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to point out that there were other facts which led him to come to the conclusion that the commissioner and the Munsif had correctly decided what amount was due from the appellants. He pointed out that the decision of the commissioner was supported by the evidence of witnesses given on oath, and that this evidence taken with the rent receipts agreed with the arrears shown in the wasilbaki account and with the realizations of 1336. The learned Advocate suggests that if the receipts were not genuine, the evidennce and the papers would not be true; but this appears to be a misunderstanding of the reasoning of the Subordinate Judge. He merely says that he does not exclusively rely on the rent receipts and there is nothing in his decision on this question of fact which can be regarded as an error of law.

The decree of the lower appellate court must accordingly be affirmed and this appeal must be dismissed with costs.

DHAVLE, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Khaja Mohamad Noor and Agarwala, JJ.

MUKTAKESHI PATRANI

v.

THE MIDNAPUR ZAMINDARY COMPANY, LIMITED.*

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Jan. 12, 22, 23, 24.
Feb. 19, 26.

Subsoil rights, ownership of—permanently-settled zamindari—presumption in favour of zamindar—grant—express dedication must be proved—minerals—adverse possession—necessary ingredients to be proved—Reports of Government officers and official documents, probative value of—ghatwal, whether is necessarily a subordinate tenure-holder—land

* Appeal from Original Decree no. 230 of 1930, from a decision of Babu Ashotosh Mukherji, Subordinate Judge of Purulia, dated the 7th May, 1930.

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within the ambit of one's zamindari—holder, whether necessarily subordinate to the zamindar.

Subsoil rights in land forming part of a permanently-settled zamindari are presumed, at all events when they are not claimed by the Crown, to belong to the zamindar. A claimant thereto proving merely possession of surface right since before the Permanent Settlement does not discharge the onus upon him, because he is presumed to hold under a grant from the zamindar and unless the grant expressly includes the subsoil rights it would not convey them.

Gobinda Narayan Singh v. *Sham Lal Singh*(1), *Durga Prasad Singh* v. *Braja Nath Bose*(2) and *Hari Narayan Singh Deo* v. *Sriram Chakravarty*(3), followed.

In a suit for declaration of title and injunction the period of limitation is six years from the date of the invasion of the plaintiff's right. As long as the title of the plaintiff is not lost by the adverse possession of the defendant, such invasion gives him a fresh cause of action.

Sheikh Latafat Hosain v. *Kumar Ganganand Singh*(4), followed.

In order that the rights be lost by adverse possession the working of the mines should be so general as to indicate that the defendant has taken possession of the minerals. Removal of a comparatively small quantity of minerals from here and there is not sufficient.

Nageshar Bux Roy v. *Bengal Coal Company*(5), referred to.

The adverse possession must be complete and will only affect the particular mineral in respect of which possession has been proved.

Bhupendra Narayan Sinha v. *Rajeshwar Prasad Bhakul*(6) and *Lodna Colliery* v. *Bepin Behari Bose*(7), followed.

(1) (1931) 58 I. A. 125, P. C.
(2) (1912) I. L. R. 39 Cal. 696, P. C.
(3) (1910) I. L. R. 37 Cal. 723, P. C.
(4) (1918) 3 Pat. L. J. 361.
(5) (1930) I. L. R. 10 Pat. 407.
(6) (1931) L. R. 58 I. A. 228.
(7) (1920) 55 Ind. Cas. 113.

Reports of Government officers and official documents are not to be regarded as having judicial authority; they are opinions on the private right of the parties, but being reports of public officers made in course of duties, they are entitled to great consideration so far as they supply information of official proceedings and historical facts and also in so far as they are relevant to explain the conduct and acts of the parties in relation to them and the proceedings of the Government founded on them.

Rajah Muttu Ramalinga Setupati v. *Perianayagum Pillai*(1), referred to.

A ghatwal's interest may not necessarily be that of a subordinate tenure-holder. The fact that a land is within the ambit of one's zamindari does not necessarily show that the holder of the land is subordinate to the zamindar. His rights may be co-ordinate with him.

Secretary of State for India in Council v. *Raja Jyoti Prasad Singh*(2) and *Forbes* v. *Meer Mohammad Taquee*(3), referred to.

Appeal by the defendants.

