

(1927) 04 PAT CK 0012
In the Patna High Court

Udai Pratap Nath Sahi Deo

APPELLANT

Vs

Jagat Mohan Nath Sahi Deo and Others

RESPONDENT

Date of Decision : 27-04-1927

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 139(3)

Limitation Act, 1963 — Article 120 Schedule 1

Transfer of Property Act, 1882 — Section 108

Citation : AIR 1928 Patna 66

Hon'ble Judges : Dawson Miller, C.J.;Kulwant Sahay, J

Bench : Full Bench

Judgement

Dawson Miller, C.J.—This is an appeal on behalf of the plaintiff from a decree of the Subordinate Judge of Ranchi, dated the 4th July 1925, dismissing the plaintiff's suit for a declaration of his right to the minerals in pargana Tori.

2. The main question for determination in the appeal is whether a grant of pargana Tori made in 1867 by Maharaja Jagannath Sahi Deo of Chota Nagpur to his younger son descendible in the direct male line of the grantee and resumable on failure of lineal male heirs passed not only the surface rights but also the right to the minerals thereunder.

3. The plaintiff, the present Maharaja of Chota Nagpur, is the elder son of Maharaja Jagannath Sahi Deo the grantor and succeeded to the Raj on his father's death in 1869. Defendant 1 who may be referred to as the Maharaj Kumar is the plaintiff's younger brother being the son of the same father by a different mother. It was to this defendant that pargana Tori was granted by way of maintenance by his father in 1867. Defendants 2 and 3 are licensees of the Maharaj Kumar under a prospecting license, dated the 21th May 1921. Defendant 5, the Tori Syndicate Limited, claims to be the assignee of the rights of defendants 2 and 3. This defendant was added on his own application. Defendant 4, the Tori Coal and Minerals Prospecting Company, Limited, claims under a prospecting license granted by the plaintiff and supports the plaintiff's

case. The remaining defendants numbered 66(a) and 66(b) who were also added on their own application claim as licensees of the Maharaj Kumar under a prospecting license granted to their deceased father on the 23rd May 1924, alleging that the previous license to defendants 2 and 3 had been cancelled.

4. The plaintiff claimed (a) a declaration of his right to the minerals in pargana Tori and the right of access thereto for himself, his servants and agents, (b) a permanent injunction against the contesting defendants restraining them from interfering with the exercise of the plaintiff's rights, and (c) a permanent injunction against the said defendants restraining them from working the mines and removing the minerals in pargana Tori. The contesting defendants pleaded that the minerals passed to the Maharaj Kumar under the grant of 1867 either by its terms or by custom and further that they have acquired title by adverse possession and that the suit is barred by limitation. A further plea was raised that the plaintiff had relinquished his rights, if any, in favour of the Maharaj Kumar by instruments of release and confirmation, dated the 10th March 1893.

5. Eleven issues were settled for determination but two of them originally numbered 6 and 9 were struck out before trial by the learned Judge without objection by the Maharaj Kumar as being irrelevant and unnecessary. They raised the question whether the Chota Nagpur Raj bearing tauzi No. 1 on the revenue roll of the Collector of Ranchi was a permanently settled estate and whether the villages in pargana Tori appertained to that estate. Defendants 2 and 3 objected to their deletion but as they admitted that the villages in pargana Tori appertained to the Chota Nagpur Raj estate the learned Judge did not consider it necessary to determine the nature of that estate. Of the remaining issues re-numbered 1 to 9 the first four were not pressed by the defendants at the trial or in this appeal. The remainder were as follows:

5. Is the suit barred by limitation?

6. Have the mineral rights in pargana Tori passed to and vested in defendant 1, either by virtue of custom as alleged by him or by virtue of the alleged lease, dated Magh Sudhi 7, 1923, Sambat?

7. Has the plaintiff got any title to the minerals in pargana Tori and is he entitled to the declaration and injunction prayed for?

8. Did the plaintiff abandon and relinquish his rights, if any, to the mines and minerals in the aforesaid pargana by the instruments of release and confirmation of the 10th March 1893?

