1930.

SIR CHARU CHANDRA GHOSE v. KUMAR KAMAKHYA NARAYAN SINGH.

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In their Lordships' opinion, this judgment cannot be read as giving rise to any plea of res judicata with reference to the *nankar* lands.

In the result, their Lordships are of opinion that the plaintiff has failed to discharge the statutory burden imposed on him, and that the appeal should be allowed, the decree of the High Court reversed, and the decree of the Subordinate Judge restored, and they will humbly advise His Majesty accordingly. The respondents must pay the appellant's costs throughout.

Solicitors for appellant: *Watkins and Hunter.*

Solicitor for first respondent: *Solicitor, India Office.*

PRIVY COUNCIL.

BAGESWARI CHARAN SINGH

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v.

October, 21.

KUMAR KAMAKHYA NARAIN SINGH

ON APPEAL FROM THE HIGH COURT OF PATNA.*

Permanent Settlement—Zamindar—Property in Settled Land—Presumption—Record-of-Rights—Minerals—Khorposh Jagir—Chota Nagpur Tenancy Act, 1908 (*Ben. Act VI of* 1908), *s.* 84 (*3*).

Land in a zamindari is to be presumed to be the property of the zamindar and held from him.

The plaintiff was zamindar of an estate settled at the decennial settlement in 1790 which was made permanent in 1793. The defendants and their predecessors, who were of the senior branch of the zamindar's family, held villages included in the settled estate subject to an annual payment to the zamindar. The holding was recorded in the record-of-rights under the Chota Nagpur Tenancy Act, 1908, as a *jagir* held from the zamindar. The defendants claimed that the villages, with the subjacent minerals, were their property; they contended that the payments were in respect of revenue paid through the zamindar instead of direct to Government. In 1791 the agent for the East India Company had granted a sanad to the defendants' predecessors remitting the revenue in respect of two of the villages.

*PRESENT: Lord Atkin, Lord Macmillan and Sir John Wallis.

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Held, that, apart from the presumption under section 84 (*3*) of the above Act that the entry in the record-of-rights was correct, there was a presumption that the villages, being part of the settled estate, were the property of the zamindar, and that the presumption was not rebutted by the evidence. Although the defendants were of the senior branch the inference was that they held under a khorposh, or maintenance jagir; and it was well settled that as between a zamindar and a jagirdar holding from him the zamindar was entitled to the minerals. The remission of revenue, whether with or without the authority of Government, did not affect the zamindar's proprietary rights.

Decree of the High Court affirmed.

Appeal (no. 47 of 1928) from a decree of the High Court (January 21, 1927) reversing a decree of the Additional Subordinate Judge of Hazaribagh (December 22, 1922).

The plaintiff-respondent, who was zamindar of the Ramgarh estate, instituted a suit against the appellant (who was defendant no. 10) and his grandfather Jado Charan Singh (defendant no. 1, since deceased), and other members of the appellant's family. The plaint claimed a declaration that the defendants had no right to the minerals underlying villages mentioned therein, an injunction, and further relief. The respondent's case was that the villages in question constituted a rent-paying jagir held by the defendants under a grant from one of the respondent's ancestors. In the record-of-rights made in 1915 under the Chota Nagpur Tenancy Act, 1908, the tenure had been so recorded. The appellant by his statement of defence denied that the villages were a part of the respondent's zamindari and contended that they had been acquired by his ancestor by force of arms and that he was proprietor and entitled to the underlying minerals. He alleged that his annual payments to the zamindar were not rent, but revenue payable through the zamindar to Government in respect of all the villages except Dharguli and Chalkusa; as to those two villages, which were situated in the Rampur pargana, he alleged that the Government after the decennial settlement remitted the revenue and constituted them lakhiraj.

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A pedigree, from which it appears that the appellant was of the senior and the zamindar of the junior branch of the same family, appears in the present judgment; the facts as to the remission of revenue also are there stated.

Both Courts in India found that all the villages in suit were part of the estate as settled at the decennial settlement.

The trial judge found on the evidence that the presumption under section 84(*3*) of the Chota Nagpur Tenancy Act, 1908, that the entry in the record-of-rights was correct, had been rebutted; accordingly he dismissed the suit.

