindari*."

There have been a series of cases before this Board in which their Lordships have held, in the case of leases of *mukarrari* and other tenures, that, in order to pass minerals to the lessee, express words must be used. They are *Tituram Mukerji* v. *Cohen* (1), *Hari Narayan Singh Deo* v. *Sriram Chakravarti* (2), *Durga Prasad Singh* v. *Braja Nath Bose* (3), *Shashi Bhushan Misra* v. *Jyoti Prashad Singh Deo* (4), *Giridhari Singh* v. *Megh Lal Pandey* (5) *Raghunath Roy Marwari and others* v. *Durga Prasad Singh* (6). Both the Subordinate Judge and the Judges of the High Court

(1) (1905) I. L. R. 32 Cal. 203; L. R. 32 I. A. 185.
(2) (1910) I. L. R. 37 Cal. 723; L. R. 37 I. A. 185.
(3) (1912) I. L. R. 39 Cal. 696; L. R. 39 I. A. 133.
(4) (1916) I. L. R. 44 Cal. 585; L. R. 44 I. A. 46.
(5) (1917) I. L. R. 45 Cal. 87; L. R. 44 I. A. 246.
(6) (1919) I. L. R. 47 Cal. 95; L. R. 46 I. A. 158.

have decided that these cases equally apply to *patni* tenures. Without so deciding, this must be assumed for the purpose of deciding the second question. The Subordinate Judge thought that such words as '*adha*' '*urdha*' '*hadud mahdud*' were mere words of style commonly used by writers of deeds without a proper understanding of their meaning, and, therefore, refused to give any effect to them. This seems a mistaken view. Common words of style used in conveyances of any sort may be, and often are, words of surplusage, but when they are not words of surplusage, they must be given the proper effect of their own meaning. This view was taken by the High Court. They thought that, looking to the anxious expression of the generality of the grant as evidenced by the long category of things conveyed, the words '*adha*' and '*urdha*' made it plain that there was every intention to convey all below the surface as well as all on it or above it. With this view their Lordships agree.

Two more contentions of the appellants must, however, be stated in order to be set aside. Their counsel argued that section 108(*o*) of the Transfer of Property Act settled the question. Their Lordships consider this an impossible contention. The meaning of the section is clear enough. It is obviously dealing with the ordinary rights of a lessee in an ordinary lease, but it would be nothing less than an absurdity to hold that its terms cut down the right to work a mineral field expressly conveyed. They further argued that a right to the minerals does not infer a right to work. It is a general principle of all grants *quando aliquid conceditur id etiam conceditur sine quo res ipsa non esse potest*. This is always true as between grantor and grantee, but it does not necessarily apply as against third parties. If the grantor has granted the surface to *A* and the minerals to *B*, it may well be that the mere grant of the minerals will not include a right to bring down or otherwise injure the surface in the process of winning the minerals. But here there is no question of that sort. The grantee

1924.

SATYA NIRANJAN CHAKRAVARTI v. RAM LAL KAVIRAJ AND OTHERS

of the minerals is also the grantee of the surface. Their Lordships have, therefore, no hesitation in saying that this grant of the minerals, in a question with the grantor, which is the only question here, includes the right to work.

Such being their Lordships' views, which directly lead to an affirmance of the judgment of the High Court, they would, in ordinary circumstances, have said no more as to the first and general question of whether a *patni* tenure, without more said, transfers as has been contended by the respondents all the rights of the *zamindari*, including the right to the minerals.

There is admittedly conflicting authority on the point, but the learned Subordinate Judge, and also the Judges of the High Court, considered that the authorities in favour of the *patnidar* were overruled by the decisions of the Board in the series of cases mentioned above. Their Lordships cannot agree with that view. *Tituram Mukerji* v. *Cohen* (1) was the case of a maintenance grant. This was held not to include minerals. *Hari Narayan Singh Deo* v. *Sriram Chakravarti* (2) was a *debottar* tenure. *Durga Prasad Singh* v. *Braja Nath Bose*(3) was the case of a lease held as the appanage to the office of *digwar*. *Shashi Bhushan Misra* v. *Jyoti Prashad Singh Deo* (4) was the case of a *brahmottar* tenure, which means that that was a grant to Brahmins for their support. *Giridhari Singh* v. *Megh Lal Pandey* (5) was an ordinary *mukarrari* lease. *Raghunath Roy Marwari* v. *Durga Prasad Singh* (6) was again a case of a *brahmottar* tenure. Not one of these was the tenure of a *patni taluk* in the hands of a *patnidar*. In their opinion the question, so far as direct decision of this Board is concerned, is still open. It really turns on what is the true nature of a *patni* tenure. Their Lordships

(1) (1905) I. L. R. 32 Cal. 203; L. R. 32 I. A. 185.
(2) (1910) I. L. R. 37 Cal. 723; L. R. 37 I. A. 136.
(3) (1912) I. L. R. 39 Cal. 696; L. R. 39 I. A. 133.
(4) (1916) I. L. R. 44 Cal. 585; L. R. 44 I. A. 246.
(5) (1917) I. L. R. 45 Cal. 87; L. R. 44 I. A. 246.
(6) (1919) I. L. R. 47 Cal. 95; L. R. 46 I. A. 158.

think that the learned Judges have been misled by a wrong view of expressions used by Lord Shaw in *Giridhari Singh* v. *Megh Lal Pandey* (1), when quoting the judgment of Lord Buckmaster. His Lordship says that the decisions establish that when a grant is made by a *zamindar* of a tenure at a fixed rent, although the tenure may be permanent, heritable and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect.

But that only means that the mere facts of a lease being permanent, transferable, and heritable does not necessarily carry with it the result that the lessee has all *zamindari* rights. His Lordship was dealing with a contention founded on *mukarrari* leases. The passing of a *mukarrari* lease does not, says he, have the effect that all the rights of a *zamindar* go with it, but his Lordship did not mean to say and did not say "because a permanent lease does not entail that effect, therefore, inasmuch as a *patni* lease is a permanent lease, it does not entail that effect." That question was not before him and was not decided.

Their Lordships do not decide it now as it is not necessary for the judgment, nor do they wish to express any opinion on the matter save one, *viz.*, that they do not agree with the dictum of the High Court which says that the judgment of Prinsep and Hill, J.J. in the case of *Ali Quader Syed Hossein Ally* v. *Jogendra Narain Roy* (2) has been overruled by the decisions of this Board above cited. That decision is in conflict with the decisions of other Courts in India, and whether it or those other decisions are right must remain for settlement on another occasion.

Their Lordships will humbly advise His Majesty to dismiss the appeal with costs.

Solicitor for appellants: *H. S. L. Polak.*

Solicitors for respondents: *Pugh & Co.*

(1) (1917) I. L. R. 45 Cal. 87, 92; L. R. 44 I. A. 246, 249.
(2) (1889) 16 C. L. J. 7.