

(1929) 06 CAL CK 0026
In the Calcutta High Court

Sachidananda and Others

APPELLANT

Vs

Jyoti Prosad Singh Deo Bahadur and Another

RESPONDENT

Date of Decision : 07-06-1929

Acts Referred:

Citation : AIR 1929 Cal 791

Hon'ble Judges : B.B. Ghose, J

Bench : Division Bench

Judgement

B.B. Ghose, J.—This is an appeal by the defendants against a judgment and decree of the Officiating Additional Subordinate Judge of Assansol partially decreeing the plaintiff's suit. The plaintiff has preferred a cross-objection against that part of the decree by which the learned Subordinate Judge dismissed a portion of his claim. The suit refers to a mouza called Itapara and the plaintiff claims that the property is situated within the ambit of this zamindari. An ancestor of his made a grant of the lands within the mouza to an ancestor of the defendants for performing the sheba of an idol named Sri Sri Gopi Nath Jue without payment of any rent. Recently, at the instance of the defendants the revenue authorities recorded the mouza in the Register under the Bengal Land Registration Act (Act 7 of 1876) as a revenue-free estate. Coal has recently been discovered underneath the mouza and the defendants have set up their right to the underground minerals. The plaintiff, therefore, brought the suit praying that his title to the mouza Itapara as zamindar might be declared and his possession of the uncultivated waste lands and subsoil minerals might be confirmed. No argument was addressed as regards those surplus waste lands. It was also prayed that it might be declared that the defendants are only entitled to the surface lands consisting of an area of about 121 big has and 18 cottas for the service of the idol above mentioned. There was a further prayer that the record of the mouza in the Register by the revenue authorities as a revenue-free property may be declared to be erroneous and ultra vires. The defendants pleaded that the mouza is their revenue-free property. It is admitted that the original grant of the property in suit was to one of their ancestors by an ancestor

of the plaintiff. It was alleged that the land originally formed part of a mouza called Bilagram. Subsequently the land granted to the defendants' ancestor formed a different mouza called Itapara a name which it now bears having been carved out of the parent village Bilagram. The grant was made prior to the accession of the East India Company to the Diwani of Bengal and this grant was confirmed by a Superintendent of Baje-Jamin-Duftar, the result of which was that it constituted a revenue-free estate quite unconnected with the zamindari of the plaintiff. That being so, the defendants are the proprietors of the mouza including the subsoil minerals and the plaintiff has no connexion whatsoever with the property. This being the principal question in dispute between the parties several issues were framed in the Court below. It was found by the learned Subordinate Judge that the grant in this case was in the nature of a demise for divine service but that it was not a grant in favour of the deity and that, therefore, the idol was not a necessary party to the suit.

2. The main issues for trial are issues 6, 8 and 9. The learned Subordinate Judge held in favour of the defendants' contention that the mouza in dispute formed part of mouza Bilagram alias Chaitanyapore.

3. It became subsequently necessary to give a separate name to the land demised and it was named Itapara. But the plaintiff was not in possession of any portion of the land in dispute and the land in dispute formed a separate revenue-free estate and it did not form a part of the revenue paying estate of the plaintiff. The learned Subordinate Judge, however, held that the defendants were not entitled to the subsoil minerals, because the grant in their favour was made by the zamindar who was an ancestor of the plaintiff and that, as there was no grant of the minerals by the zamindar, according to the long line of authorities the defendants are only entitled to live upon the land and to enjoy the profits from the surface and that they are not entitled to the subsoil minerals. On these findings he made a decree to the effect that the plaintiff's possession of the underground minerals in the disputed mouza be confirmed in view of the finding that he was the zamindar of the disputed mouza and was entitled to the minerals and did not part with them in the defendants' favour, but that the other reliefs claimed by him including the prayer for a declaration that the said mouza appertained to his revenue-paying estate be disallowed. The defendants appealed against the former part of the decree declaring the plaintiff's right to the minerals and confirming his possession and the plaintiff preferred a cross-objection against the latter part of the decree principally against that portion where it is declared that the mouza does not appertain to his revenue-paying estate.

