RAM RANJAN CHAKERBATI (PLAINTIFF) *v.* RAM NARAIN SINGH AND OTHERS (DEFENDANTS).*

P. C.* 1894 *November* 7. *December* 8.

[Consolidated appeals from the High Court at Calcutta.]

Evidence—Admissibility of evidence—Presumption arising from facts of permanency of tenancy—Long possession at an unvaried rent.

A zemindar claimed the proprietary right and possession of *mouzas* within the limits of his zemindari, against tenants, who, by themselves and their predecessors in title, had held the land from before the Decennial Settlement in Bengal, an unvaried rent having been paid to the zemindar. The first defendant alleged a grant to his ancestor of a *mokurari* tenure by a ghatwal then holding land within the zemindari: the other defendants alleged title as *dar-mokuraridars* under the first. Part of the evidence for the defence consisted of judgments, among which was one of the year 1817, and another of 1843, to which the zemindar's predecessors had not been parties. These had been given in suits brought by the successor of the ghatwal which had been resisted by the first defendants' ancestors, on the ground of their having had fixity of tenure. *Held*, that they could be received as evidence of long anterior possession at a rent, and of the title, on which the defendants now relied, having been openly asserted long ago. Taken with other evidence, they established possession by the defendants at a uniform rent paid to the zemindar, thus leading to the inference that the tenure had been, and still was, of a permanent character.

APPEALS from a decree (9th February 1891) of the High Court, affirming, on second appeal, a decree (19th December 1889) of the Court of the Deputy Commissioner of the Sonthal Pergunnas, which affirmed a decree (17th August 1889) of the Sub-Divisional Officer of Jamtara.

These appeals arose out of two suits brought on the 20th December 1884 by the Raja of Hetampur, in Birbhum, the present appellant, who claimed possession of seven *mouzas*, known as *taluk* Sitamarhi, by the setting aside, as not existing, the *mokurari* tenure alleged by the first defendant, and supported by twenty-two other defendants, alleging themselves to have *dar-mokurari* rights under the first. These rights had been recognised in their favour in the settlement proceedings of the year 1875, held under the Sonthal Regulation III of 1872.

* *Present:* LORDS HALSBURY, HOBHOUSE, SHAND and DAVEY, and SIR R. COUCH.

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The title claimed by the appellant was that he, and his predecessor in title, had been possessed as zemindars of the villages in suit, leasing them in *ijara*, of which the last *ijara* expired in 1877, the first *ijara* having been made to Digumber Singh in 1806 and renewed from time to time.

The first of the two suits was brought against Ram Narain Singh and Atni Behari Sircar, with twenty-two other sircars, for six *mouzas* out of the seven. All these villages were part of seventeen *mouzas* comprising *taluk* Koroya formerly belonging to the Raja of Nagore, by whom the *taluk* was said to have been sold to the plaintiff's grandfather in 1817. The second suit was brought for the seventh *mouza*, Damdami, against the same first defendant, with whom was joined the occupant of it, Mahomed Bhikam, the latter alleging a *dar-mokurari* under Ram Narain, who claimed to be *mokuraridar* of all. The other defendants claimed to hold under him; so that, as was admitted in the lower Appellate Court, upon the title of Ram Narain depended that of all the others. His defence was that his great-grandfather, Bandhu Singh, acquired a *shikmi* or fractional under-tenure in these villages, at a fixed rent, from Gambhir Singh, who was ghatwal of *taluk* Koroya, and who granted a lease in 1777 of five villages to Bandhu Singh at a rent of sicca Rs. 25, and of two more villages in 1778, raising the rent to sicca Rs. 35, and that these villages had been since so held by his ancestors and by him. The defence of the others was that Bandhu Singh granted their *dar-mokurari* leases to their ancestors. On Gambhir Singh's side the descents were these: He had a son Digumber Singh, whose son was Haradhun Singh, the father of Durga Pershad Singh, whose son, Kali Pershad Singh, was living when this suit was heard, but was not made a party to it. On the other side, the Bandhu Singh, above-mentioned, had a son, Jugmohun Singh, whose son was one also named Kali Pershad, and this last was the father of Ram Narain Singh.

