

Maharajah Joy Mungul Singh (Defendant),
Appellant,

versus

Mohun Ram Marwaree (Plaintiff),
Respondent.

*Mr. R. T. Allan and Baboos Nil Madhub
sein and Boodh Sein Singh for Appel-
lant.*

*Baboo Romesh Chunder Miller for
Respondent.*

An arbitrator has full power to retract his resignation
of office before it is accepted.

Norman, C. J.—WE think that there is
not the smallest doubt in this case.

The appeal is an appeal against a judg-
ment passed in pursuance of an award made
by Mr. Teignmouth Sandys and Moulvie
Wahidooddeen, as arbitrators. The judgment,
being in accordance with the award, is
final.

Mr. Allan, however, has attempted to make
one point—and only one—which has the
least semblance of substance in it, namely,
that, before signing the award, Mr. Sandys
had resigned the office of arbitrator to
which he had been appointed in the course
of a judicial proceeding by the Judge of
Bhaugulpore. A paper which had been
irregularly signed as an award having been
sent back to Mr. Sandys and Moulvie
Wahidooddeen, in order that they should
sign it at the same time, Mr. Sandys wrote a
letter to the Judge, expressing his desire and
intention to resign the office of arbitrator,
and, as far as he could, at the same time,
resigning such office

The Judge wrote to Mr. Sandys, dissuad-
ing him from persisting in his refusal to
act, upon which Mr. Sandys withdrew his
resignation, and proceeded to make the
award

It appears to us that, as he did so before
his resignation was accepted by the Court
by which he had been appointed, he had full
power to retract his resignation; and his
award is a good and perfectly legal award.

The appeal is dismissed with costs

The 18th January 1871.

Present:

The Hon'ble J. P. Norman, *Officiating
Chief Justice*, and the Hon'ble G. Loch
and W. Ainslie, *Judges.*

Possessory suit—Section 15, Act XIV. of 1859—
Ghatwals—Leases.

Cases Nos. 73 and 125 of 1870.

*Regular Appeal from a decision passed by
the Subordinate Judge of Beerbhoom,
dated the 24th March 1870.*

Mr. G. Grant and the Court of Wards
(Defendants), *Appellants,*

versus

Bungsheo Deo (Plaintiff), *Respondent.*

*Messrs. J. Graham and R. E. Twidale and
Baboos Unnoda Pershad Banerjee and
Juggodanund Mookerjee for Appellants.*

*Mr. R. T. Allan and Baboo Sreenath Dass
for Respondent.*

A suit for restoration to possession on the ground of
having been dispossessed otherwise than by due pro-
cess of law, where the plaintiff seeks to exclude the
question of title must be brought within six months
after the time of dispossession.

A ghatwal is not competent to grant a lease in perpe-
tuity, and his successors are not bound to recognize
such an incumbrance.

Norman, C. J.—THE plaintiff, the younger
of two sons of Junglee Deo, who was the
great-grandson of one Roop Narain Deo,
the proprietor of a ghatwalee estate called
Talooka Rohinee in the District of Beer-
bhoom, sued for the recovery of possession
of five villages, part of this ghatwalee ta-
look, which he claimed as having been
assigned to his ancestors for their mainte-
nance in hereditary right.