4. The argument on behalf of the appellants amounts to this that upon the finding of the learned Subordinate Judge that the mouza is a revenue-free estate and does not form part of the revenue-paying zamindari of the plaintiff, they are entitled to the minerals and that the Subordinate Judge's finding that the plaintiff is entitled to the minerals under the property in dispute is

unconsequential to his previous finding. The appellants based their title upon three documents Ex. (A) the date of which cannot be found; but it would appear from Ex. B (1) which is dated 16th June 1785 that Ex. (A) was granted sometime in 1761. The learned Subordinate Judge finds that by Ex. (A) a certain quantity of land in mouza Bilagram was granted to an ancestor of the defendants free of revenue. The Bengali word is to the effect that no "Rajaswa" was to be paid. This word "Rajaswa" may mean both rent and revenue. The Subordinate Judge finds that it was necessary to grant a second document Ex. B(1) in 1785 as the area of the land granted was not specified in the previous document. The third document is Ex. B dated 27th August 1807. This is a copy of an order from the Maharajdhiraj Bahadur, the ancestor of the plaintiff, to the Raj officers and thanadars and inhabitants of mouza Bilagram and runs to the effect, that there was a debuttar village Itapara and that on ceremonial occasions in the said village the persons named belonging to the village Bila wrongfully committed oppression on people with respect to certain imports in respect of village Itapara and that those persons were forbidden from molesting the inhabitants of the village Itapara.

5. It is contended by the learned advocate for the appellants as it was found by the learned Subordinate Judge u/s 48, Regulation 19 of 1793, this grant in favour of the defendants was confirmed by the Superintendent of the Baje Jamin Duftar, therefore although it was not registered under the provisions of Section 27 of that Regulation, the right given to the grantee to hold the land revenue-free cannot be considered to have been annulled. He further says that the Subordinate Judge ought to have held that the plaintiff has no concern whatsoever with this property and cannot claim any right as zemindar of the mouza and that consequently the cases upon which the learned Subordinate Judge held that there was no grant of the subsoil by the plaintiff's ancestor cannot be supported. The defendants being the proprietors of the property are entitled both to the surface and the minerals of the mouza. It seems to me that the Subordinate Judge is right in holding that if this grant be of a revenue free interest made antecedent to 12th August 1765, it having been confirmed by the Superintendent of Baje Jamin-Duftar u/s 48, Regulation 19 of 1793, the defendants would be proprietors of the mouza and entitled to hold it revenue-free and the plaintiff would have no right to the property. As Mr. Field points out in his Regulation of the Bengal Code at p. 246:

Non-Badshahi lakheraj grants may be divided into three classes namely, (1) grants of dates antecedent to 12th August 1763 the date of the Company's accession to the Diwani, (2) grant posterior to 12th August 1765 but antecedent to 1st December 1790., (3) grants posterior to 1st December 1790.

6. With respect to the first class, all grants by whatever authority made, and whether in writing or not, were admitted or allowed to be valid if the grantees had got possession and the land had not subsequently been made subject to the payment of revenue by competent officers of Government. With regard to this

class of lakheraj grant the zemindar can have no interest.

7. It is, however, contended on behalf of the respondent that reference should be made to the preamble of the Regulation where it is stated that grants made previous to the date of the Diwani and provided the grantee had obtained possession before that date should be held valid to the extent of the intentions of the grantor as ascertainable from the terms of the writings upon which the grants might have been made, and from their nature and denomination. It is next contended by a reference to the grant (Ex. A) that the object was that the grantee should build a debuttar homestead and by blessing the grantor and performing the sheba of the deity should go on enjoying the lands without payment of rent. The intention of the grantor was not therefore to be presumed to be that he desired to make the grantee full proprietor of the lands concerned by the grant. It is argued by a reference to Section 7, Regulation 8 of 1793 which has now been repealed, where it was provided that when taluqdars hold their taluqs in writing or under sanads from the zemindar which did not expressly transfer the property in the soil but only entitled the taluqdars to possession so long as they continued as leaseholders and not actual proprietors of the soil, that the sanads did not transfer the property in the soil and that, therefore, the grantee should only be considered as a leaseholder. With regard to the question of fact as to whether the disputed lands are covered by the sanads Ex. (b) and Ex. B (1) it is argued that the defendants have not been able to make out that these lands were included within those sanads. The name of Itapara first appeared in the order Ex. (B) dated 27th August 1807 which has already been referred to. The defendants stated that Itapara has got an alias Chaitanyapore and that was stated with the object of identifying Itapara as included within mouza Bilag-ram, because in Ex. B(1) of 1785 in the schedule the mouza Bilagram is also called Chaitanyapore. The learned Subordinate Judge did not accept that statement of the defendants, as he observed:

Defendant 1 is not correct in saying that the disputed mouza was also called Chaitanyapore.

