

concurrent with the sentences passed upon them for the offence under sections 304 and 325 respectively.

I would accordingly make the rule absolute and direct that the two sentences passed upon Ramlakhan and Anup Lal run consecutively in each case.

MACPHERSON, J.—I agree.

*Rule made absolute.*

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EMPEROR.

DHAVLE, J.

### PRIVY COUNCIL.\*

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KUMAR JAGAT MOHAN NATH SAH DEO

*June, 11.*

v.

PRATAP UDAI NATH SAH DEO.

*Minerals—Khorposh grant by Zamindar—Impartible Zamindari—absence of express grant of minerals.*

A khorposh or maintenance grant made by the holder of an impartible zamindari does not convey the sub-soil rights unless they are included expressly or by clear implication.

*Sashi Bushan Misra v. Jyoti Prasad Singh Deo*<sup>(1)</sup> and *Gobinda Narayan Singh v. Sham Lal Singh*<sup>(2)</sup>, followed.

Judgment of the High Court<sup>(3)</sup>, affirmed.

Consolidated appeals (nos. 19 and 20 of 1929) from a decree of the High Court (April 27, 1927) reversing a decree of the Subordinate Judge of Ranchi (February 4, 1925).

The suit was instituted by the first respondent the Maharaja of Chota Nagpur, against his younger brother, the above-named appellant, and licensees from the appellant, for a declaration of the plaintiff's right to the minerals and sub-soil rights in Pargana

\* Present:—Lord Russell of Killowen, Sir Lancelot Sanderson, and Sir George Lowndes.

(1) (1917) I. L. R. 44 Cal. 585; L. R. 44 I. A. 46

(2) (1931) I. L. R. 58 Cal. 1187; L. R. 58 I. A. 125.

(3) (1927) I. L. R. 6 Pat. 688.

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Tori and for an injunction. Licensees from the plaintiff were joined also as defendants and were parties in the present appeals.

Pargana Tori had been granted to the appellant by a registered pottah dated February 11, 1867, executed by the father of the first respondent and of the appellant, the previous holder of the impartible Zamindari of which the pargana had formed part. So far as material the terms of the grant were as follows :

" I have granted the entire pargana.....original with dependency.....(together with) jalkar, banker, trees, parjapur (tenants' licenses), from boundaries all included (sub sudha) in brit jagir to .....for their maintenance."

The Subordinate Judge dismissed the suit. He held that the grant conveyed both the surface and sub-soil rights in the pargana, and that it was made in accordance with the immemorial custom of the family. He was further of opinion that the plaintiff had abandoned his rights, if any, to the minerals by transactions in 1890 and 1893, and that the suit was barred by limitation.

The plaintiff appealed to the High Court which reversed the above decision, and made a decree as prayed. The learned judges (Dawson Miller, C.J. and Kulwant Sahai, J.) held that the grant of 1867 did not convey the sub-soil rights in the absence of express word or words having that effect by clear implication. They found that the alleged family custom was not proved, there being no evidence of any previous khorposh grant which carried the minerals. They also rejected the other defences accepted by the trial judge.

The present appeals were by respectively the Maharaj Kumar and by persons holding a prospecting license granted by him in 1890.

1931. June 9, 11, *De Grupther, K. C.* and *Wallach* for the abovenamed appellant.

*Hyam* for the appellants in the second appeal.

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*Dunne, K. C.* and *Ramsay* for the respondent Maharaja.

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*Du Pareq, K. C.* and *Jardine* for the respondent licensees from the Maharaja.

The respondents were not called upon to argue.

The judgment of their Lordships was delivered by—

LORD RUSSELL OF KILLOWEN.—This is a consolidated appeal which involves the decision of a dispute which has arisen between the Maharaja of Chota Nagpur on the one hand and the Kumar, his younger brother, on the other hand, and it relates to the ownership of the mines and minerals under the Pargana Tori. The parties before their Lordships are, on the one hand as appellants, the Kumar and lessees of minerals claiming under him, and on the other as respondents, the Maharaja and lessees of minerals claiming under him.

The question for determination which have been argued before their Lordships are four in number: first, whether the Kumar acquired the rights in the mines and minerals under the Pargana Tori by virtue of a certain grant of the 11th February, 1867; secondly, whether, assuming the grant did not include the minerals, he has got the minerals by virtue of an alleged custom; thirdly, whether the Maharaja, assuming both of those points failed, did not, by abandoning and relinquishing his claim to the mines and minerals in the year 1893, then create a title in the appellant, the Kumar; fourthly and finally, whether the suit, which was a suit brought by the Maharaja for a declaration of his rights, is or is not barred by the Limitation Act.

These questions will be dealt with in that order. As regards the construction of the deed in question, which has been closely argued before their Lordships,

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their Lordships think it sufficient to say two things : first, that the position, from the point of view of previous decisions by their Lordships, is summed up in the case of *Gobinda Narayan Singh v. Sham Lal Singh*<sup>(1)</sup>, in these words :

“ A long series of recent decisions by the Board has established that if a claimant to sub-soil rights holds under the zamindar, or by a grant emanating from him, even though his tenure may be permanent, heritable and transferable, he must still prove the express inclusion of the sub-soil rights.” [The word “tenure” is put in the place of the word which occurs in the report, “powers,” which appears to be a mistake.] “This is laid down in a passage from the judgment of Lord Buckmaster in *Sashi Bhushan Misra v. Jyoti Prashad Singh Deo*<sup>(2)</sup>, “which has been so often quoted in subsequent judgments of the Board that it is unnecessary to repeat it here.”

The second observation which their Lordships think it necessary to make is this : As regards the construction of this particular grant, they find themselves completely in agreement with the views expressed in the High Court, which held that the deed is incompetent upon its construction to pass the mines and minerals.

Passing to the second question which was argued, namely, that the Kumar had a right to the mines and minerals by virtue of a custom, all that need be said is this—that there is no evidence in this case, worthy of the name, establishing any such custom at all.

The third point, namely, as regards the claim that by virtue of a certain transaction which took place in the year 1893, the Maharaja then vested the minerals in the Kumar, the document which is relied upon is one which contains a recital of an agreement entered into between the Maharaja and the younger

(1) (1931) I. L. R. 58 Cal. 1187; L. R. 58 I. A. 125, 132.

(2) (1917) I. L. R. 44 Cal. 585, 594; L. R. 44 I. A. 46, 53.

brother in the year 1893. Their Lordships have carefully considered the terms of that recital, and, in their opinion, the agreement therein referred to and the transactions which then occurred, clearly did not amount to any creation of title in the Kumar. On the contrary, the agreement and the transactions which then occurred, are evidence of an assertion by the Maharaja of his title at that date. Accordingly that point equally fails.

As regards the plea of the Limitation Act, Mr. De Gruyther, who appeared for the principal appellant, the Kumar, quite properly, in their Lordships' view, gave up the point and did not argue it. Mr. Hyam, however, appearing for the lessees claiming under the Kumar, argued the point, but to his credit, be it said, with commendable brevity. In their Lordships' opinion, there is nothing in the point. A right in the Maharaja to sue arose in the year 1921, quite independent of any right to sue which may have arisen in him at an earlier date. The suit in question here was brought in the month of August, 1922; that is, therefore, clearly within time. For these reasons their Lordships will humbly advise His Majesty that this appeal fails, and should be dismissed. The appellants will pay the costs of the respondents who appeared, such costs to be limited to one set of costs to be shared equally between those two respondents.

Solicitors for appellant: *T. L. Wilson and Co.*

Solicitors for respondent: *Sanderson, Lee and Co.; Barrow, Rogers, and Nevill.*

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