Before Mr. Justice Rampini and Mr. Justice Mookerjee.

KAZI NEWAZ KHODA

v.

RAM JADU DEY.*

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Dec. 5.

Chowkidari Chakran lands—Resumption by Government—Putni lease—Right of Putnidar in the resumed lands—Bengal Act VI of 1870, s. 51.

By a putni lease the zemindar transferred all the lands appertaining to an estate to the putnidar for an annual rental. Subsequently the Collector resumed all the chowkidari chakran lands situate within the said estate, under Bengal Act VI of 1870, and transferred them to the zemindar of the estate, who again settled the lands with some tenants.

The putnidar brought a suit for recovery of possession of those lands on the ground that he was entitled to them under the terms of the putni lease.

Held, that the putnidar was entitled to the possession of the disputed lands on condition of his paying the additional revenue assessed thereon by Government.

Kashim Sheik v. *Prasanna Kumar Mukerjee*(1) distinguished.

Per MOOKERJEE J. Under s. 41 of Reg. VIII of 1793, the chowkidari chakran lands must be taken to form a part of the parent estate, in which they are situated.

Joy Kishen Mookerjee v. *The Collector of East Burdwan*(2) and *Jonab Ali* v. *Rakibuddin Mallik*(3) referred to.

Even if the effect of the resumption proceedings under Bengal Act VI of 1870 was to create a new title in the zemindar, the rights of the putnidar would be protected by s. 51 of the Act.

SECOND APPEAL by Kazi Newaz Khoda and others, the defendants.

The original suit was in respect of chowkidari chakran lands of Touzi No. 23 of the Burdwan Collectorate.

One Kazi Khoda Newaz, who was the proprietor of Lot Paligram and predecessor in interest of the defendants Nos. 1 to 9,

* Appeal from Appellate decree, No. 112 of 1905, against the decree of F. Roe, District Judge of Burdwan, dated the 6th January 1905, affirming the decree of Annoda Prosad Bagchi, Additional Subordinate Judge of that District, dated the 7th August 1903.

(1) (1906) I. L. R. 33 Calc. 596. (2) (1864) 10 Moo. I. A. 16.
(3) (1905) 1 C. L. J. 303.

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leased out in putni settlement all the rights in the whole of the lands of Lot Paligram under a registered potta, dated the 9th Magh 1273 B. S. to one Ramdhan Muhury, at an annual jama of Rs. 4,171.

After the death of the said Ramdhan his successor Shib Das Muhuri was in possession of Paligram in putni right. Shib Das became insolvent and his putni right was eventually sold at a public auction and was purchased by the plaintiffs in March 1892.

The putnidars of the said Lot Paligram since the time of the putni settlement exercised all rights of the zemindar on payment of merely the rental due to him. They, as putnidars, had the advantages of the services of the chowkidars of the chakran lands of the mouzas appertaining to the said Lot Paligram.

In 1899 Bengal Act VI of 1870 was enforced in Lot Paligram, and the Collector resumed all the chowkidari chakran lands of that estate, and then made them over to the zemindars, (who are the principal defendants in this case), assessing an additional revenue thereon. The zemindars, in 1900, again settled the lands thus transferred to them by the Collector with some tenants (the defendants Nos. 10 and 11).

The plaintiffs thereupon brought this suit to recover possession of those lands and for mesne profits, mainly on the ground that they were entitled to them under the terms of the lease.

The defendants contended, *inter alia*, that the resumption of the chowkidari chakran lands by Government created a new title and a separate estate, to which the plaintiffs were not entitled; that the putnidar must pay an additional rent to the zemindars in case the lands pass to him; and that the plaintiffs could not eviet the tenants with whom the lands had been settled by the zemindars since the resumption.

The Subordinate Judge made a decree in favour of the plaintiffs, which was confirmed by the District Judge on appeal.

The defendants now appealed to the High Court.

Babu Naliniranjan Chatterjee and *Babu Rajendra Chandra Chuckerbutty* for the appellants.

Dr. Rash Behary Ghose, *Babu Digambar Chatterjee* and *Babu Khetra Mohan Sen* for the respondents.

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RAMPINI J. This is an appeal against a decision of the District Judge of Burdwan, dated 6th January 1905.