8. The learned Advocate-General on behalf of the respondent contends that the Subordinate Judge is wrong in holding that Itapara was a portion of Bilagram, as he says, there is no evidence in support of such a conclusion. It is also contended on behalf of the respondent that this mouza was included within the zemindari of the plaintiff and that the Subordinate Judge is wrong in holding otherwise. The two questions involved in the appeal and in the cross-objection are so connected that they must be decided together.

9. It is pointed out by the learned Advocate-General that all the documents except the very recent documents show that Itapara was always considered as included within the estate of the plaintiff. The documents on which the respondent relies are the following: Ex.7(a) dated 1859-60. It is a copy of a statement presumably of the villages within the zemindari of the Raj of Panchakote. Column (2) shows the number of the chakla "Panchakoti" which has

another name Pachete ; the next column contains the names of the mouzas as Itapara (1) and Dhadka ? mouza and Sri Sri Gopinath Jeu 1?. This idol whose shebait is the defendant is said to be the owner of 1? anna. This was filed by Raja Nilmoni Singh, the ancestor of the plaintiff. Panchakote or Pachete is the estate of the plaintiff. The next document is Ex. 7(c) dated 1860-61 the name of the zemindar and landlord of the chakla is given as Nilmoni Sinha Deo. The name of the mouza is Itapara, one mouza and there is also the name of the deity Sri Sri Gopinath Jeu. In the remark column it is stated that the land under this party is applied to the seba of Sri Sri Jeu and that there is no particular of jama at this place. This document was also filed by Nilmoni Singh Deo. In Ex. 2 (a) which is a thak statement dated 10th May 1862 with regard to mouza Itapara the deposition was recorded of a gumasta on behalf of the ancestor of the present defendants who are described as bramottar-holders. In answer to the question:

What is your connexion with this village ? whether you are the zemindar, taluqdar, or mokararidar.

The answer recorded is:

I am the gumasta of this village on behalf of Wooni Thakur and Nani Thakur, bramottar-holders; and the bramottadars are on behalf of Maharajh Nilmoni Singh, zemindar of (illegible) and the gross jama of the said entire village comes to about one hundred.

10. This is signed by the gumasta on behalf of the Wooni Thakur and Anir Thakur brahmottar-holders and underneath that there appears also the signature of Wooni, who was one of the brahmottadars.

11. Exhibit (8) is the next document, which is an extract from the mouzawar register dated 1862-63. There mouza Itapara is recorded as appertaining to chakla Panchakoti, the plaintiffs zemindari. Next comes the general register of revenue-paying lands of estates in one district and borne on the touzi of a different district. This is Ex. (7) dated 1877-78-register kept under the provisions of the Bengal Land Registration Act (Act 7 of 1876). There the name of the mouza and the description of the interest are given as Itapara (1) khas, Seba Debuttar or Sri Sri Gopinath Jeu and the name of Maharajdhiraj Nilmoni Singh Deo Bahadur is given as the proprietor.

12. Exhibit (7) is also a similar document.

13. Then it is pointed out on behalf of the respondent that decrees for cesses have been obtained by the plaintiff and his predecessor, which have been exhibited in this case, from the year 1894. No assertion of any right was made by the defendants that they were not bound to pay any cesses to the plaintiff in those cases on the allegation that they did not hold an interest subordinate to that of the plaintiff.

14. The next document is the Record-of-Eights, Ex. (5) where this mouza Itapara was recorded as within the zemindari of the plaintiff. This Eecord-of-Eights was

published in 1919. It is argued on behalf of the respondent that the cumulative effect of these documents is that the plaintiff is the proprietor of the mouza in question and that the defendants hold a debuttar interest under him without payment of any rent. No question can be raised that the mouza is a revenue-free estate dissociated from the zemindari of the plaintiff.