9. What relief, if any, is the plaintiff entitled to.

6. If the grant were merely a lease either for a term or in perpetuity or a maintenance grant for the life of the grantee I consider that the question would be concluded by a series of authorities binding on this Court notwithstanding that there are words of general import in the grant itself which taken in their widest significance, would be sufficient to pass all rights in the property to the grantee

and the heirs male of his body. The learned Subordinate Judge before whom the case came for trial held that none of the decisions upon which reliance was placed by the plaintiff governed the present case. He was further of opinion that the nature of the estate created by the grant bore a close resemblance to what in England would be called an estate in tail male and was in the nature of a freehold estate passing the underground as well as the surface rights. He further relied upon evidence of surrounding circumstances when the grant was made as showing the intention of the grantor.

7. He further held that the suit being one for a declaration was barred by Article 120 of the schedule to the Limitation Act. He also decided the eighth issue in favour of the defendants holding that the plaintiff had by the transaction of the 10th March 1893, abandoned and relinquished his rights in the minerals to the Maharaj Kumar.

8. The translation of the grant of 1867 used in the lower Court and printed with the record was imperfect, certain important words being entered as illegible. We accordingly had a translation made by an official translator of this Court which is as follows:

Sri Sri Basudev Rai Sahi

Sign Manual

Maharajadhiraj Sri Jagarnath Sah Deo.

This patta is granted in respect of brit jagir on the auspicious 7th day of Magh Sudi, Sambat 1943, by the great and powerful Maharaj Sri Jagarnath Sah Deo.

I have granted the entire pargana Tori khas bhandar, original with dependency, appertaining to the Collectorate and district Kismat Lohardagga, Sub-District Ranchi, (together with) jalkar, bankar, trees, parjapur (tenants' houses), four boundaries, all included, in brit jagir to Manjhil Lal Sri Jagat Mohan Nath Sah Deo for his maintenance. He with his sons and grandsons and so on shall realise from the former and present elakadars rents fixed in respect of the jagirs granted previously and at present, in accordance with the patta, together with the rakumats. So long as the sons and grandsons and so on of Manjhil Lal Sri Jagat Mohan Lal Sah Deo will live, (they shall take possession of) bhandar khas at every place and realize rents in respect of the entire pargana Tori khas bhandar and the elakadari, and enjoy the same peacefully, and pay to huzur an annual rental of Rs. 300 (Rupees three hundred) in the Company's coin together with rakumat. So long as Manjhil Lal is not fit to sign his name by his own pen, the papers of his villages (dehat), such as thika patta, receipts, acquittance, etc., shall be executed under the sahi signature of huzur, and Manjhil Lal shall continue to get all the income from the aforesaid villages (dehat). He shall remain in possession and occupation of the said villages (dehat) and peacefully enjoy the same. It is, therefore, witnessed by Dudhbhiya Sri Puran Sahi Bakhsh Sri Nilamar Das Mirdaha Sri Ganesh Ram. Signature (scribe?) Pande Bhupal Rai

of Bhoro.

(On the margin)

Witnessed by

Swami Sri Trambak Nath Deo.

Purohit Sri Gobind Ram, Guru Sri Manik Ram.

Jubraj Sri Pratap Udainath Sah Deo.

Thakur Sri Padamlochan Nath Sah Deo.

9. The words "four boundaries, all included" are a literal translation of the words "chatur sima sab sudha" and might perhaps be rendered in idiomatic English as "including everything within the four boundaries" The words "bhandar khas" refer apparently to the villages or portions of the estates in the direct possession of the proprietor himself and not rented or farmed to others. The Chota Nagpur Raj to which pargana Tori appertains is admittedly an impartible estate and succession thereto is governed by the rule of male lineal primogeniture, females being excluded. Such an estate according to the decision in the case of Sartaj Kuari v. Deoraj Kuari [1888] 10 All. 272 is alienable at the will of the Maharaja for the time being except in so far as there may be any custom to the contrary and no such custom has been shown in this case. The younger sons of the family although they have no right to partition or to restrain alienation are entitled by the custom prevailing in the family to a maintenance grant of a portion of the estate which descends in the direct male line of the grantee in the same manner as the parent estate and is resumable on failure of that line. According to the evidence of the defendants' witness 3 the third son of the plaintiff, there is no hard and fast rule as to the kind of property to be given in khorposh. There is no set form for the documents executed in evidence of the grants. The terms of such grants may not be exactly similar but the substance is the same. At the time of making grants calculation is made on the basis of the income derivable from the pargana concerned. This witness adds that up to now no mines in Chota Nagpur have to his knowledge been worked. Except Chota Lal none of the khorposhdars in the Raj has as yet worked any mines in their respective villages and he adds:

I do not know in what village or villages the said Chhota Lal has worked mine but I have heard that he has got some mines working.

10. Chhota Lal there referred to is the fourth son of the Maharaja. He was also called as a witness and agrees with his brother that there is no fixed rule as to the extent of khorposh grants in reference to the parent estate. There is no dastur on the point. If any disputes arise in the matter the same have to be decided either in Court or by arbitration. It does not appear from his evidence that he ever worked any mines within his khorposh grant but he appears to have excavated clay or earth on his estate for the purpose of making bricks for his

house without any opposition from the plaintiff. In fact it may be stated at once that except for the evidence of Lal Jogendra Nath Sahi Deo, a son of the present khorposhdar of the Jharria estate, held under the Chota Nagpur Raj, there is no evidence of any of the khorposhdars having worked the minerals upon their estates. The evidence of this witness is of the vaguest description. He says that some 40 or 50 years ago some iron mines used to be worked on that estate. The operations went on for two or three years. The greatest depth reached was about 15 feet and the excavations were made along a ditch 100 to 150 steps in length. This village is in a remote part of the country 44 or 45 miles from the nearest railway station and it does not appear that the Maharaja of Chota Nagpur had any knowledge of the matter. I think that it may safely be assumed that in 1867 when the grant in question in this suit was made the question of mineral rights was not present to the mind of anyone.

11. Several cases have been drawn to our attention of maintenance grants and leases in which it has been held that the mineral rights did not pass except by express words of grant or by necessary implication. In *Tituram Mukerji v. Cohen* [1906] 33 Cal. 203 the Judicial Committee held that a khorposh grant for the lifetime of the grantee could not be presumed to be more than a grant of the rents and profits and did not carry with it the right to open mines and remove minerals which are a portion of the soil. In that case there was no direct evidence as to the terms of the grant. In *Hari Narayan Singh Deo v. Sriram Chakravarti* [1910] 37 Cal. 723 it was held that a perpetual lease to a certain idol at a nominal rental did not pass the mineral rights in the absence of any evidence that the grantor had parted with them. Again the document in this case relied on by the lessees was not produced. In *Jyoti Prasad Singh v. Lachipur Coal Co.* [1911] 38 Cal. 845 it was held in the Calcutta High Court that a permanent moghali brahmottar grant which had existed before the permanent settlement, nothing being known about the intentions of the parties at the time of the inception of the lease, did not pass the mineral rights. In *Durga Prasad Singh v. Braja Nath Bose* [1912] 39 Cal. 696 it was held by the Judicial Committee that a digwari grant in Manbhum did not pass the mineral rights to the Dighwar the presumption being that they remained with the zamindar in the absence of proof that he parted with them. In *Biswanath Gorain v. Surendra Mohan Ghose* 19 C.W.N. 102 it was held by the Calcutta High Court that the interest of a khorposhdar heritable in the male line, being a limited interest liable to defeasance by failure of heirs and thereupon resumable by the proprietor for the time being, was not an interest sufficient to carry with it the subsoil rights. That was a case arising in Chota Nagpur and would appear to be indistinguishable from the present case unless it should appear from the words of the grant now relied on that the mineral rights were transferred. The case of *Christian v. Tekaitni Narbada Koeri* 19 C.W.N. 796, does not carry the matter any further. It was the case of a maintenance grant for the lifetime of the grantee and as the deed did not contain any express provision authorising the grantee to open new mines and to appropriate the minerals therefrom it was held that the minerals

did not pass. The grant, however, was made in 1894 and was governed by Section 108, Transfer of Property Act.