The question on this appeal was whether, upon evidence legally admissible, the inference had been properly drawn that Ram Narain had succeeded as *mokuraridar*. At the hearing of the suit, he was allowed to put in evidence judgments in suits, of which one was decided in 1817, and the other in 1843; the first having been between Digumber Singh, as ghatwal, plaintiff, and

Jugmohun Singh, as tenant, defendant, the latter defending his possession on the ground that he held a *mourasi* and *mokurari* or hereditary and fixed tenancy of the seven villages. In the later suit of 1843 Digumber sued, again without success, to enhance the rent upon these villages against Kali Pershad Singh, the father of the present defendant, Ram Narain.

On the 16th September 1875, the Settlement Officer of the Sonthal Pergunnas made an order recognizing Ram Narain as *mokuraridar*, and the other defendants as *dar-mokuraridars*. The present suits, when first heard in the Sub-Division, were held to be barred by limitation under the Sonthal Regulation III of 1872, section 25, because they had not been brought in due time from the date last mentioned. The suits, however, were remanded by the Deputy Commissioner for hearing on their merits, and were so heard by another Sub-Divisional Officer, who had succeeded the first, and who found, after a searching inquiry, that Gambhir Singh, in 1184 B.S., or 1777 A.D., being then the ghatwal of *taluk* Koroya, had granted the *mokurari* to Bandhu Singh at the rent above stated. On an appeal to the Deputy Commissioner, in which the grounds, amongst others, were that the judgments above-mentioned had been erroneously admitted in evidence, this evidence was held to have been rightly received. The District Officer held the first to be the best evidence available of Digumber's having been in 1807 openly claiming to be ghatwal, and of Jugmohun's asserting a permanent tenure; and observed that this was on the part of the plaintiff in that suit setting up a title hostile to that of the zemindar, which the latter would hardly have passed over if Digumber had been only an *ijaradar* for a term of years. That was soon after the Permanent Settlement. The suit of 1843 gave rise to similar inferences. The person now called by the present plaintiff an *ijaradar* was then openly declaring himself ghatwal, and this, if untrue, would probably have occasioned a cessation of the renewal of such leases to him, according to the view taken in this judgment.

On an appeal to the High Court, a Division Bench, NORRIS and BEVERLEY, JJ., held that they might properly presume the grant of a permanent *mokurari* tenure from long continuous possession at an unvarying rent. This was done in the cases of *Dukhina Mohun*

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Roy v. *Kureemoollah* (1) and *Nidhi Krishna Bose* v. *Nistarini Dasi* (2). The Court observed as to the admissibility of the judgments, to which exception had been taken, that the lower Appellate Court had only admitted them as evidence of there having been litigation between the parties thereto at the dates to which they related; to show, in fact, that at those dates the so-called ghatwal was suing the so-called *mokuraridar*, respecting the villages in suit, and that in those suits the parties asserted the same rights that were asserted in this suit. To this extent the Judges held that the prior judgments were admissible, though the zemindar was no party to them. The Court also noticed a contention for the appellant that on the construction of Regulation XXIX of 1814 and Act V of 1859, even supposing that Gambhir Singh was a ghatwal, he had no authority to grant a permanent under-tenure. On this point they referred to the records of two cases, decided by the High Court in 1866, in which it was held that ghatwals in Birbhum, under circumstances very similar to those of the present case, had the power to make permanent grants of portions of their lands to others. The appeal, therefore, failed. The Judges added that the defendants having been in possession, probably, for upwards of a century, should not be allowed to be dispossessed upon the case made for the plaintiff. It might be true—indeed it was not denied—that the plaintiff was zemindar of the estate, but before evicting the defendants at his will, when they held for so long a period, he ought to be compelled to prove something more than that he was the zemindar. The defendants claimed to have been in possession before the plaintiff's purchase in 1807, under a person who was admitted to have been in possession at that date. On the other hand, all that the plaintiff alleged, and this he did not even attempt to prove, was that the intermediate holder was a mere *ijaradar*, and, as such, incompetent to create a permanent under-tenure. The appeals were dismissed.

On this appeal,—

Mr. *R. V. Doyne*, for the appellant, argued that the evidence to establish the defendants' rights to permanent tenures was

(1) 12 W. R., 243. (2) 13 B. L. R., 416 : 21 W. R., 386.

