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series of cases decided in the Calcutta High Court without referring to those cases, then, with all respect, I differ from their Lordships.

The other case upon which Mr. Hasan Imam relies is the case of *Ramprotap Marwari* v. *Jhoomak Jha*(1). The only point involved in that case was whether an application presented to the Deputy Collector was an application contemplated by section 167 of the Bengal Tenancy Act. No other point was involved in the case, and I decline to consider as binding upon me any obiter dictum that may have been expressed in the course of the decision of their Lordships in dealing with that case. In my opinion the decisions of the Calcutta High Court on this point are correct and I respectfully agree with those decisions. In my opinion therefore, there is no evidence at all that the incumbrances have been annulled under section 167 of the Bengal Tenancy Act; and, even if it were established in this case that the decree obtained by the landlord was a rent decree, the plaintiff would still be entitled to recover possession of the disputed lands.

I agree with the conclusion at which the learned Subordinate Judge has arrived and dismiss this appeal with costs.

ALLANSON, J.—I agree.

PRIVY COUNCIL.

J. C. 1928.

April, 24.

ASHUTOSH DEO AND ANOTHER

v.

BANSIDHAR SHROFF.*

Ghatwali Tenure—Ghatwals in Birbhum—Inalienability—Execution of Decree— Commutation of Police Charges—Ben. Reg. XXIX of 1814—*Act V of* 1859—*Santal Parganas Rural Police Regulation (Reg. IV of* 1910).

*Present: Viscount Sumner, Lord Shaw, Lord Blanesburgh, Lord Atkin, and Sir Lancelot Sanderson.

(1) (1917) 38 Ind. Cas. 948.

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The inalienability of a ghatwali tenure is a settled principle of the general law, and, with regard to those in Birbhum it was affirmed by Ben. Reg. XXIX of 1814 and Act V of 1859. A ghatwali tenure in Birbhum, held under conditions more extensive than that of merely supporting the police within the zamindari, is not rendered alienable, and therefore liable to seizure in execution, by the Santal Parganas Rural Police Regulation, 1910, which commuted for a money payment the obligation of the ghatwals in relation to police without purporting to affect the Regulation of 1814 or the Act of 1859. The Regulation of 1910 does not operate as a release or discharge of the Government's right to have the alienability of the tenure enforced unless and until the Government effectually puts an end to it in the manner laid down in *Narayan Singh* v. *Niranjan Chakravarti* (1).

Decree of the High Court reversed.

Appeal (no. 73 of 1925) from a decree of the High Court (December 9, 1924) reversing a decree of the Subordinate Judge of Deoghar (September 15, 1923).

The respondent having obtained in 1917 decrees for the aggregate sum of Rs. 30,000 with interest against the first appellant, applied to execute them against that appellant's ghatwali estate in the Birbhum District.

The Subordinate Judge dismissed the application being of opinion that the appellant's estate was inalienable.

An appeal to the High Court was allowed, and an attachment and sale ordered. The learned Judges (Ross and Das, JJ.) were of opinion that by virtue of the Police Regulation IV of 1910 the estates of ghatwals to whom the Regulation applied were no longer inalienable and free from liability of attachment and sale.

The terms of the Regulation and the obligations imposed upon the first appellant by his muchilka appear from the judgment of the Judicial Committee.

The Secretary of State for India in Council was joined as an appellant by special leave of the Board.

Upjohn K. C. and *Dube* for the first appellant;

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(1) (1923) I. L. R. 3 Pat. 188, 217; L. R. 51 I. A. 37, 68.

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Dunne K. C. and *Kenworthy Brown* for the Secretary of State. Prima facie the appellant's ghatwali holding was inalienable and not liable to seizure in execution: *Nilmoni Singh* v. *Bakranath Singh*(1), Ben. Reg. XXIX of 1814, Act V of 1859. That incident of the tenure is not affected by the Santal Parganas Rural Police Regulation, 1910. The Regulation refers to ghatwali tenures only so far as they are brought into its operation by the definition of a zamindar, it does not purport to affect the established incidents of ghatwali tenures, and as by section 2 it can be withdrawn it is highly improbable that it was intended permanently to have that effect. The ghatwal was not a person holding upon a condition "of supporting the police" within section 8, sub-section 1, his obligation was to perform police services himself. In any case his obligations under his muchilka were much wider.

It was held by the Board in *Narayan Singh* v. *Naranjan Chakravarti* (2), which related to a ghatwali tenure in the Santal Parganas, that the ghatwali character of the lands terminated only upon the Government expressly or impliedly releasing its right to appoint the ghatwal, and to enforce his obligations. The Regulation had not that effect. The muchilka of 1911 shows that the obligations were continued.

De Gruyther K. C., *Sir George Lowndes K. C.*, and *E. P. Raikes* for the respondent. The appellant was not, like some ghatwals, a great landowner with duties to protect the border; his position did not differ in substance from that of an ordinary zamindar. The effect of the Regulations of 1900 and 1910 was to commute for a money payment the only service which he had to perform. Under these Regulations he could no longer perform his services. The muchilka and kabuliyat were the documents usually given, but in fact the duties depended upon statutory enactments. The Regulations having removed the only ground upon

(1) (1882) I. L. R. 9 Cal. 187; L. R. 9 I. A. 104.