The facts of the case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

R. S. Chatterji, for the appellants.

P. R. Das and *S. C. Mozumdar*, for the respondents.

KHAJA MOHAMAD NOOR, J.—The plaintiff-respondent is the patnidar of Barabhum in Manbhum. One of the four principal Tarafs of pargana Barabhum is Taraf Tinsaya. He also claims to have acquired the mineral rights of the pargana from Nathaniel Kenny who in his turn had acquired a permanent mukarrari lease of those rights from the zamindar on 12th November, 1881. The defendant no. 1 is the Sardar Ghatwal of Taraf Tinsaya and defendants 2 to 3 are her subordinate ghatwals of

(1) (1874) L. R. 1 I. A. 209.
(2) (1926) I. L. R. 53 Cal. 533, P. C.
(3) (1870) 13 Moo. I. A. 438, 457.

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villages Berma and Bela alias Bengapatam. Defendant no. 4 is alleged by the plaintiff to have some interest in the said Taraf. The plaintiff instituted the suit for a declaration of his rights in the minerals of the ghatwali tenure of the Taraf and for a permanent injunction against the defendants claimed the mineral rights for themselves in their respective villages. This is, however, not material. Defendant no. 1 admitted having taken the royalty which is the subject-matter of suit.

The learned Subordinate Judge has decreed the suit. He has mainly relied upon the judgment of this Court in *Mathewson* v. *The Secretary of State for India in Council*(1) in order to decide the position of the ghatwals of Barabhum in relation to the Raja and held that they were subordinate tenure-holders and as such have no right in the minerals of the ghatwali tenure which is vested in the superior landlord. It must be conceded that the learned Subordinate Judge was not right in relying upon that decision for the determination of the question of fact which arises in this case. The judgment not being inter partes the defendants are not bound by it. The relationship of the ghatwals with the Raja of Barabhum was a question of fact and not of law and should be decided independently of that decision. No doubt that decision is of very great value in elucidating the questions involved in the case and appreciating the materials placed before us in this case just as Gazetteers and other books of reference are useful for this purpose. I therefore propose to decide the various points raised in this case on the materials placed before us in this case taking as much help as I legitimately can from that decision and other similar decisions relating to ghatwalis and also from other publications for the history of the pargana and of the ghatwali tenures situated therein. These are based on various reports of Government officers and official documents. As was pointed out by the Privy Council in the case of *Rajah Muttu Ramalinga Setupati* v.

(1) (1924) I. L. R. 3 Pat. 673.

Perianayagum Pillai(1), these are not to be regarded as having judicial authority. They are opinions on the private rights of the parties, but being reports of public officers made in course of duties they are entitled to great consideration so far as they supply information of official proceedings and historical facts and also in so far as they are relevant to explain the conduct and acts of the parties in relation to them and the proceedings of the Government founded on them.

The learned Advocate who appeared on behalf of the appellants has raised the following points in the present appeal:—

1. That the estate of Barabhum was not permanently settled and the Raja of Barabhum is not the proprietor of the entire estate.

2. That if Barabhum was permanently settled Taraf Tinsaya was not included in that settlement.

3. That the ghatwals of Taraf Tinsaya are not subordinate tenure-holders. They are what has been described in the Regulations independent talukdars or shikmi zamindars who are themselves entitled to a permanent settlement and the fact that permanent settlement was not made with them did not affect them and their rights are co-ordinate with the rights of the zamindar of Barabhum.

4. That the suit is barred by limitation as it has not been instituted within six years of the first infringement of the mineral right of the plaintiff if he had any such right.

5. That the claim for money is not maintainable as there was no evidence on the record that the stones were taken out from under-ground.

I take up the first question, namely, whether the estate of Barabhum was permanently settled.

* * * * *

(1) (1874) L. R. 1 I. A. 209.

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These facts leave no room for doubt that the entire pargana Barabhum was settled for ten years which settlement by operation of law became permanent and that the settlement continues up till now.

* * * * *

The next question for consideration is whether Taraf Tinsaya was included in the settlement made with the Raja of Barabhum. Here again there can be no doubt whatsoever that it was included.