The suit arises out of a suit brought by a putnidar for the possession of certain chowkidari chakran land, which the Government has made over to the zemindar, after cancelling the chowkidari chakran holding. The plaintiff putnidar sued for possession of these lands, alleging that he is entitled to them under the terms of this putni lease.

The District Judge has given the plaintiff a decree on condition that he pays to Government the additional revenue assessed by Government on the land.

The zemindar defendants 1 to 3, and certain lessees under the zemindars, defendants 10 and 11, appeal. On their behalf it is contended; (*i*) that the resumption of the land by Government creates a new title to the land in the zemindars and that the putnidar has accordingly no right to it; (*ii*) that if the land passes to the putnidar, he must pay a proportionate rent for it to the zemindar, and (*iii*) that the plaintiff is not entitled to eject the defendants 10 and 11, who have been inducted into the land by the zemindar.

In support of the first contention reliance is placed on the case of *Kashim Sheik* v. *Prasanna Kumar Mukerjee*(1). It is sufficient, however, to say that that case is distinguishable from the present one. That case relates to the passing of chowkidari chakran lands on the sale of a share in a zemindari. The present relates to the question whether on the terms of the plaintiff's putni lease, the plaintiff is entitled to the lands in dispute, the chowkidari chakran rights in which have been cancelled by Government and the possession of which has been delivered to the zemindars. On the terms of the plaintiff's lease, it would seem that the plaintiff is entitled to the lands in dispute. The lease conveys to the putnidar all the lands of which the zemindar at the time of the execution of the lease is possessed of in the mouza, of which the putni was granted The lands in dispute were then in the possession of the zemindar, for he was enjoyinig the chowkidars' services

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in lieu of rent. The plaintiff is therefore certainly entitled to the present possession of these lands.

The appellant's second contention relates to the terms on which the plaintiff is entitled to the lands. The Lower Appellate Court has directed him to obtain possession of the lands upon his paying to the zemindar the extra assessment of revenue, which the zemindar has to pay to Government. This would seem to be equitable. The putnidar after the execution of the putni was entitled to and enjoyed the services of the chowkidars, and hence the zemindar cannot obtain more from him than the extra assessment imposed on him by Government. The case of *Hari Narain Mozumdar* v. *Mukund Lal Mundal*(1), in which a different rule was applied, has however been cited. But no general rule was laid down in that case. It would seem that the zemindar was in that case in the enjoyment of the services of the chowkidar; whether this was only before or after the execution of the putni is not clear. Further, there were tenants on the land in that case, and it was admitted that by the assessment of the chowkidari chakran lands, the *hustbood* of the putni had increased. No such increase is shown to have taken place in this case, and the zemindar in that case was not relieved of the liability to pay the additional revenue payable to Government. There would, therefore, seem to be no ground for interfering with the decree passed by the District Judge in this case.

The case of *Binad Lal Pakrashi* v. *Kala Pramanic*(2) is relied on in support of the contention of the defendants Nos. 10 and 11 that the plaintiff cannot eject them. But it has been found by the District Judge that the defendants 10 and 11 were inducted into the land by the zemindar defendants "in ill faith." The case of *Binad Lal Pakrashi* v. *Kala Pramanic* (2) has accordingly no application.

The appeal is accordingly dismissed with costs.

MOOKERJEE J. On the 31st January 1867, one Kazi Khoda Nawaz, the predecessor in interest of the first nine defendants to

(1) (1900) 4 C. W. N. 814. (2) (1893) I. L. R. 20 Calc. 708.