Upon appeal the decision was reversed and a decree was made as prayed. Mullick, J. (with whose judgment Sahay, J. agreed) found that the defendants had failed to rebut the presumption arising under the entry in the record-of-rights, and that the plaintiff had established that the entry was correct; he held therefore that the defendants' tenure was a khorposh jagirdari at an annual rental. He was of opinion that the defendants had not shown that they were independent taluqdars.

1930. July 16, 18, 21, 22.—*De Gruyther K. C.* and *Dube* for the appellants.

Upjohn K. C., L. P. E. Pugh and Wallach for the respondent.

The judgment of their Lordships was delivered by—

SIR JOHN WALLIS.—In this, as in the case of *Sir Charu Chandra Ghose* v. *Kumar Kamakhya Narain Singh*(1), in which judgment has just been delivered the main issue is as to the correctness of an entry in the *khewat* or record-of-rights of the Ramgarh *zamindari* prepared under the provisions of the Chota Nagpur Tenancy Act, 1908. Section 84(*3*) of that Act imposes on parties challenging such an entry the burden of proving by evidence that it is incorrect.

The suit is brought on behalf of the minor Raja of Ramgarh for a declaration that the defendants

(1) *See* Ante, page 284.

have no right to the minerals in the villages held by them and for an injunction and damages. The claim for damages has been withdrawn. The defendants denied that they derived title from the plaintiff or his predecessors in title, and alleged that they themselves were the owners of the villages and of the subjacent minerals.

In the *khewat* the defendants' tenure is entered as *jagir* held under the Raja of Ramgarh resumable after the family of Fateh Singh, the supposed grantee, becomes extinct without any heirs being left at an annual rent of Rs. 1,387-1-9, and cesses amounting, at the time of survey, to Rs. 2,112-6. If this entry is correct, the plaintiff must be regarded as the proprietor of the villages and the defendants as holding under him, and it is well settled that, as between *zamindar* and *jagirdar* the *zamindar* must be regarded as the owner of the minerals.

It is, therefore, incumbent on the defendants to show that the entry is incorrect. Apart from the statutory presumption arising in this case, there is a general presumption that the land in a *zamindari* is the property of the *zamindar*, and held under him. In the two cases from this *zamindari* which have already come before the Board there was evidence that the defendant tenure-holders were the original proprietors of the suit villages, and it was not shown that they had come to be held from Ramgarh *zamindars* as *jagirs*. They were, therefore, held to have been correctly entered in the *khewat* as *shamilat taluks*, that is to say, *taluks* of which the *talukdars* were the proprietors though liable to pay the Government revenue to the *zamindar* of Ramgarh instead of directly to Government. In the present case the Subordinate Judge held that the defendants had established this, and dismissed the plaintiff's suit; but the Appellate Court were of a contrary opinion, and gave the plaintiff a decree. In their Lordships' opinion the defendants have wholly failed to prove their title and have no answer to the plaintiff's suit.

The plaintiff and the defendants are members of the same family, and it is not questioned that, if the

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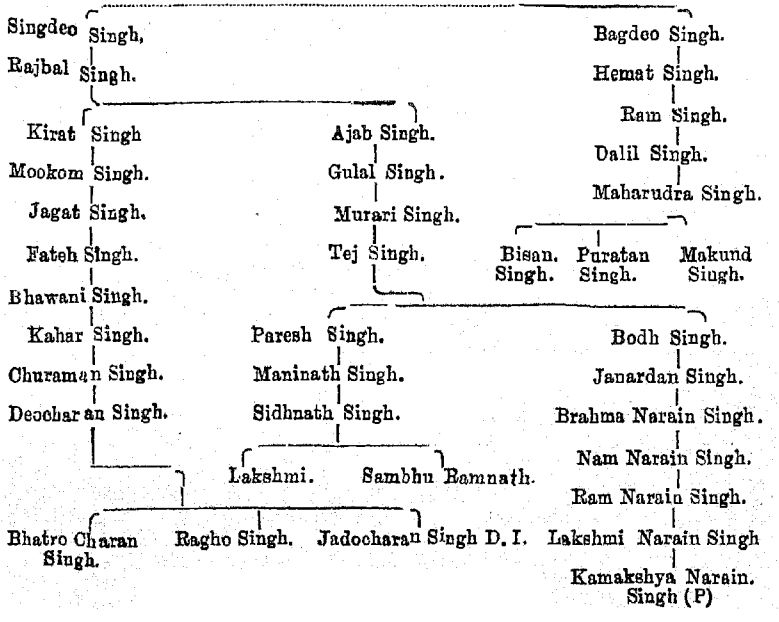
defendants were junior members of the family the natural inference would be that this was a *khorposh* or maintenance *jagir* granted to them by the head of the family. It is said, however, that the defendants are the senior branch of the family, and that it ought to be inferred that they do not hold these villages under grant from the Ramgarh Raja, but merely pay him the Government revenues for an estate which their ancestors acquired by force of arms.

