APPELLATE CIVIL.

1938.
January, 5.

Before Courtney Terrell, C.J. and James, J.

BHAGI MALIK

v.

SATYABADI OTA.*

Service tenure—chaukidari land, whether liable to be resumed by zamindar—land assigned for public purposes—zamindar accustomed to demand private services—such services no longer rendered by chaukidar—land, whether liable to be resumed on this ground.

A zamindar is not ordinarily entitled to resume chaukidari lands, because chaukidars have public duties to perform, and the lands which they hold on service tenure as remuneration for the performance of such duties are to that extent appropriated or assigned for public purposes.

Raja Ranjit Singh v. *Kali Dasi Debi*(1) and *Radha Pershad Singh* v. *Budhu Dashad*(2), followed.

Even if a zamindar has been accustomed to demand certain private services from the chaukidar, he would not be entitled to resume the chaukidari land merely because those private services are no longer rendered, so long as the holder of the land is the chaukidar of the village.

Appeal by the defendant.

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

B. K. Ray and *B. Mahapatra*, for the appellant.

C. M. Acharya and *B. K. Das*, for the respondents.

JAMES, J.—This appeal arises out of a suit for ejectment of a village chaukidar from the chaukidari

* Circuit Court, Cuttack. Appeal from Appellate Decree no. 30 of 1935, from a decision of Babu Surjamoni Das, Additional Subordinate Judge of Cuttack, dated the 29th January, 1935, reversing a decision of Maulavi Mirza Ahmed Beg, Munsif, 2nd Court, Puri, dated the 25th May, 1934.

(1) (1917) I. L. R. 44 Pat. 841; L. R. 44 Ind. App. 117.

(2) (1895) I. L. R. 22 Cal. 938.

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jagir. The land was recorded at the provincial settlement as chaukidari jagir in possession of the defendant's father and at the recent revisional settlement as chaukidari jagir of the defendant with a note that this jagir had been given in niskar for village chaukidari work by the sub-proprietors. The Munsif dismissed the suit on the ground that the sub-proprietors had no right to resume the jagir of the chaukidar who held an office of a public nature; but his decision was reversed on appeal by the Subordinate Judge who held that since the record-of-rights stated that the jagir had been granted by the sub-proprietors, they were entitled to resume it. It was alleged in the plaint that the jagir was liable to resumption, because the chaukidar failed to perform certain services to the zamindar in consideration of which the jagir had been granted; but according to the record-of-rights the jagir is a chaukidari jagir granted for chaukidari work.

It is argued on behalf of the appellant chaukidar that his office being of a public nature, the land is not liable to resumption at the instance of the zamindar; and further that this jagir being in the nature of a grant of land burdened with service, cannot be resumed so long as the holder is willing to render services due on account of the jagir. Rai Bahadur C. M. Acharya on behalf of the respondents raises a new point for the first time in second appeal that the defendant himself is no longer the chaukidar but that his son has been doing the work of the village chaukidar for the last seven years. This point was not raised at any earlier stage of the proceedings, and if the son is doing the work of the chaukidar, that would on the face of it appear to justify the retention of the jagir by the family of which the nominal holder is the father or the son. The nature of these chaukidari jagirs was discussed by the Privy Council in *Raja Ranjit Singh* v. *Kali Dasi Debi*(1) wherein Lord

(1) (1917) I. L. R. 44 Cal. 841; L. R. 44 Ind. App. 117.

Parker pointed out that the zamindar was not ordinarily entitled to resume chaukidari land, because chaukidars had public duties to perform, and the lands which are held on service tenure as remuneration for the performance of such duties are to that extent appropriated or assigned for public purposes. And in *Radha Pershad Singh* v. *Budhu Dashad*(1) it was pointed out by the Calcutta High Court that a jagir could not be resumed by the zamindar when it had been granted for services of a public nature. " The distinction between a grant for services of a public nature and one for services, private or personal, to the grantor, is well understood. In the former case the zamindar is not entitled to resume, while in the latter case he may do so; when the services are not required or when the grantee refuses to perform the services. A distinction also exists between the grant of an estate burdened with a certain service, and that of an office, the performance of whose duties is remunerated by the use of certain lands. In the former case it would seem that the zamindar is not ordinarily entitled to resume, even if the service is not required, if the grantee is willing and able to perform the services, while in the other case he may do so when the office is terminated ". In the present case the jagir appears to have been granted to the village chaukidar in his capacity of chaukidar for services which are in their nature essentially public services and not private to the zamindar. Even if the zamindar had been accustomed to demand certain private services from the chaukidar, he would not be entitled to resume the chaukidari land merely because those private services were no longer rendered so long as the holder of the land was the chaukidar of the village. It may be true that because the chaukidar now receives pay from the chaukidari fund, the jagir has become liable to resumption; but that resumption can only be made in accordance with the provisions

(1) (1895) I. L. R. 22 Cal. 938.

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of Part 2 of Act VI of 1870 and a suit for resumption of the chaukidari land on the ground that the chaukidar receives his remuneration in another way would not be cognizable in the civil courts. It is not necessary for us to say whether this jagir is actually liable to resumption under Act VI of 1870 though on the face of it it appears to be so; but it was not liable to resumption on the grounds set out in the plaint and the decree of the learned Subordinate Judge cannot be maintained.

I would allow this appeal and set aside the decree of the Subordinate Judge, restoring the decree of the Munsif. The appellant is entitled to his costs throughout.

COURTNEY TERRELL, C.J.—I agree.

Appeal allowed.

S. A. K.

APPELLATE CIVIL.

Before Courtney Terrell, C.J. and James, J.

1938.

January, 6.

RADHAMOHAN THAKUR

v.

BIPIN BEHARI MITRA.*

Sale—title to vended property, when passes—intention of parties, how is to be proved—terms unambiguous—external evidence, whether admissible—recital as to passing of consideration, whether differs from strictly contractual part—Evidence Act, 1872 (*Act I of* 1872), *section* 92.

In a contract of sale the strictly contractual part, as for instance, the arrangement between the parties as to when the property shall pass is, if the contract has been reduced to writing, to be determined solely from the words of the writing and evidence is not admissible for the purpose, as

* Circuit Court, Cuttack. Appeal from Appellate Decree no. 62 of 1935, from a decision of Babu B. K. Sarkar, Additional Subordinate Judge of Cuttack, dated the 24th July 1935, reversing a decision of Babu B. N. Ray, Munsif, 1st Court, Cuttack, dated the 31st July, 1934.