this suit granted in favor of Ramdhone Muhuri, now represented by the plaintiffs, respondents, a putni of Lot Paligram. The deed purports to transfer to the putnidar all the lands appertaining to the zemindari, and in the possession of the grantor, for a specified bonus and annual rental. In 1899, the Collector resumed all the chowkidari chakran lands situated within the ambit of the zemindari under Bengal Act VI of 1870, and transferred them to the first nine defendants, as the zemindars of the estate within which the lands in dispute are situated. At the same time the Collector fixed the assessment subject to the payment of which the lands were to be held. The plaintiffs allege that under the terms of the putni, which is the foundation of their title, they are entitled to the possession of the lands, and the ground of their complaint is, that in contravention of the terms of the grant, the zemindar in 1900 settled the lands with defendants 10 and 11. The plaintiffs accordingly ask for recovery of possession and mesne profits. The Subordinate Judge made a decree in favor of the plaintiffs, which, upon appeal, has been confirmed by the District Judge. The zemindars as well as the tenants defendants have appealed to this Court, and on their behalf the concurrent decisions of the Courts below have been challenged on three grounds, namely, *first*, that the effect of the resumption proceedings under the Village Chowkidars Act was to create a new title and separate estate in the zemindars, to the benefit of which the putnidars have no claim; *secondly*, that in any event, the putnidars can recover possession only on condition of payment of rent to the zemindars in addition to the assessment imposed by the Collector; and *thirdly*, that even if the putnidars are entitled to possession as against the zemindars, they cannot evict the tenants with whom the lands have been settled.

In support of the first point taken on behalf of the appellants, it was argued that the chowkidari chakran lands were not part and parcel of the zemindari and therefore could not have been intended to be transferred to the putnidars under the lease of 1867, which covered only such lands as appertained to the zemindari and were in the possession of the zemindars. In my opinion this contention is entirely unfounded. Under section 41 of Reg. VIII of 1793, the chowkidari chakran lands must be

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taken to have formed part of the estate settled with the predecessors of the defendants; they were annexed to the malguzari lands and declared responsible for the public revenue assessed in the zemindari in which they were included in common with all other malguzari lands therein. This view is supported by the cases of *Joy Kishen Mookerjee* v. *The Collector of East Burdwan*(1) and *Jonab Ali* v. *Rakibuddin Mallik*(2). Our attention, however, has been drawn by the learned vakil for the appellants to some observations contained in the judgment of this Court in *Kashim Sheik* v. *Prasanna Kumar Mukerjee*(3), which lend some apparent support to the suggestion that chowkidari chakran lands were not integral parts of an estate settled with the proprietor. If the learned Judges, who decided that case, really intended to lay down any such proposition, I must respectfully dissent from it; it is contrary to the plain meaning of section 41 of the Regulation and to the decision of the Judicial Committee referred to. It was next contended on behalf of the appellants that, assuming that the chowkidari chakran lands originally formed part of the zemindari, the effect of the resumption proceedings under the Village Chaukidars Act was to create a new title in the zemindars to the benefit of which the putnidar has no claim. In support of this position, reference was again made to some observations in the judgment in *Kashim Sheik* v. *Prasanna Kumar Mukerjee*(3). Our attention was particularly drawn to two passages in the judgment in which it is stated that "the Act assumed, notwithstanding section 41 of Reg. VIII of 1793 and the decision of the Judicial Committee, that chowkidari chakran lands were not liable for the payment of land revenue and were not parts and parcels of the estate settled with a proprietor" and that "section 41 of the Regulation was impliedly repealed in districts or parts of districts to which Bengal Act VI of 1870 was made applicable." It must be observed, however, that in another passage in the same judgment, it is stated that "the effect of these lands being resumed by Government and transferred to the zemindar under Bengal Act VI of 1870, was to detach them from the parent

(1) (1864) 10 Moo. I. A. 16. (2) (1905) 1 C. L. J. 303.
(3) (1906) I. L. R. 33 Calc. 596.