* * * * *

The next question is whether the interest of the ghatwals in the Taraf is co-ordinate with that of the Raja of Barabhum or subordinate to him. In the case of *Secretary of State for India in Council* v. *Raja Jyoti Prasad Singh*(1) their Lordships of the Privy Council observed that a ghatwal's interest may not necessarily be that of a subordinate tenure-holder. The fact that a land is within the ambit of one's zamindari does not necessarily show that the holder of the land is subordinate to the zamindar. His rights may be co-ordinate with him: *Forbes* v. *Meer Mohammad Taquee*(2). The learned Advocate relied upon the cases of *Charu Chander Ghosh* v. *Kumar Kamakhya Narain Singh*(3) and *Surendra Nath Karan Deo* v. *Kumar Kamakhya Narain Singh*(4). In both those cases the taluks were recorded in the record-of-rights as shamilat. The zamindar said that they were jagir. The Privy Council found as a matter of fact that the taluks were shamilat taluks and the holders thereof were prior to the Permanent Settlement independent Taluqdars. Their rights were not affected by the fact that they did not come forward to take settlement within the time fixed by Regulation I of 1801.

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(1) (1926) I. L. R. 53 Cal. 533, P. C.
(2) (1870) 13 Moo. I. A. 438, 457.
(3) (1930) I. L. R. 10 Pat. 284, P. C.
(4) (1929) 12 Pat. L. T. 319, P. C.

The position of the ghatwals of Manbhum has been very elaborately dealt with by the late Sir Jwala Prasad in his illuminating judgment in *Mathewson* v. *The Secretary of State for India in Council*(1) and the nature of the service rendered by them is detailed in the Gazetteers. It is not necessary to detail them here. It is enough to say that the official records referred to by him show that the Tarafs are subordinate tenures. According to the report of Colonel Dalton the revenue payable by them was assessed at about one-third of what would otherwise have been payable by them. For the balance of two-thirds of the revenue they were required to perform police or semi-military services. These services were renderable to the Raja first when he was in charge of the police and are renderable to the Government now. By Regulation XVIII of 1805 the zamindars of jungle Mahals including Barabhum were vested with powers of police officers and they were required to perform police duties in conformity with the rules prescribed by the Government. By subsequent Regulation XXXIII of 1833 the Government directly assumed the control of the police maintaining the ghatwals as subordinate police officers and the power of appointment and dismissal of the ghatwals now rests with the Government. Ordinarily the office is hereditary, but the Government has the right of dismissing a ghatwal if occasion arises as was held in *Mathewson's*(1) case above referred to. The ghatwals, therefore, are tenure-holders under the Raja of Barabhum. In lieu of their holding this tenure they pay some rent to the Raja of Barabhum and also render services to Government. The succession to the tenure and the appointment of the tenure-holder is controlled by the Government. The position is exactly the same as would have been of the ghatwals of Kharuckpore dealt with by the Privy Council in the case of Kharuckpore in *Raja Lelanund Singh Bahadoor* v. *The Government of Bengal*(2), but for

(1) (1924) I. L. R. 3 Pat. 673.
(2) (1855) 6 Moo. I. A. 101.

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the fact that the Raja of Kharuckpore agreed to pay a perpetual amount of Rs. 10,000 to Government and the latter gave up their rights of receiving services from the ghatwals. The fact that as a part of consideration for holding the tenure the ghatwals have to render services to the Government is in no way derogatory to the position of the Raja of Barabhum who in my opinion is the proprietor of the tenure.

Sifton in his Settlement Report of Barabhum and Patkum seems to be of the view that the Taraf Sardars and ghatwals of Barabhum were coeval with the Raja of Barabhum. He has referred to the report of Mr. Dent, the Joint-Commissioner concerned in the suppressing of Ganga Narayan's rebellion in 1832 and the views of Colonel Dalton that the ghatwals were coeval with the Raja of Barabhum. Strachey seems to be of opinion that the Raja of Barabhum was only primus enter pares—the principal taraf sardar occupying the central taraf with an allotment of land for his eldest son but with a property hardly superior to those of other four major sardars. These opinions are certainly entitled to weight, but they cannot form the basis of a judicial decision. Others who went equally deeply into the question like Lala Nandjee and Risley held opposite views. The real fact is that the origin of these taraf sardars and their relation with the Raja of Barabhum are matters of ancient history and reliable data are not available to come to any definite conclusion. The fact, however, remains that at the time of the Permanent Settlement and since then they were undoubtedly treated as subordinate tenure-holders. In 1833 disputes seem to have arisen between the zamindar and the ghatwals as to whether the latter held any mal lands over and above the lands which they held as ghatwali tenure. The taraf sardars filed ismnavisis showing what lands were held as mal and what as ghatwali lands. Then the Raja of Barabhum granted a patni of the entire Barabhum to Robert Watson & Company and the latter threatened an

