

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi and others; and of Same v. Bhaba Prasad Khan Chowdhuri and others; and of Bhaba Prasad Khan Chowdhuri v. Maharaja Jagadindra Nath Roy Bahadur; and of Rani Hemanta Kumari Debi v. Same; and of Hem Chandra Chowdhuri v. Same; and of Maharaja Jagadindra Nath Roy Bahadur v. Hem Chandra Chowdhuri and others, from the High Court of Judicature at Fort William in Bengal; delivered the 28th June 1911.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD ROBSON.

MR. AMEER ALI.

[DELIVERED BY MR. AMEER ALI.]

These Appeals and Cross-Appeals from a Judgment and Decrees of the High Court of Bengal, dated the 5th of June 1905, arise out of certain actions in ejectment brought by the Plaintiffs in the Court of the Subordinate Judge of Mymensing to recover possession of seven plots of jungle lands, commonly called garhs, as appertaining to their estate of Pergunnah Pukhuria.

The main defence to the suits was based on the allegation that the lands in dispute formed part of the Defendants' talook of Balasuti, and not

of the Plaintiffs' zamindari of Pukhuria. It was also urged that the actions were barred by the Statute of Limitation.

At the trial the Plaintiffs appear to have withdrawn or abandoned their claim in respect of Plots 5, 6, and 7; and the adjudication was thus confined to the first four pieces of property, named respectively, (1) Ramkrishnabaree, (2) Pirijpur, Bagalbari and Krishnapur, treated as one plot, (3) Jote Pailan, and (4) Mantollah.

A number of issues were raised, most of which only touched the fringe of the case, and, as usual, helped in prolonging the trial,

The Subordinate Judge, in a very able judgment dealing with the real issue, came to the conclusion that the Plaintiffs had established both title and possession in respect of all four plots, and awarded them a Decree in modification of their claims regarding area.

On appeal by the Defendant the High Court has affirmed the Subordinate Judge's Decree in respect of Plots 1, 2, and 4, but has dismissed the claim in respect of Jote Pailan (Plot 3).

Both parties have appealed to His Majesty in Council.

Regarding Mantollah (Plot 4), the decision of the High Court has not been seriously impugned at their Lordships' Bar, and the controversy is thus narrowed to the correctness of the Decree with regard to Ramkrishnabari (Plot 1), Pirijpur, &c., (Plot 2), and of the dismissal of the claim respecting Jote Pailan (Plot 3).

The history of the two properties Pukhuria and Balasuti is set out in considerable detail in the Judgments of the Subordinate Judge and of the High Court. It is sufficient therefore to refer here to only a few of the salient features of the case.

Pergunnah Pukhuria prior to the Permanent Settlement of 1793, belonged to a Hindu lady,

Rani Bhabani, whose name occurs frequently in the annals of Eastern Bengal towards the end of the 18th century, and who is referred to in very reverent terms in the First Court's Judgment. Between the years 1766 and 1778 this lady appears to have made certain grants to her daughter Rani Tara Debi of a number of mouzahs which now constitute the Talook of Balasuti, paying rent to the parent estate of Pukhuria. The Defendant derives title from Rani Tara Debi, whilst the Plaintiffs, by various transfers and devolutions, have become the proprietors of the zamindari of Pukhuria.

The forest of Garhgojali forms admittedly a part of Talook Balasuti, and is owned by the Defendant. In the year 1850 there was, at the instance of Government, a *thakbast*, followed by a scientific survey of this tract of country, which seems to have lasted until 1857. In the course of the survey various contentions arose between the zamindars on one side and the talookdar on the other, regarding the demarcation of the lands. These contentions are referred to in the Judgments of the Courts in India as *matneza* or contentious proceedings.

Ramkrishnabari and the three villages of Pirijpur, Bagalbari, and Krishnapur, now alleged by the Defendant to form part of Garhgojali were surveyed then as appertaining to Pergunnah Pukhuria and not to Garhgojali, which was *thaked* and surveyed separately. Among the many contentions that arose between the parties in the course of the survey proceedings, no question seems to have been raised regarding the demarcation of these lands as falling within the ambit of the zamindari. Further, both the Courts in India concur in finding that the Plots 1 and 2 are not included in the sanads by which the talook was created; and having regard to the nature of the property as jungle land they

have held, in their Lordships' opinion correctly, that possession must be presumed to have been all along with the Plaintiffs, who clearly had title to them, until dispossession within the statutory period. In this view their Lordships think that the Defendant's appeals in regard to Plots 1, 2, and 4 must fail.

With regard to Jote Pailan (Plot 3), the position is not so clear. Admittedly the Plaintiffs are entitled to a mouzah or jote of that name as appertaining to Pukhuria, but bearing a separate revenue assessment in the Collector's Register. It is established that they pay the revenue for it and that they have often purported to deal with it as an existing mouzah. It is clear, however, that for many years prior to the Government survey of 1851 they were unable to localise Jote Pailan; and consequently in the partitions that took place between the different owners of the Pergunnah, the *batwara* of Jote Pailan among the co-sharers was effected by means of a division of the *jama* or Government revenue payable for it.