Their Lordships are unable to agree with this contention, and are of opinion that the fact that the defendants are descended from a senior branch of the family is insufficient to rebut the presumption that the lands which they hold in the *zamindari* are held from the *zamindar* as *khorposh* or maintenance grants.

It is common ground that the *zamindari* was acquired by Bagdeo Singh, the junior brother of Singdeo Singh, from whom the parties to this suit are descended.

The following genealogical table is taken from the Subordinate Judge's judgment:—



The *zamindari* descended in the line of Bagdeo Singh to Mukund Singh, who was dispossessed by the East India Company in 1772, when Tej Singh, from whom the present *zamindar* is descended, was installed in his place. Tej Singh traced his descent from Ajab Singh, the junior brother of Kirat Singh, from whom the defendants are descended, and was selected because he had gone over from Mukund Singh, in whose service he had been, and joined forces with the Company in driving him out. According to tradition the two brothers, Singdeo Singh and Bagdeo Singh, were Rajputs who came from another part of India and conquered Ramgarh, and it was only natural that, when the junior brother, Bagdeo Singh, acquired the *zamindari* he should have made provision for the descendants of his elder brother. The senior brother, Singdeo, or his descendants, might, of course, have acquired an independent *zamindari* of their own; but there is no evidence that they did so, and the presumption arising from the inclusion of the villages in the Ramgarh *zamindari* is that they did not.

Except as to the two villages of Dharguli and Chalkusa in the Rampur Pargana the defendants have really no case. As regards these two villages, it is said for the defendants that the annual rent of Rs. 1,387-1-9, shown in the *khewat*, arises out of the other villages belonging to the defendants, which are all in the Pargana Markacho, and that the entries in the *khewat* in which this sum appears as including the assessments on Dharguli and Chalkusa, are incorrect, as they are *lakhiraj* or revenue-free properties which were acquired independently by the defendants' predecessors, and never formed part of the Ramgarh *zamindari*. The Subordinate Judge has taken this view, and has found that the defendants have proved by their exhibits *F* and *B*, that these villages do not belong to the Ramgarh Raja, but are the revenue-free property of the defendants.

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Assuming, however, in the defendants' favour, as the evidence appears to afford some reason for thinking, that the defendants are right in saying that the rent of Rs. 1,387-1-9 arises from the villages in the Markacho Pargana, and that the villages of Dharguli and Chalkusa in the Pargana of Rampur do not bear any assessment, still, exhibit *F*, the defendants' own exhibit, shows clearly that these two villages were formerly assessed to revenue as part of the Ramgarh *zamindari*. As is well known, the Mogul rulers were in the habit of keeping accounts of the actual as well as the *khanil* or standard *jama* of the villages as to which they had made temporary settlements of the revenue, and this system was continued by the East India Company. Exhibit *F* described as "Settlement Register of Pargana Ramgarh from 1760 to 1790," shows that these two villages were entered in the name of Maninath Singh, who was the Raja of Ramgarh in 1790, as proprietor. It shows also that these two villages had formerly been assessed to revenue in the time of Bishun Singh, the Raja who died in 1763, but that in the time of Raja Maninath Singh they were entered in the accounts without any *jama* being shown against them.