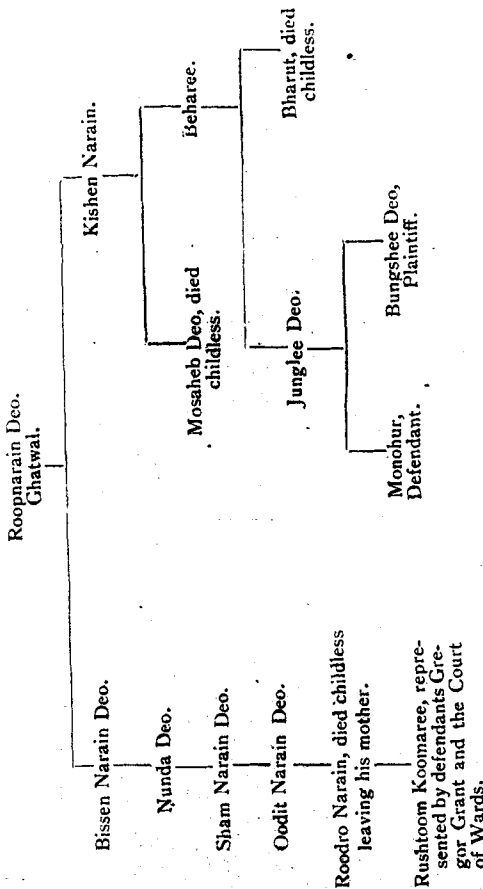
The title set up in the plaint is under an
alleged lease said to have been granted by
Bissen Narain, the brother of his ancestor
Kishen Narain Deo, to his grandfather
Beharee Deo, son of Kishen Narain, out of
the ghatwalee estate of Rohinee, of which
Bissen Narain was then the owner, at a fixed
rent of Rupees 31-12.

He values his suit at Rupees 29,224
Rupees 18,945 being the value of the land
and Rupees 10,279 the amount of the mesne-
profits for the period of dispossession.

The defendants, Mr. Grant, lessee under the Court of Wards, and the Deputy Commissioner of the Sonthal Pergunnahs representing the Court of Wards on behalf of Rushtoom Koomaree, the mother of Roodro Narain Deo, in whom the ghatwalee estate is now vested, by their written statements raised several defences.

The principal defence—that which was mainly argued before us in appeal—was that, as regards ghatwalee tenures in Beerbhoom, the ghatwal has no authority to grant a lease in perpetuity.

In order to the better understanding of the facts, it is convenient to refer to the pedigree of the parties, which is as follows:—



The plaintiff did not prove a lease by Bissen Narain to Kissen Narain as alleged, but a lease granted in 1240 by Sham Narain to Junglee Deo to hold generation after generation at an annual rent of 11 rupees.

The ghatwalee estate having been attached in execution of a decree, the Sezawul dispossessed the lessee on which Mosaheb Deo, the uncle of Junglee Deo, made an application to the Collector, who, by order dated 12th July 1838, *i. e.*, 1245, directed that he, Mosaheb Deo, should be restored to possession paying an enhanced rent of thirty rupees Sicca, or Company's rupees thirty-two.

Oodit Narain, who was the ghatwal prior to 1857, became insane. On his death, the Court of Wards, on the 13th of April 1867, caused a proclamation to be made requiring the tenants of the ghatwalee estate to pay their rents to the Court of Wards on behalf of his infant son Roodro Narain, and from that time it is not disputed that the plaintiff and his family have been out of possession. But prior to this date, namely, on the 3rd April 1854, the rights and interests of the plaintiff's father, Junglee Deo, were sold in execution of a decree against him, and were bought by one Gireedharee, who has come forward as a witness in the present suit, and stated that he had no real interest, and that he bought benamee for Junglee Deo. Strange to say, the Subordinate Judge stopped the defendant's vakeels, who were cross-examining the witness as to the nature of his dealings with Junglee Deo, who appeared to have been indebted to him, saying that the questions were not relevant, and this, though it appeared from his own statement that he had been collecting rents—he says as tehsildar—from 1265 to 1263, that is, from 1853 to 1857.

The Subordinate Judge decides all the issues in favor of the plaintiff. He disposes of the question relating to the power of a ghatwal to grant a lease in perpetuity, by saying that, if a ghatwal *bond fide* grants a lease in perpetuity, it remains good and valid, not only during the life of the ghatwal, but also after his death, so long as his heirs continue to hold the ghatwalee. He says also: "The lease granted by a former ghatwal can be set aside by a regular suit. The Court of Wards or surburakar under them cannot, of their own authority, oust any persons in possession of lands under a lease granted by the ancestor of the present ghatwal."