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insufficient to outweigh the *primâ facie* case made by the plaintiff as zemindar, the judgments used as evidence for the defence having been inadmissible. The position of the plaintiff as zemindar was not disputed, and the burden of proof was entirely on the defence. Under the authority of *Perhlad Sein* v. *Durga Pershad Tewaree* (1) it was submitted that the zemindar had a *primâ facie* title to the gross collections from all the *mouzas* within his zemindari, and that it was incumbent on the descendants setting up the title of intermediate tenures to prove the grant to them, or to their predecessors. The question was whether Ram Narain had, by legal evidence, or at all, proved any such grant to his ancestor as that which he alleged. He had been allowed to give in evidence, notwithstanding objections taken by the plaintiff, judgments delivered in suits to which no one, through whom the plaintiff derived his zemindari title, had been a party. The result at which the Courts arrived was that, at the dates of those judgments, Ram Narain's predecessors were successfully asserting the title that he now set up; and that this, with other evidence, went so far as to show that he was entitled. But (the law as to the reception of documentary evidence being the same in India as here) the first objection was that the judgments were not admissible; and the argument, in the second place, was that the result of Ram Narain's being *mokuraridar* was not established, even if they were admitted. They did not show that there had been a ghatwal actually with hereditary right. The son and grandson of Digumber Singh had, upon the facts, ceased in later years, and as far back as 1807, to have any connection with Sitamarhi. The *ijaras* which the plaintiff alleged to have been made had been made for short terms, and it was said that, on the expiration of one, another followed. Consequently it was not necessary for the zemindar to take any notice of holdings created by the *ijaradars*, or permitted by them to continue. The zemindar's rights were not affected by them, as they could not continue beyond the term of the current *ijara*. It was submitted that the long possession taken as evidence of a permanent and transferable interest in *Dukhina Mohun Roy* v. *Kureemoollah* (2), and in *Nidhi Krishna Bose* v. *Nistarini Dasi* (3),

(1) 12 Moo. I. A., 322 (331); 2 B. L. R. P. C. 111 (134).

(2) 12 W. R., 243.

(3) 13 B L. R., 416; 21 W. R., 386.

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was better established than the *mokurari* lease here alleged, on which depended all the *dar-mokurari* leases also in issue.

The respondents did not appear on this appeal.

Their Lordships' judgment was delivered by

LORD SHAND.—The appellant in this *ex-parte* case, in which two appeals have been consolidated, is the Raja of Hetampur, in Zillah Birbhum, and the zemindar of a *taluk* in the Sonthal Pergunnas called Koroya, within which are comprised the seven *mouzas* now in suit, of which the six *mouzas* embraced in the first suit, and the seventh, called Damdami, the subject of the second suit, form a subordinate *taluk* or estate known as Sitamarhi. The appellant was plaintiff in both suits, which were instituted on the 20th December 1884, against the respective respondents in the first Court, which was that of the Sub-Divisional Officer of Jamtara. Both suits were, after a remand by the Deputy Commissioner of Sonthal Pergunnas, dismissed by the first Court on the 17th August 1889, and on the appellant's appeals in both suits to the Court of the Deputy Commissioner those appeals were dismissed on the 19th December 1889, and his second appeals from the judgments and decrees of the Deputy Commissioner's Court were again dismissed by the High Court at Calcutta on the 9th February 1891.

During the settlement proceedings which took place in the Sonthal Pergunnas in 1875, the appellant claimed settlement with him directly of the seven *mouzas* in question, and a claim was made on behalf of the first respondent, Ram Narain Singh, for settlement with him as *mokuraridar* and on behalf of the other respondents, in the first appeal, as *dar-mokuraridars* of the six *mouzas*, and a similar claim was made on behalf of the respondent in the second appeal, Mahomed Bhikan, as *mokuraridar* of Damdami.

The Settlement Officer, finding that the respondents were in possession, and that they had been so for a long period of time, made the settlement with them on the 16th December 1875, and referred the appellant to a regular suit to try the question of right; and about nine years thereafter the present suits were instituted in which the appellant seeks to have it declared that the respondents

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have no such rights, *mokurari* or *dar-mokurari*, as they maintain, and to have possession given to him.

The appellant founds his claim to the *mouzas* in question, on the fact that they are locally within the zemindari belonging to him—a fact which is not disputed by the respondents; and in his plaint he alleged that his predecessor, and afterwards he himself, held possession of those properties, "by letting out the same in *ijara*. The term of the *ijara* expired in the year 1284." He does not state when or how he or his ancestors acquired right to the zemindari, nor when the term of the *ijara* or *ijaras* commenced.