expensive and protracted litigation in which Government were likely to be involved. At the instance of Government Mr. Risley brought about a compromise in 1884. I am not concerned with the binding nature of the compromise upon the taraf sardars; but as it appears from page 52 of Sifton's report, though the taraf sardars of Barabhum claimed to be shikmi zamindars, the title was disallowed in the ghatwali compromise. I came across a passage in Sifton's Settlement Report at page 22 which indicated that in some case known as Erka case the claim of the taraf sardar of Tinsaya as shikmi taluqadar was accepted. We drew the attention of the parties to this passage and asked them to produce papers in connection with that case. The final judgment of the Calcutta High Court has been produced on behalf of the respondents and has been admitted by us in evidence on the admission of the plaintiff. No such question was decided in that case. The suit related to the right of the taraf sardar in respect of specific piece of land and was fought on the understanding that the taraf sardar was intermediate tenure-holder. As I have said whatever their position may have been in the past since the Permanent Settlement they have undoubtedly been nothing more than subordinate tenure-holders. I have said that Tinsaya consisted of 13 villages. Since then it seems that the number of villages has increased to 25 and the taraf also comprises 651 bighas atirikta mal jungles recognized as such in the settlement. This fact also is inconsistent with the taraf sardars being the full proprietors of the taraf.

Government is not a party to this suit and is not bound by this decision but as between the plaintiff and defendants the right in minerals is certainly with the plaintiff. No claim so far has been made by the Government. It has been laid down by the Privy Council in *Gobind Narayan Singh* v. *Sham Lal Singh*(1) that subsoil rights in land forming part of

(1) (1931) L. R. 58 I. A. 125.

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a permanently-settled zamindari are presumed at all events when they are not claimed by the Crown to belong to the zamindar. A claimant thereto proving merely possession of surface right since before the Permanent Settlement does not discharge the onus upon him, because he is presumed to hold under a grant from the zamindar and unless the grant expressly included the subsoil rights it would not convey them. The same view has been taken by the Privy Council in *Durga Prasad Singh* v. *Braja Nath Bose*(1). This was the case of a ghatwal of Manbhum and followed the decision of the Privy Council in *Hari Narayan Singh Deo* v. *Sriram Chakravarty*(2).

The next question raised by the learned Advocate is about limitation. The suit being for a declaration and injunction, the period of limitation is six years from the date of the invasion of the plaintiff's right. As long as the title of the plaintiff is not lost by adverse possession of the defendant each invasion gives him a fresh cause of action: *Sheikh Latafat Hosain* v. *Kumar Ganganand Singh*(3). The question for consideration, therefore, is whether the plaintiff has lost his right by adverse possession of the defendants. In order that the rights be lost by adverse possession the working of the mines should be so general as to indicate that the defendant has taken possession of the minerals of the Taraf. Removal of a comparatively small quantity of mineral from here and there will not be sufficient. It should be such as was found to be the case in *Nageshar Bux Roy* v. *Bengal Coal Company*(4). Such evidence is wanting in the present case. The evidence in this respect is as follows:

Exhibit B is the kabuliyat, dated the 3rd September, 1892, executed by Kangali Charan Acharjya

(1) (1912) I. L. R. 39 Cal. 696.
(2) (1910) I. L. R. 37 Cal. 723, P. C.
(3) (1918) 3 Pat. L. J. 361.
(4) (1930) I. L. R. 10 Pat. 407.