From that decision the defendants have appealed.

It is necessary first to notice the point, which might arise if it be true, as supposed

by the Subordinate Judge, that Mr. Grant, the lessee under the Court of Wards, wrongfully dispossessed the plaintiff or his father without suit. If the plaintiff had sued for restoration to possession on the ground that he had been dispossessed otherwise than by due process of law, and sought to exclude the question of title, as appears to have been the case in Marshall's Reports, page 117, the suit should have been brought within six months after the time of the dispossession—see Section 15 of Act XIV. of 1859.

In the suit now brought it is incumbent on the plaintiff to show that he had a right to possession subsisting at the time of the commencement of the suit. He must, therefore, show that the lease under which he claims is valid and binding against the present ghatwal.

A point very closely resembling that with which we have to deal was considered by the late Sudder Court in the case of Hur Lall Singh *versus* Jorawun Singh, VI. Select Reports, pp. 169 to 171. In that case, a ghatwalee estate had been divided by a previous ghatwal amongst his family, and one of the family, who was, in fact, the eldest son of the ghatwal, sued for partition and separate possession of the one-third share which had been assigned to him. After full consideration the Court dismissed the suit, deciding that ghatwalee lands are grants for particular purposes, especially of police, and to divide them into small portions amongst heirs of the ghatwals would be to defeat the very end for which the grants were made. Mr. Rattray says: "The lands are held conditionally on the due performance of certain defined duties. They belong to the office, and should not be frittered away into portions inadequate to the remuneration of the duty demandable from the occupants of the whole as a whole. I would not allow the division even with the sanction of an entire family or clan."

In the case already referred to in Marshall's Reports, the Court say that they think that the ghatwals of Beerbhoom are, under Section 2, Regulation XXIX. of 1814, possessed of estates of inheritance without the power of alienation.

The late Sudder Court, S. D. A., 1853, page 900, held that "ghatwalee tenures of Beerbhoom, being, not the private property of the ghatwals, but lands assigned by the State in remuneration for specific police-services, are not alienable or attachable for personal debts."

The language of the judgment is quite general, but the case before the Court was of an attachment of the ghatwalee estate in the hands of Bharut Chunder Singh, ghatwal, under a decree against the former ghatwal Digbijoy Singh. This case came under the consideration of the High Court—Sir Barnes Peacock and Mr. Justice L. S. Jackson, in the case of Binode Ram Sein *versus* the Deputy Commissioner of the Sonthal Pergunnahs, 7 Weekly Reporter 178. The Court, in holding that the rents of a ghatwalee tenure are not liable in the hands of the heir in possession to attachment for debts of his ancestor, the former holder of the tenure, say that, "under the Regulation, the holder of the tenure is to enjoy the whole income of the tenure," and that "it must have been intended that each ghatwal should be entitled to the whole income of the estate, and that such income should not be charged or incumbered by a previous ghatwal."

With this opinion we entirely agree. We think that the supposed lease by Sham Narain was an incumbrance which, as a ghatwal, he was incompetent to make, and that the succeeding ghatwals were not bound to recognize such lease.

Mr. Graham was content to take our judgment on this point, and therefore we did not go into the many other objections to the judgment of the Court below.

We reverse the decision of the Subordinate Judge, and dismiss the suit with costs in both the Courts.

The 18th January 1871.

Present:

The Hon'ble E. Jackson and Onookool Chunder Mookerjee, *Judges.*

Application for Probate—Stamps—Article 1, Schedule II., Act VII., 1870.

In the Matter of

Judoonath Shadhookhan and others,
Petitioners.

Baboo Bungshee Dhur Sein for Petitioners.

The stamp requisite for an application for a probate of a will, or letters of administration, is not required to be proportionate to the value of the property involved as such applications come under the provision made in Article 1, Schedule II., Act VII. of 1870, for common applications and petitions.

THE petitioners presented an application to the High Court, representing that the