15. It is quite true that the payment of cesses to the plaintiff will not affect any title which the defendants may have in the property and they are entitled to argue that in spite of the fact that they had paid cess to the plaintiff they can establish their right to their property as proprietors of the soil. But from the fact that never at any time before 1918 did "the defendants raise the question that they held the mouza independently of the plaintiff's right as proprietors of the soil, they are bound to prove that all these proceedings that had taken place for a considerable number of years were not challenged for some cogent reason. It is only in 1918 that the defendants made an application to the revenue authorities for recording this mouza as their revenue-free property in B Register (Part *) under the Land Registration Act. The Deputy Collector allowed the prayer but on appeal, it appears, that the Commissioner doubted the identity of the land granted in the sanad being the same as the land of village Itapara and directed a further enquiry into the matter. In the end, however, the defendants succeeded in having the property recorded as revenue-free property under the order of the Board of Revenue. The learned Subordinate Judge considers this order of the revenue authorities as rebutting the Record-of-Rights Ex. (5). The learned Subordinate Judge observes:

This mouza was treated as appertaining to the plaintiff's revenue-paying estate for a long series of years till the revenue authorities decided otherwise in 1920 and the plaintiff seeks relief against the decision of the revenue authorities. The onus is upon the plaintiff to show that the disputed mouza had been assessed with revenue at the time of the permanent settlement and in my opinion the plaintiff has failed to prove that.

16. Now whether this mouza was assessed with revenue or not at the time of the permanent settlement does not appear to me to be a guiding factor in this case. From the documents filed by the plaintiff it is quite clear that this mouza had all along been treated as within the revenue-paying estate of the plaintiff and his predecessor. The sanad as stated above does not distinctly make a grant of the soil to the defendants' ancestor, assuming that it includes the lands of the mouza. Under such circumstances, it seems to me to be rather a large assumption to make that the grant was a revenue-free grant to be held independently of the grantor for all time. That assumption is further negatived, in my opinion, by the description of the document by which the grant was made. This document is bogus as:

This debuttar potta is granted in San 17 Sal to the effect following

and it concludes thus : "To this effect I grant (this) debuttar patta." Now the

expression patta can only mean that that is a grant by way of a lease. It was contended by the learned advocate for the appellants that in common parlance every document is described as a patta. Even if it be so, the various documents to which I have referred show that this was not a gift out and out. If it had been a grant free of all interest it might have been described as danpatra or arpannama and not as a patta. The zemindar in this case maintained his interest in the property without objection till recently. The true inference, therefore, is that it was rent-free grant by way of a lease by the grantor for the purpose of deb sheba.

17. The question whether the mouza Itapara is covered by the sanad Ex. A and the confirming sanad Ex. B (1) is left in great obscurity by the evidence. It is difficult to say as the learned Subordinate Judge has found that at the time of the grant these lands formed part of the parent mouza Bilagram and that subsequently to the grant it became necessary to give the lands a separate name. The learned Subordinate Judge, however, notes:

that the western, northern and eastern boundaries as given in the defendants' sanad, namely, mouza Bila and Nuniapore, obtained even at the time of the Revenue Survey as appears from the map Ex. (c).

18. It is, however, very difficult to identify the boundaries of the lands in the sanad with the boundaries of mouza Itapara. In my opinion the finding that the sanad refers to mouza Itapara is one which cannot reasonably be arrived at. However, on the opinion that I have expressed the grant should be considered as a rent-free lease, even assuming that Ex. (a) refers to mouza Itapara, the defendants would not be entitled to the underground minerals and the plaintiff would remain the owner of those minerals. It is not necessary for me to pile up authorities for the proposition that even when a lease-holder is granted a rent-free tenure the rights to the subsoil remain with the grantor unless there are express words granting such rights. It is only necessary to refer to this case of Ragu Nath Boy v. Raja Durga Prasad AIR 1919 P.C. 17 and to the last case on this point, the case of Raja of Pittapur v. Secy. of State AIR 1929 P.C. 152. On the evidence also it should be held that the defendants held the rent-free tenure for deb seba which was granted to them for the performance of deb seba of the idol of Sri Sri Gopinath Jeu.

19. The result, therefore, is that this appeal will stand dismissed with costs and the cross-objection allowed to this extent that the disputed mouza is declared to be within the revenue-paying estate of the plaintiff and not an independent revenue-free estate. The defendants, however, will be entitled to hold the whole of the surface of the mouza in their debuttar right including 121 bighas odd.

20. The plaintiff is entitled to his costs in the appeal and the cross-objection, the hearing-fee being assessed at ten gold mohurs consolidated in the appeal and the cross-objection.