in favour of Sardar ghatwal of Tinsaya taking lease of the minerals of the Taraf on behalf of the Iron & Steel Company. It appears from the evidence of defendants' witness no. 3 Dvarikanath Mitra, Tahsildar of the defendants, that Kangali Charan Acharjya on behalf of Iron & Steel Company worked the iron-stones and lime-stones by digging the surface for 8 to 10 years. It further appears that this was objected to by Mathewson, predecessor-in-interest of the defendants, and the Deputy Commissioner intervened and directed that the royalty should not be paid to the ghatwal but be deposited with the Deputy Commissioner and a fresh lease on these terms was given in the year 1905. The Company worked for some years and paid royalty to the Deputy Commissioner who was in the position of a stake-holder. The possession of the Iron and Steel Company was therefore not adverse: *Sarala Sundari Dasi* v. *Sarada Prosad Sur*(1). The next series of documents are Exhibits D and E. Exhibit D is a lease given by the manager of the Encumbered Estate on behalf of Tinsaya Ghatwali and is dated the 4th December, 1909, and Exhibit E is the license granted by the said manager and is dated the 9th March, 1910. Both are in favour of one Mr. F. H. Achard. The only evidence to show that Mr. Achard interfered with the minerals of the Taraf is Exhibit 0(4) which is a letter from the General Manager of the Encumbered Estate to Mr. Achard to the effect that receipts of the royalty were being sent to Mr. Achard by the manager. These receipts, however, do not show the extent of the working of the mines and the number of years for which they were worked. This exhausts the documentary evidence of adverse possession produced on behalf of the defendants and, in my opinion, they are not enough for us to hold that the mineral rights of this Taraf have been lost by the plaintiff on account of adverse possession of the defendants.

(1) (1904) 2 Cal. L. J. 602, 610.

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The learned Advocate for the appellants, however, has relied upon the evidence of the plaintiff's witness no. 9, Ramratan Ghose. It is to the effect that "B. N. Railway Co., took stones for 8 to 10 years from the mauzas meaning mauzas Bela and Berma comprising the Taraf Tinsaya. He also says that the depth of the quarries was 11 or 12 cubits. The evidence is too vague to be of any value. It is not clear whether the period of the working was 8 or 10 years or whether it was 8 or 10 years before the time when the witness was deposing in 1930. If we take 8 years from 1930 that will take us to about the year 1922 and the suit was instituted in 1927 well within six years of the act of infringement. In fact it is the quarrying of the stones by the B. N. Railway Company which is the cause of action of the present suit. The adverse possession must be complete and will only affect the mineral for which possession has been proved: *Bhupendra Narayan Sinha* v. *Rajeshwar Prosad Bhakul*(1) and *Lodna Colliery* v. *Bepin Behari Bose*(2). It is not enough to prove a lease but that the lessee actually worked the mines. I am, therefore, of opinion that the plaintiff's suit is not barred by limitation. I may note, however, that the question of limitation, though raised in the written statement, was not argued before the learned Subordinate Judge and he has not dealt with it in his judgment. It was raised before us in appeal and we have to decide it on the materials before us without any help from the judgment of the trial Court. Ordinarily we would not have allowed the learned Advocate to raise this question which was not pressed before the lower Court, but we decided to let him do so.

The next question is whether the stones for which the price is asked were taken away from the surface. In my opinion the plaintiff has proved that the stones were quarried from underground and the

(1) (1931) 58 I. A. 228.
(2) (1920) 55 Ind. Cas. 113.

evidence in this respect is unrebutted and unchallenged.

The appeal, therefore, fails and I would dismiss it with costs.

AGARWALA, J.—I agree.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Macpherson and Khaja Mohamad Noor, JJ.

NANHAK AHIR

v.

KING-EMPEROR.*

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February, 9, 14, 15, 27.

Trial by Jury—Judge, duty and function of, in summing up to the Jury—evidence of accomplice, probative value of—conviction based on uncorroborated testimony of accomplice, legality of—presumption—Evidence Act, 1872 (*Act* 1 *of* 1872), *sections* 114 *and* 133.

Under section 133 of the Evidence Act, 1872, an accomplice is a competent witness against an accused person and a conviction is not illegal because it proceeds upon the uncorroborated testimony of the accomplice; under section 114 of the Act it is *open* to the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, and in particular it is open to the court to presume that "an accomplice is unworthy of credit unless he is corroborated in material particulars". If, however, this presumption is raised, the court shall, in considering whether this maxim (which is but a rule of prudence after all) does or does not apply to the case before it, also have regard to considerations which would go to show that the evidence of the accomplice is *not* unworthy of credit and which vary in different cases.

* Criminal Appeals nos. 312 and 320 of 1933, from a decision of T. G. N. Ayyar, Esq., I.C.S., Additional Sessions Judge of Patna, dated the 15th September, 1933.