In defence, besides a plea of limitation, with which it will be unnecessary to deal, the respondents in the first appeal, by their written statement, asserted that from a period before the year 1793, that is before the Decennial Settlement, they and their ancestors had been in possession of the *mouzas* in dispute as a ghatwali tenure, and they maintained that, having possessed respectively under permanent *mokurari* and *dar-mokurari* rights at fixed rents without variation for this long period of time, the appellant had no right to dispossess them. The respondents did not admit that the appellant had granted *ijaras* of the *mouzas* in question, and they alleged that the ancestor of the appellant had acquired the zemindari by purchase after their *mokurari* and *dar-mokurari* rights had been acquired, and while they or their ancestors were in possession under a tenure which could not be defeated by a purchaser of the zemindari. As to the nature of the *mouzas*, they explain that these lands were originally dense jungle, infested with tigers and other wild animals, and that tanks and other improvements having been executed by the efforts and at the expense and with the labour of themselves and their ancestors the ground was now occupied by tenants. In point of fact the lands in question are now the site of seven villages.

The case was originally decided by the Judge of first instance in favour of the respondents on the ground of limitation, in consequence of the proceedings which took place before the Settlement Officer in 1875, and the lapse of time thereafter before the suit was instituted. But this decision was recalled by the Deputy Commissioner, and the case remanded for trial on the merits. Thereafter evidence, oral and documentary, was adduced for both

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parties, and the decision of all the three Courts, before which the suits came, proceeds on the evidence adduced.

It was not disputed by the Counsel for the appellant that the respondents and their ancestors have been in possession for a very long period of time, and there are indeed concurrent findings to this effect. It has been found by the Judge of first instance that the defendant Ram Narain Singh "has held at a fixed *mokurari* rental from before the Permanent Settlement, of Rs. 35 sicca, Government Rs. 37-5-4" (and it is conceded that if the *mokurari* rights be established the *dar-mokurari* rights cannot be successfully challenged), and again in the judgment of the Deputy Commissioner on appeal it is stated that "there has been no serious attempt before me to prove that the rent payable by Ram Narain Singh and his ancestors has been varied since the time of the Permanent Settlement."

Further, it has been held by these Courts that the appellant has never held *khas*, or had immediate possession of the *mouzas* which have for upwards of a century been in the possession of the respondents and their ancestors. The original grant of a *mokurari* right is said by the respondents to have been granted by Gambhir Singh, the ghatwal of *taluk* Koroya, in 1777, by a lease of five villages granted to Bandhu Singh, a direct ancestor of the respondent Ram Narain Singh at a fixed rent of Rs. 25 in perpetuity, and that in 1788 two more villages were added, the rent being raised to sicca Rs. 35.

The ground of judgment by the High Court is that "the Court may very properly presume the grant of a permanent *mokurari* tenure from long continuous possession at an invariable rental," and that "upon the evidence . . . the lower Courts were amply justified in coming to the conclusion that the defendants were in possession long before the date of the plaintiff's purchase, and that it has not been proved that they derived their title from a mere *ijaradar*."

The ground of the appeals by the appellant to this Board, as stated in his case and by his Counsel at the Bar, is that this conclusion was reached by taking into view evidence which was not legally admissible, and in particular the evidence of certain decrees granted in proceedings relating to the *mouzas* in question, to

which the predecessors of the appellant as zemindars were no parties. These decrees were pronounced in proceedings at the instance of Digembur Singh, the son of Gambhir Singh, by whom the original grant is alleged to have been made, against persons in possession of the *mouzas* in question, predecessors of certain of the respondents, the first dated in 1817 and the second in 1845. In the first of these cases, which originated in 1811, the plaintiff describing himself as owner of the ancestral ghatwali property of the *taluk* Koroya, claimed recovery of possession of the villages now in question from the persons then in possession. The defence was that Gambhir Singh, the father of the plaintiff, Digumber Singh, had granted permanent rights of ghatwali tenure at fixed rents amounting to Rs. 35, and that possession had followed, and the ghatwali duties had been continuously performed, so that possession could not be decreed in the plaintiff's favour. The suit for possession was dismissed, but with leave to bring another suit for assessment of rent, but a decree was therein given for the arrears of rent for the past years, and for future rents at the rate of Rs. 35, which had been "hitherto paid." The subsequent suit for assessment of rent was instituted in 1842. The defence in the former case was repeated. It was maintained that the defendants held under permanent rights of ghatwali tenure at a fixed rent, and for performance of police duties, and that he had fulfilled these obligations, and that in such a case no assessment or enhancement of rent could be given; and this defence was sustained, and the action was dismissed in 1845. It was argued for the appellant that the judgments, of which he now complains, were arrived at by holding certain of the statements of the parties as recorded in the decrees or judgments of 1817 and 1845 as evidence against him in the present suits. Their Lordships do not think this complaint is well founded. It does not appear to their Lordships that the statements of the parties recited in the decrees in these former cases were accepted as evidence in the present suits.