(2) (1923) I. L. R. 3 Pat. 183, 217; L. R. 51 I. A. 38, 68.

which the alleged inalienability of the tenure rested the tenure was liable to seizure in execution:

Midnapore Zamindari Co. v. *Appayasami Naicker* (1).

The judgment of their Lordships was delivered by Viscount Sumner.

The appellant, the holder of a ghatwali tenure in Birbhum called Rohini, appeals from a decree of the High Court at Patna, which reversing a decision of the Subordinate Judge of Deoghar, granted the petition of the respondent, a decree-holder, and ordered execution, by sale of the tenure, to proceed. The Secretary of State, intervening by leave, supports the appeal.

Apart from the effect of the Santal Parganas Rural Police Regulation, 1910, whatever it may be, it is quite clear that no such order could be made. The inalienability of a ghatwali tenure is a settled principle of the general law [see *Nilmoni Singh* v. *Bakranath Singh* (2)], and, with regard to those in Birbhum, Bengal Regulation XXIX of 1814 and Act V of 1859, which the Regulation of 1910 does not purport to affect, have specifically affirmed it. The contention of the respondent is that the administrative arrangements laid down in the Regulation of 1910 have, in effect, commuted the whole of the ghatwal's personal services into a money payment and have accordingly removed the reason, which historically has been assigned as the explanation of this incident of ghatwali tenure. The Regulation of 1910 is itself plain enough, and nothing seems to turn on its mere construction. The principle of the decision below may be briefly said to have been an application of the maxim, Cessante ratione legis cessat ipsa lex, to the case of an established incident of a right to land.

The Regulation, which repeals and replaces a similar Regulation of 1900, is designed to provide for the organization of the Rural Police in the Santal

(1) (1918) I. L. R. 46 Mad. 749.
(2) (1882) I. L. R. 9 Cal. 187; L. R. 9 I. A. 104.

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Parganas generally, but in providing for the pay of different police grades, it enacts by section 8 that, where a zamindar or undertenure-holder holds subject to the condition, express or implied, of supporting the police within his zamindari or undertenure, he shall be liable to pay the amount of money required for such police. It is only by the definition section that the provisions of the Regulation are applied to ghatwals at all, for, in defining the word "zamindar," section 3 adds "and includes also the ghatwals of Tapah Sarath Deoghar, whose tenures are subject to the provisions of the Bengal Ghatwali Lands Regulation, 1814."

The appellant succeeded the previous holder, his deceased cousin, in 1911, being duly appointed by the Deputy Commissioner of the Santal Parganas, and he executed, as usual, a muchilka, in an ancient and accustomed form, dated the 23rd October, 1911, by which, on his appointment, he undertook a variety of duties, most of them no doubt connected directly or indirectly with the "maintenance of the public peace" within his lands, partly by personal service, partly by constables and such like, employed for the purpose. It may be frankly recognised that, if relieved of that part of his obligations which would be dealt with under the regular system of the rural police, the residue of his duties would be neither onerous nor important. As is the case with many other ghatwals, his position might then be described as an interesting survival.

Accordingly, in so far as his duties fell to be performed by the rural police, they may be fairly said to have been commuted for a money payment, and section 8 itself provides that, in cases of default in payment, the Deputy Commissioner is to recover it by the "process prescribed for the recovery of arrears of Government revenue."

As between himself, as judgment-debtor, and his judgment-creditor no doubt the appellant has no merits; but the issue involved in this case is the wider one of the effect of this Regulation upon the

alienability of a ghatwali tenure in Birbhum generally. If the effect is that contended for, the tenure would pass to a purchaser by the sale alone, and would in future involve no further obligation on the holder, if so much, than payment of such police salaries as might attach to it. The Government would lose its power of forfeiting the tenure on failure of the holder to perform the conditions and of making a new grant to some more worthy ghatwal. Not only judgment-creditors would be entitled to sale; the ghatwal himself would be able to sell at will, for inalienability, if removed at all by the effect of the Regulation, must be removed for all. Apart from an actual repeal, which was the fate of the former Regulation in about a decade, this Regulation itself provides by section 2 for its own withdrawal by the Local Government from any portion of the Santal Parganas and also for its own restoration by the same authority. So far from being on its face a Regulation altering the general law as recognised by the above-quoted Regulation and Act, this local Regulation only brings in ghatwals as zamindars, incidentally and for the sake of uniformity. It was passed, alio intuitu, to make better provision for local police administration, and it is essentially of a temporary character and of shifting application. Nevertheless, the respondent has to contend that it has also incidentally terminated for ever an ancient characteristic of the ghatwali tenures to which it applies, not to be revived automatically on a withdrawal of the Regulation but only by some legislation in the future, which, unlike this Regulation, would have to be passed ad hoc.

