

**(1935) 06 CAL CK 0009**  
**In the Calcutta High Court**

Indian Iron and Steel Co. Ltd.

APPELLANT

Vs

Bara Gopal Thakur and Others

RESPONDENT

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**Date of Decision :** 25-06-1935

**Acts Referred:**

Land Acquisition Act, 1894 — Section 32

**Citation :** AIR 1935 Cal 641 : 158 Ind. Cas. 656

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**Judgement**

1. This is an appeal by the Indian Iron and Steel Co. Ltd., from a decision of the District Judge of Burdwan by which the learned Judge has dismissed their claim to a part of the compensation money awarded for acquisition of lands for a project named, Indian Iron and Steel Co. Ltd., construction of their works, office and buildings." In the reference which has given rise to this appeal the claim of the appellants was confined to two plots of land numbered as 1156 and 1159. They claimed a fifth share of the compensation money awarded for plot 1156, and a sixth share of that for plot 1159. From the judgment appealed from it would appear that the claim as regards the latter plot was not seriously pressed in the Court below, and in this Court Mr. Bose appearing on behalf of the appellants has conceded that there are no sufficient materials on which he can argue that the said plot is identifiable with or covered by the subject-matter of the two kobalas on which the appellants' claim as regards the plot rests.

2. The controversy in the appeal has thus been reduced to the share of the compensation money which has been awarded for plot 1156. The documents of title on which the appellants rely for this plot are four in number: they are Exs. 1, 2, 3 and 4. By Ex. 2, dated 1886, one Atal Chandra Thakur sold a one-fifth share of a plot of jungle named Korkota Jungle to Mr. Coutts, a missionary priest belonging to the Roman Catholic Mission at Asansol. The property was described as rent free jungle, situate in Moujah Hirapore which bore Towzi No. 1 of the Burdwan Collector and was a Lakheraj debuttar mehal held by the vendor Atal Chandra Thakur and his co-sharers. Ex. 3 is a deed of release dated 1889 executed by Mr. Coutts in favour of Dr. Goethals, the then Archbishop of Calcutta, in respect of several properties amongst which this property was one.

By Ex. 4 dated 1891 Dr. Goethala sold the property to one Mrs. Stevo. On 11th June 1919, three months before the declaration in connection with the present land acquisition proceedings, the company purchased the property from Mrs. Stevo by the Kobala Ex. I. The Collector awarded the entire compensation money in respect of this plot to the shebait of Sree Sree Madan Gopal Jiu Thakur, of whom Atal Chandra Thakur is one, and ordered that the amount be invested u/s 32, Land Acquisition Act. The learned Judge has upheld this order.

3. At the outset it is necessary to deal with an application which was made to us on behalf of the appellants for receiving certain documents as additional evidence. One of these the Court below refused to admit in evidence and as regards the others they allege they have discovered their existence during the pendency of this appeal. The document, which the Court below refused to admit in evidence, is a sale-deed the consideration showing the value to be Rs. 71-12-9; and the learned Judge rejected it on the ground that it was not a registered instrument. The document no doubt was not receivable for any of the purposes mentioned in Section 49, Registration Act, but in our opinion, it was not altogether inadmissible in evidence, and so we ordered it to be admitted and marked as an Ex. (H C.) 1. We then gave the respondents an opportunity to adduce such rebutting evidence as they might desire to do and they filed two documents, a copy of an award and a cess return. They were admitted in evidence and marked as Exs. (H.C.) A and (H.C.)-B, respectively. As regards the other documents we are satisfied that the account which the appellants have given is not untrustworthy. But we think the decision of the Judicial Committee in *Kessowji Issur v. G.I.P. Ry. Co.* (1907) 31 Bom 381, and the explanation given by their Lordships of C. 41, Rule 27 of the Code in *Parsotim Thakur v. Lal Mohan* 1931 PC 143 preclude us from receiving them as additional evidence. The application for receiving the said document as such therefore is rejected.

4. Considerable stress has been laid on behalf of the appellants upon a judgment (Ex. 11) passed by the District Judge of Burdwan in L.A. Ref. Case 12 of 1892 on 12th May 1893 in which the appellants' predecessor Mr. Coutts was allowed a share of compensation in connection with the acquisition of another part of the same property on the strength of the very same title; and it has been urged on their behalf that the decision operates as *res judicata* on the question of the appellants' title to the property and so of the share they claim. Ex. 14 shows that in that reference the deity as such was not a party at all and the Shebait of the deity, that is to say Atul Chandra Thakur and his co-sharers, were ranged as 2nd party debuttardars and Mr. Coutts, apparently as purchaser from Atul Chandra Thakur, was the 3rd party debutterdar. And the judgment Ex. 11 shows that the contest as between these two sets of persons was that while Mr. Coutts claimed an one-fifth share in the compensation money the co-sharers debutterdars of Atul Chandra Thakur (he himself being absent) put forward an objection that Atul Chandra Thakur had no power to alienate his share of the property by deed of sale to Mr. Coutts. and hence the latter's assignee, that is to say Mrs. Stevo, who by the same judgment had stepped into Mr. Coutts' shoes