The Judge of first instance states with reference to these decrees: "I am of opinion that the documents produced by the defendants may be accepted as evidence in this case, as showing ancient possession, and that the title on which the defendants now rely

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was openly asserted as early as 1195, B.S., corresponding to 1788 A.D., and at subsequent dates, irrespective of the findings come to in those decrees. The orders passed in these decrees themselves would not be evidence against plaintiff's title, nor can they be considered as proving the defendants' title; but they may be accepted to show ancient possession, and to show that the title was asserted rightly or wrongly many years ago."

The Judges of the High Court say: "As regards the admissibility of the judgments to which exception has been taken, we observe that the lower Appellate Court has only used those judgments as evidence that there was litigation between the parties thereto at the dates to which they relate. It uses those judgments to show that at those dates the so-called ghatwal was suing the so-called *mokuraridar* respecting the villages in suit, and that in those suits the parties asserted the same rights which they now assert. To this extent, we think, that the judgments were admissible in evidence, even though the zemindar was no party to them."

It must be observed that by the judgment of 1817 a decree for rent of the *mouzas* now in question was given at the rate of Rs. 35 *per annum*, against the predecessors of the respondents. Their Lordships are of opinion that, although the predecessor of the Raja was no party to that litigation, it was competent to use the judgment as evidence shewing the rent paid for the possession at and prior to that date, now nearly 80 years ago. Taken with the other evidence in the case, the respondents have thus established possession at a uniform rent for so long a period as to lead to the inference that the tenure was and is of a permanent nature.

As the case came finally to be presented for judgment on the evidence, the appellant had really proved nothing beyond his title as zemindar of the *taluk*, within which the villages were situated, which, indeed, was not disputed. This admitted title, no doubt, *primâ facie* imposed on the respondents the onus of establishing a defence which entitled them to continue in possession. On the other hand, the appellant has given neither statement nor evidence as to when or how his title had its origin. The only information given on the subject is to be found in certain statements in the decrees to the admission of which he himself objected. It is there said that

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about the year 1807 the appellant's grandfather had become the purchaser of the zemindari at an auction sale, at which date the decree also showed that others were in possession, paying rent to Digumber Singh, who claimed in the character of ghatwal. The only evidence of possession by the appellant related to dates so late as 1868 and 1869, in which years two *pottahs* were granted by the appellant in favour of Durga Pershad Singh of the whole of the *taluk* Koroya at rents of Rs. 550 and Rs. 600. There is no evidence that any rents were asked for or received by him from the possessors of the *mouzas* in question.

The case, therefore, stands in this position, that against the appellant's title to the zemindari, without any evidence of possession of any of the *mouzas* in question, there is proved uninterrupted possession by the respondents and their predecessors from a date before the appellant's ancestor acquired a title; and, indeed, it may be presumed for upwards of a century. The *mouzas* were held throughout that time for the payment of a uniform rent, and there are other considerations to be found in the parol evidence, and specially referred to in the judgment of the Judge of first instance, which support the view that the tenure was ghatwali. Their Lordships are satisfied that the presumptions in favour of a fixed and permanent ghatwali tenure, arising from the long-continued possession of the respondents and their predecessors at a uniform rent, are sufficient to overcome the mere title of the appellant as zemindar. There is no reason to presume that by the purchase of the zemindari the appellant's ancestor acquired any right to set aside the rights then existing and exercised by the respondent's predecessors. On the contrary, the presumptions arising from possession are all to a contrary effect. Their Lordships are, therefore, of opinion that the judgments appealed against are well founded, and they will accordingly humbly advise Her Majesty that the appeals ought to be dismissed.

Appeals dismissed.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

C. B.