If the contention be right, it was not the Regulation of 1910 but that of 1900 which really worked this novel and irrevocable change, for its provisions were essentially similar. If it be right, the muchilka taken in 1911 was, as to many of its terms, wholly otiose, and the appointment made by Government was no longer a personal appointment in favour of the next heir as an act of State, but had

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really become, apart from its form, an unqualified admission, to be made, of course, in favour of any donee or vendee who could show a title.

On examining the muchilka, which need not be set out at length, there is a good deal which cannot be said to fall merely within the duties of rural police, and in this the Government was plainly imposing useless obligations, since on a sale they would remain with the alienating ghatwal, while his alienee would be free of them. Such obligations are the continuance of the old arrangements of Amals; the escort of pilgrims through the ghatwal's elaka, which is certainly not merely for their protection from the villagers or of the villagers from the pilgrims' thefts and violence; the obligation to lodge information as to crimes and other occurrences happening within the taluk; the refusal of all permission to bad characters to live within it; and the requirement of an annual list of Isimnavasi and of persons serving under the ghatwal. The words further contemplate a continuing obligation to appoint and be answerable for some peace officers of some sort apart from the constables appointed by and serving under the Local Government. They are as follows:—

"I will not allow any thief, badmash, or absconder to live within the jurisdiction of my taluk, neither will I plot or conspire against Government nor help others in doing the same. I will not discharge, without the order of Government, such persons under me who have been engaged in doing police duties; if it be found necessary to discharge any such person, I will first send an information thereof or report his faults to the authorities, and abide by such orders as will be passed by them."

Whatever may be done in actual practice, which may be little and of small moment, these words clearly import some kind of personal organization, appointed, directed and discharged by the ghatwal, over and above or it may be under and subject to the regular rural police, and out of that nucleus an important revival of the old ghatwali obligations might at any time arise.

In their Lordships' opinion the following propositions may be laid down:—

(1) Under the terms of his appointment the present ghatwal holds, under conditions which are

more extensive than that of merely supporting within his zamindari the police, in respect of whom he has to pay the amount determined by the Deputy Commissioner, and which are also substantial enough to leave his inability to alienate unaffected, as if the Regulation and its predecessors had not passed.

(2) The Regulation contains nothing, which can be construed as or operates to the same effect as a release or discharge of the Government's right to have the inalienability of the tenure enforced unless and until it effectually puts an end to it. The rule on this point was thus laid down by the Board in *Narayan Singh* v. *Niranjan Chakravarti* (1):—"To terminate the ghatwali character of the lands, it seems to their Lordships that it is necessary to find something done or omitted to be done on the part of Government as the grantors, which would have the effect of a legal surrender and regrant of the lands on new terms, or at any rate of a release of the right to appoint the ghatwal and call for the performance of his services."

What has here been done on the part of the Government is a mere provision for the machinery of police administration and had no such effect as that mentioned above.

(3) The maxim Cessante ratione legis cessat ipsa lex, or any corresponding rule has no application to the present case. The contention really amounts to a claim that a Court of Law can inquire into the present utility of an ancient incident of tenure and annul it and its enjoyment by the ruling power, whenever in its opinion the incident has survived its usefulness. This is a matter of policy, not of interpretation of a legislative instrument or of application of general law, and is beyond judicial powers.

Their Lordships are accordingly of opinion that the judgment appealed against should be reserved

(1) (1923) I. L. R. 3 Pat. 183, 217 I. R. 51 I. A. 37, 68.

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and that of the Subordinate Judge restored and that the Respondent should pay to the Appellant, Thakur Ashutosh Deo Ghatwal, his costs of this appeal and in the High Court at Patna and in the Court of the Subordinate Judge, and so they will humbly advise His Majesty.

Solicitor for first appellant: *H. S. L. Polak.*

Solicitor for second appellant: *Solicitor, India Office.*

Solicitor for respondent: *Watkins* and *Hunter.*

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

1928.

April. 24.

TIKAIT KRISHNA PRASAD SINGH

v.

BUDHAN MANJHI.*

Chota Nagpur Tenancy Act, 1908 (*Ben. Act VI of* 1908)—"*Thika dawami*" *incidents of—cultivating tenancy, nature of—non-permanency, presumption of, whether attaches—*"*thika,*" *meaning of.*

The name "thika dawami" in the record-of-rights in Chota Nagpur is given to a cultivating tenancy which partakes largely in its origin and development of a raiyati character, and is in fact a raiyati tenancy which has grown into a tenure.

Where it is not proved that the tenure is not a cultivating tenancy in which dawami rights might arise (or where it is proved affirmatively that it is such a tenancy) not only is there no presumption that it is non-permanent and resumable like a tenure of the farming class, but the onus is upon the plaintiff to rebut by evidence the entry of permanency in the record-of-rights.

* *Appeal from Appellate Decree no. 1400 of 1925, from a decision of G. Rowland, Esq., I.C.S., Judicial Commissioner of Ranchi, dated the 11th May, 1925, confirming a decision of Babu Pramatha Nath Bhattacharji, Subordinate Judge of Hazaribagh, dated the 30th September, 1920.