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estate and to grant a new title in respect of these lands to the proprietor of the parent estate." It is not easy to perceive how these lands could be "detached" from what is described as the parent estate, if they "were not parts and parcels of the estate settled with the proprietor." Nor am I able to appreciate the reasoning by which it is held that there has been a repeal by implication of section 41 of the Regulation. It is quite possible that the actual decision in *Kashim Sheik* v. *Prasanna Kumar Mukerjee*(1) may be supported on the ground, amongst others, that the effect of the resumption proceedings under Act VI of 1870 is to substitute two distinct estates for what was the original estate; one consisting of the enfranchised chowkidari lands, the other composed of the remaining lands included in the original zemindari. But it is not necessary to decide this question in the present case. I only desire to say that the observations to which our attention has been drawn were not necessary for the decision of the case of *Kashim Sheik* v. *Prasanna Kumar Mukerjee*(1), that I am unable to adopt them and that, if the decision had been precisely in point, a reference to a Full Bench would have been necessary. It may be observed that, if we were to accede to the contention of the appellants, we would have to hold that a series of decisions of this Court, particularly the cases of *Hari Narain Mozumdar* v. *Mukund Lal Mundal*(2), *Upendra Narain Bhattacharjya* v. *Protab Chandra Pardhan*(3), *Jonab Ali* v. *Rakibuddin*(4), *Hari Das Goswami* v. *Nistarini Gupta*(5), and *Girish Chandra Roy* v. *Hem Chandra Roy*(6) were all erroneously decided. I am not prepared to do so, and after a careful consideration of the matter, I see no reason to abandon the view which I had expressed in the last three cases. It may further be pointed out that, even if the effect of the resumption proceedings under Act VI of 1870 was to create a "new title" in the zemindar, the rights of the putnidar would be protected by section 51 of that Act. The first point taken on behalf of the appellants cannot therefore be sustained.

The second ground upon which the validity of the decree of the District Judge is questioned relates to the terms upon which

(1) (1906) I. L. R. 33 Calc. 596.
(2) (1900) 4 C. W. N. 814.
(3) (1903) 8. C. W. N. 320.
(4) (1905) 1 C. L. J. 303.
(5) (1905) 5 C. L. J. 30.
(1905) 5 C. L. J. 28.

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the putnidars ought to be allowed to obtain possession of the lands. The learned vakil for the appellant has argued that in addition to the assessment imposed by the Collector on the resumed lands, the putnidars are bound to pay some additional rent to the zemindar. In support of this position reliance has been placed upon the case of *Hari Narain Mozumdar* v. *Mukund Lal Mundal*(1). It has also been pointed out that after the grant was made in this case to the putnidars inclusive of the chowkidari chakran lands, the putnidars received the services of the chowkidars, who also performed services to the public; and that by reason of the resumption, the lands were enfranchised and the putnidars obtained the land freed from the partial burden of the public service. With reference to these facts, it has been argued that the putnidars are bound to allow the zemindars some profit in respect of that portion of the rights in the land which was subject to the burden of public service and which has now been freed from such burden. It may be conceded that there is some apparent force in this contention, and that, if there were materials on the record corresponding to what were furnished by the parties in the case of *Hari Narain Mozumdar* v. *Mukund Lal Mundal*(1), it might have been necessary to consider whether the putnidars were bound to pay to the zemindar any additional rent for these lands, and if so, upon what principal such rent was to be assessed. The principle which would determine whether additional rent is payable or not was indicated in the case of *Hari Das Goswami* v. *Nistarini Gupta*(2), and the decision of the question must ultimately depend upon the mode in which the rent was assessed at the inception of the putni; if at the time of such assessment, the profits of all the lands, including the chakran lands were fully taken into account, the zemindar would clearly have no right to claim any rent in addition to the putni rent. It is not disputed that the putnidars would be liable to pay the assessment imposed by the Collector, and having regard to the provisions of section 52 of Act VI of 1870, there could not be any dispute on the point. The second ground, therefore, cannot be supported.

(1) (1900) 4. C. W. N. 814. (2) (1905) 5 C. L. J. 80.

As regards the third point taken on behalf of the appellants, it is argued on the authority of the case of *Binad Lal Pakrashi* v. *Kula Pramanic*(1), that the tenants appellants with whom the lands were settled by the zemindars after the transfer to them by the Collector, have acquired the status of non-occupancy raiyats and are protected from eviction. But as pointed out in *Jonab Ali* v. *Rakibuddin*(2), a tenant, who takes a settlement from the zemindar under these circumstances, does not become an occupancy or a non-occupancy raiyat, and there is this additional fact in the present case, namely, that the settlement by the zemindars was not made in good faith, which would take the case out of the rule laid down in *Binad Lal Pakrashi* v. *Kula Pramanic*(1), even if it was otherwise applicable. The third point urged on behalf of the appellants consequently fails.

For these reasons I agree with my learned brother that the decree made by the Court below is correct and must be affirmed.

Appeal dismisssed.

B. D. B.

(1) (1893) I. L. R. 20 Calc. 708. (2) (1905) 1 C. L. J. 303.