This goes to show that prior to the time of Tej Singh, Dharguli and Chalkusa formed part of the Ramgarh *zamindari*, and that the Ramgarh Raja had the same proprietary rights in them as in the rest of his *zamindari*. If this be so, it does not appear how a subsequent remission of land revenue, whether authorized by the Government or not, could affect the proprietary rights of the *zamindar*.

It is stated by Major Sifton, the Settlement Officer, in his order dealing with Dharguli, that Fateh Singh and Bechu Singh belonging to the defendants' family, were two of the principal lieutenants of Tej Singh, when he invited the Company's assistance and defeated Mukund Singh and obtained the *gadi*. Tej Singh may well have rewarded them by a grant of

other villages in addition to their Markacho estate and by allowing them to hold such villages without paying *jama*. So long as they paid their own *jama* to Government according to the terms of their *patta*, *zamindars* were at liberty to collect or not to collect the *jama* payable to them by those holding under them, as the *jama* or land revenue had been alienated to them for the duration of the settlement, but they could not any further affect the Government's right to its land revenue. Therefore, at the decennial settlement of 1790 Government could either have reassessed these villages and included the assessment in the assets with reference to which the *zamindar's jama* was fixed, or have left them unassessed or *lakhiraj*, in which case the *zamindar* was prohibited by the terms of his *patta* from assessing them.

In their Lordships' opinion these considerations are material with reference to the other document on which the defendants rely, exhibit *B*, Mr. Dallas's *sanad* of November, 1791, remitting the revenue of Dharguli and Chalkusa and two other villages which are not the subject of this suit—

"(Seal of) Mr. George Dallas, Madarul Muham (principal manager) of the East India Company, the best of traders, under Emperor Shah Alam, the victorious (illegible).

"To the brave Thakur Fateh Singh and Thakur Bechu Singh. May you live in comfort. I had called you giving you assurances. Thereupon, you had sent Thakur Bechu Singh and Babu Medni Singh to me, as ordered by me. Both of them appeared before me. Both of them settled the entire landed property as it was ordered by me, and submitted the settlement papers to me. Therefore I am highly pleased with you, as you have carried out my orders, and I have come to know well that you are great well-wishers of the Company. Bearing this in mind, taking into consideration your loyal services and being pleased with you, I remit the rent of the four Chhajan (?) villages, which belong to you, in favour of you and your children. No one should, in future, ever make a claim in respect of the rent of those four villages.

"Mauza Dhurguli—1, Mauza Sariya—1.

"Mauza Bagdo—1, Mauza Jalkusa—1.

"The 7th Aghan Badi, 18, (torn) Sambat, corresponding to the 4th November (torn) '91."

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The Appellate Court have held this document to be genuine but invalid, as infringing the rights of the *zamindar* under the *patta* of 1790. Their Lordships are unable to share this view. They find it difficult to believe that the Collector, merely because he was pleased with Fateh Singh and Bechu Singh for following his advice in coming to a settlement with their ryots and in consideration of their former services, would have taken upon himself to remit land revenue to which the *zamindar* was entitled under his *patta*. It appears to them much more likely that, as contended before the Appellate Court, these villages were treated as *lakhiraj* and left unassessed at the decennial settlement. In that case, more especially if no grant of exemption by Government was forthcoming, the Collector may well have felt himself authorised by virtue of the authority vested in him, either to resume the revenue and assess the villages, or for the reasons mentioned in the *sanad*, to regularise the existing situation by making, on behalf of the Government, a formal remission of the land revenue.

It is, however, in their Lordships' opinion, quite immaterial for the purposes of the present case, whether or not Mr. Dallas granted the alleged remission, and whether or not he had authority to do so. The remission by the Government of its right to the land revenue of these villages could in no way affect the Ramgarh Raja's proprietary rights in these villages or his right as against tenure-holders under him, to claim the ownership of the minerals in them.

In their Lordships' opinion the appeal fails and should be dismissed, and they will humbly advise His Majesty accordingly. The appellant must pay the respondent's costs of the appeal.

Solicitors for appellant: *Watkins and Hunter.*

Solicitor for respondent: *Solicitor, India Office.*