In the *thakbast* and Survey Proceedings of 1850 and 1851, no attempt appears to have been made to trace Jote Pailan or to have it demarcated by the Amin preparing the Thak map which formed the foundation of the subsequent survey.

In 1857, when the survey proceedings were evidently drawing to a close, attention was directed to the fact that Jote Pailan, a separate revenue paying mouzah appertaining to Pergunnah Pukhuria, did not appear to have been separately measured or *thaked*. The officer who submitted the report asked for an enquiry as to the reason of its non-appearance in the *thakbast* measurements of the locality; and the Deputy Collector in charge of the survey thereupon called for a statement from the person in possession of the mouzah or his Mukhtar. Pursuant to this

order the zamindar's agent appeared and stated that as Jote Pailan, was wholly covered with jungle and was situated "by the side of Garhgo-  
"jali" it had been surveyed along with it, and that "the 10-gunda share of Garhgojali should  
"be taken for that mouzah."

There is nothing to show on what data or material the application was made for the allotment to Jote Pailan of a 10-gunda share of the lands demarcated within the *thaked* boundaries of mouzah Garhgojali. But on the 27th July 1857, the Deputy Collector, proceeding on the allegations of the zamindari mukhtar, directed that the statement in the *thakbast* proceedings be rectified, and pursuant to this direction an entry was made in the index attached to the *thakbast* map of Garhgojali (lx. 386). In the remark column it is entered that "this mouzah  
"(Jote Pailan), has been measured without  
"demarcation within the enclosure of mouzah  
"Garhgojali." And in the column of *mahal*, it is recorded that Garhgojali consists of "15 annas and 6 pies" and Jote Pailan of 6 pies (or 10 gundas).

On the 19th July, and consequently before the order referred to above, a Petition had been presented by the Mukhtar of the Defendant's predecessor in title objecting to the statement of the zamindar's agent that Jote Pailan had been measured "in the same circle with Garh Jayanshi" (another name for Garhgojali). The Petition then goes on to say "Jote Pailan is to the east of  
"Ramnagar, and to the north of Kanyajora  
"Khal, and forms an unprofitable mahal consisting of minor and worthless jungles, and it  
"neither forms a part of, nor appertains to the  
"garh held by" the Petitioner, meaning Garhgojali. This Petition was rejected on the 27th July on the ground that the matter had been already disposed of.

No further step seems to have been taken with regard to the localisation of Jote Pailan until 1882, when the Plaintiffs brought a suit for the enhancement of the rent of the Talook. In their claim they purported to exclude a tract of land, which they alleged to be Jote Pailan, wrongly included in Garhgojali. A map was prepared on that occasion, and the line of boundary pointed out then has been reproduced in the map of the locality prepared for the purposes of the present suits.

It will thus be seen that the Plaintiffs' claim to Jote Pailan hinges on the entry in the statement attached to the *thakbast* map of Garhgojali, and the boundaries given in the Defendant's Petition of the 19th July 1857.

The position of Ramnagar is not disputable, but the parties are not in accord with regard to Kanyajora Khal. The Subordinate Judge has accepted the Plaintiffs' statement that what the Defendant calls Mendi Khal is the real Kanyajora Khal of the Petition of 1857; and as according to the statements made then by the Defendant, Jote Pailan lay to the east of Ramnuggur and north of the Kanyajora Khal he has treated the disputed Jote accordingly. He seems further to have considered that the declaration entered in the index to the *thakbast* map was an official act to which no exception had been taken on behalf of the Defendant, and may therefore be presumed to have been correctly made. Proceeding on this hypothesis he awarded the Plaintiffs a Decree for  $\frac{1}{3}$ rd. or 10-gunda share of the total *thaked* area of Garhgojali lying to the east of Ramnagar and north of Kanyajora as pointed out by the Plaintiffs. The learned Judges of the High Court were not satisfied with the Plaintiffs' identification of the Khal. With regard to the entry in the statement attached to the *thakbast* map, they considered it was made

*ex parte*, and so far as appears on the record, without any inquiry. And they accordingly held that the Plaintiffs had failed to discharge the onus that lay on them to show Jote Pailan was situated within Garhgojali. Their Lordships do not feel in a position, on a general review of the evidence, to say that they are wrong in the view they have taken. It is only with the help of the disputed entry in the *thak* map that the Subordinate Judge was able to mark off the area he has awarded to the Plaintiffs. In the *Plaint* they had claimed 8,000 biggas as belonging to Jote Pailan; before the officer making the local investigation and who prepared the map of the locality, they pointed out an area extending to 22,000 biggas. The learned Judges are right in observing that the Plaintiffs are "not at all certain as to the true position of Jote Pailan." The entry on which the Decree awarded to them must rest, was made on an *ex parte* statement of the zamindars' agent which was immediately contradicted on behalf of the Defendant. Under these circumstances their Lordships think the Judgment and Decree of the High Court with regard to Jote Pailan must be affirmed.

In the result their Lordships will humbly advise His Majesty that these Appeals and Cross-Appeals be dismissed with costs.

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In the Privy Council.

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MAHARAJA JAGADINDRA NATH ROY  
BAHADUR

v.

RANI HEMANTA KUMARI DEBI AND  
OTHERS.

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DELIVERED BY MR. AMEER ALI.

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