

(1931) 06 PRI CK 0008

In the Privy Council

Case No : Privy Council Appeal Nos. 19 and 20 of 1929

Jagat Mohan Nath Sah Deo

APPELLANT

Vs

Pratap Udai Nath Sah Deo and others

RESPONDENT

Date of Decision : 11-06-1931

Acts Referred:

Citation : (1931) AIR(PC) 302

Hon'ble Judges : George Lowndes, Lancelot Sanderson, Lord Russell of Killowen, JJ.

Advocate : M.R. Jardine, T.B.W. Ramsey, H.Du Parcq, A.M. Dunne, S. Hyam, W. Wallach, L.De Gruyther, for the Appearing Parties.

Judgement

Lord Russell of Killowen

This is a consolidated appeal which involves the decision of a dispute which has arisen between the Maharaja of Chota Nagpur on the one hand and the Kumar, his younger brother, on the other hand; and it relates to the ownership of the mines and minerals under the Parganna Tori. The parties before their Lordships are, on the one hand as appellants, the Kumar and lessees of minerals claiming under him, and on the other, as respondents, the Maharaja and lessees of minerals claiming under him.

The questions for determination which have been argued before their Lordships are four in number : first, whether the Kumar acquired the rights in the mines and minerals under the Parganna Tori by virtue of a certain grant of 11th February 1867; secondly, whether assuming the grant did not include the minerals, he has got the minerals by virtue of an alleged custom; thirdly, whether the Maharaja, assuming both of those points failed, did not, by abandoning and relinquishing his claim to the mines and minerals in the year 1898. then create a title in the appellant, the Kumar; fourthly and finally, whether the suit, which was a suit brought by the Maharaja for a declaration of his rights, is or is not barred by the Limitation Act.

These questions will be dealt with in that order. As regards the construction of the deed in question which has been closely argued before their Lordships, their Lordships think it sufficient to say two things; first that the position, from the point of view of previous decisions by their Lordships, is summed up in the case of *Gobinda Narayan Singh v. Sham Lal Singh*, AIR 1931 PC 89=181 IO 758=58 IA 125 (PC) (at p. 132 of 58 IA) in these words:

"A long series of recent decisions by the Board has established that if a claimant to subsoil rights holds under the zamindar, or by a grant emanating from him even though his tenure may be permanent, heritable and transferable, he must still prove the express inclusion of the subsoil rights. The word "tenure" is put in the place of the word which occurs in the report, "powers," which appears to be a mistake. "This is laid down in a passage from the judgment of Lord Buckmaster in *Sashi Bhushan Misra v. Jyoti Prashad Singh*, AIR 1916 PC 191=40 IC 188=44 Ca. 585=44 IA 46 (PC), (at p. 63 of 44 IA) " which has been so often quoted in subsequent judgments of the Board that it is unnecessary to repeat it here.

The second observation which their Lordships think it necessary to make is this : As regards the construction of this particular grant, they find themselves completely in agreement with the views expressed in the High Court, which held that the deed is incompetent upon its construction to pass the mines and minerals.

Passing to the second question which was argued, namely, that the Kumar had a right to the mines and minerals by virtue of a custom, all that need be said is this : that there is no evidence in this case, worthy of the name, establishing any such custom at all.

The third point, namely, as regards the claim that by virtue of a certain transaction which took place in the year 1893 the Maharaja then vested the minerals in the Kumar, the document which is relied upon is one which contains a recital of an agreement entered into between the Maharaja and the younger brother in the year 1898. Their Lordship's have carefully considered the terms of that recital, and in their opinion the agreement therein referred to and the transactions which then occurred, clearly did not amount to any creation of title in the Kumar. On the contrary the agreement and the transactions which then occurred, are evidence of an assertion by the Maharaja of his title at that date. Accordingly that point equally fails.

As regards the plea of the Limitation Act, Mr. De Gruyther, who appeared for the principal appellant, the Kumar, quite properly, in their Lordships' view, gave up the point and did not argue it. Mr. Hyam however appearing for the lessees claiming under the Kumar, argued the point, but to his credit, be it said, with commendable brevity. In their Lordships' opinion, there is nothing in the point. A right in the Maharaja to sue arose in the year 1921, quite independent of any right to sue which may have arisen in him at an earlier date. The suit in question here was brought in the month of August 1922; that is therefore clearly within

time. For these reasons their Lordships will humbly advise His Majesty that this appeal fails, and should be dismissed. The appellants will pay the costs of the respondent who appeared, such costs to be limited to one set of costs to be shared equally between those two respondents.