as such assignee, had no right to an apportionment of the compensation. The question which has to be considered in the present case, namely whether a shebait or rather an assignee from a co-sharer shebait has the right to the compensation money as against the deity does not appear to have been raised in that case; and indeed such a question, in our opinion, could not be raised or decided in that case having regard to the form in which the parties to that case were arrayed. It is quite true that the right of suit vests in the shebait and not in the deity and when all the shebaits institute a suit as shebaits the suit may be regarded as a suit in which the deity is the plaintiff. And it is also true that in that way the constitution of the reference aforesaid is distinguishable from the constitution of the suit in *Radha Benode Mandal v. Gopal Jiu Thakur*, 1927 PC 128. But in the reference the shebaits raised a contest as regards their rights inter se and not a right as against the deity which is the nature of the contest in the present case. We are of opinion therefore that the judgment Ex. 11 does not operate as *res judicata*.

5. It appears that the question whether the property was a complete debuttar property of the deity or not was gone into as between the deity and the present appellants in a suit of which the judgment is Ex. A from which an appeal to this Court was taken by the appellants but was ultimately allowed by them to be dismissed. The decision was that the entire Mouzah Hirapur was a property dedicated to the deity Sree Sree Madan Gopal Jiu Thakur and not a property merely charged with the expenses of his sheba. As against this decision what has been shown on behalf of the appellants is, firstly that in the present case one of the other shebaits, namely one Mukunda Lal Thakur, claimed an apportionment of the compensation money as amongst themselves (vide his petition dated 29th March 1921); secondly on one occasion compensation money was allowed to be divided between Mrs. Stevo on the one hand and the shebaits on the other (vide Ex. 11) and thirdly that there is some evidence that Mrs. Stevo possessed the property by cultivating the lands and keeping cattle there and that she as well as the appellants since then have erected structures on it.

6. So far as the first two of the aforesaid three items of evidence are concerned they are obviously of no value. As regards the third, the learned Judge has found the evidence untrustworthy and he has disposed of the case with some general remarks to the effect that all the sale deeds, Exs. 1, 2, 3 and 4 are paper transactions and that neither Atal Thakur nor the successive transferees from them had any possession in the property. These remarks, in our judgment, are without justification. The sale deeds were bona fide documents and intended to pass title; but at the same time we are of opinion that there is nothing which would indicate that such possession as the vendees exercised was anything else than the kind of possession which the owner of a piece of land full of jungles could have or exercise on it. An argument has been addressed to us by Mr. Bose based on his reading of the decision of the Judicial Committee in *Baraboni Coal Co. v. Gokulnanda Thakur* 1934 PC 58. That decision as well as the decision of this Court in *Narendra Nath v. Atul Chandra* 1918 Cal 810 which it purports to

approve of, no doubt lay down that the shebaitis are trustees as regards endowed property and that where there is a body of shebaitis their interests and authority are equal and undivided and so they cannot act separately and must all join and act as a collective trustee and exercise the powers of their office in their joint capacity. Whether by this pronouncement their Lordships intended to depart from the long line of decisions in which their Lordships expressly propounded a different view as regards the true position of shebaitis is a matter which we need not discuss. The argument is that the act of Atul Thakur in transferring his share was ultra vires and so the vendee from him was a trespasser, and by adverse possession on the part of the successive transferees, who were also trespassers, the right of the deity to that share was lost. The transferees purported to come in only as co-sharers of the co-shebaitis and their possession was not such as would enable them to acquire a title as against the latter; such possession in order to be sufficient for the purpose must amount to an ouster of the latter. And as against the deity the possession was at no point of time hostile to the title of the deity and so never adverse to the deity; the sale-deed by Atul Chandra Thakur in favour of Coutts was in respect of ancestral debutter mahal held, by the vendor and his co-sharers, and the successive vendors held possession under that title.

7. We are of opinion that the title of the deity to the share which the appellants claim is still subsisting. In the record of rights, Ex. B., the plot concerned has been recorded as in the deity's khas possession, and nothing in our opinion has been proved which can go to rebut that entry. The documents admitted in this Court as Ex. (H C) 1 relates to a part of the acquired land in this case which appears to have been sold by the Government after it had been acquired. It describes the remaining portion of the land which lay on the north, east and west of the plot sold as mukarrari land of Mrs. Stevo. The recital of the boundary is hardly any evidence and certainly evidence of no worth at all against the deity. The documents Exs. (H C) A and (H C) B are of no worth whatever. The appeal is dismissed with costs, hearing-fee five gold mohurs.