12. In *Kunja Behari Seal v. Durga Prasad Singh* [1915] 42 Cal. 346; the previous decisions of the same Court in the cases above referred to decided in 1910 and 1911 were followed and it was held that a moghali brahmottar grant of a mauza did not pass the minerals to the grantee. The case of *Shashi Bhusan Misra v. Jyoti Prasad Singh Deo* AIR 1916 P.C. 191 was decided by their Lordships of the Privy Council in 1916. It was the case of a permanent mukarrari grant made before the permanent settlement to certain Brahmins and the question for determination was whether such a grant carried with it the mineral rights in the soil. The Lord Chancellor in delivering the judgment of the Board pointed out that it was important to avoid giving words used in connexion with legal transaction in India the special and technical meaning which they possess in England and added:

According to our law the word "grant" is strictly applicable to the conveyance at common law of remainders, reversions and incorporeal hereditaments which do not lie in livery or of which livery could not be given. But in connexion with the present dispute the word has no such meaning and it is important at the outset to bear this in mind.

13. Previous decisions of their Lordships' Board were referred to and from those decisions a principle was enunciated which in their Lordships' opinion was conclusive of the case before them. The principle so enunciated was that when a grant is made by a zamindar of a tenure at a fixed rent, although the tenure may be permanent, heritable and transferable minerals will not be held to have formed part of the grant in the absence of express evidence to that effect.

14. In *Giridhari Singh v. Megh Lal Pandey* AIR 1917 P.C. 163, it was held that a mukarrari lease of land of a permanent and heritable character did not pass the minerals unless by the terms thereof there was an express or plainly implied grant of the underground rights. In that case just as in the present the grant contained words of general import. The terms of the grant appear from the report of the case in the Calcutta High Court in *Megh Lal Pandey v. Girdhari Singh* [1907] 34 Cal. 358. They are as follows:

I settle in mukarrari the whole of mauza Baramasia with all rights (mai hak hakuk) as per boundaries given below appertaining to my zamindari, etc.

Their Lordships held that in spite of the wide general terms the minerals did not pass.

It is unavailing to urge

said Lord Shaw in delivering their Lordship's judgment

that the right granted by the mukarrari patta to the lessee is of a permanent heritable and transferable character, as even although this be the case it does

not advance the question of whether the lease itself embraced within its scope the mineral rights. On the contrary unless there be by the terms of the lease an express or plainly implied grant of those rights they remain reserved to the zamindar and are part of his zamindari.

15. Again in *Raghunath Roy Marwari v. Durga Prasad Singh* AIR 1919 P.C. 17, it was held that the principle enunciated in the previous cases applies as well to rent free grant as to grants of tenures at fixed rates. The grant in that case was of rent free brahmottar land. Sir John Edge in delivering the judgment of their Lordships said:

The result at which their lordships have arrived after a consideration of the decisions of the Board is that where a zamindar grants a tenure in lands within his zamindari, and it does not clearly appear by the terms of the grant that a right to the minerals is included, the minerals do not pass to the grantee.

16. In 1920 the case of the *Secretary of State v. Srinivasa Chariar* AIR 1921 P.C. 1 was decided by the Judicial Committee. In that case a village had been granted as a shortriyam inam in 1750 by the Nawab of the Carnatic. The grant provided that the grantee having appropriated to his own use the produce of the season each year might pray for the prosperity of the Empire and that he should pay a fixed yearly sum to the Sirkar. The inam was enfranchised in 1865 and the inam title deeds purported to convert the tenure into a permanent freehold upon payment of a quit rent. In 1905 the Madras Government imposed upon the successors of the original inamdars royalties in respect of stone which they had quarried in the village. The latter sued for a declaration of their full rights to the rocks and bills within the village and claimed a refund of the royalties already paid. It was held that upon a true construction of the grant the full right to the quarries and minerals did not pass to the grantee and that having regard to Madras Act 8 of 1869 the inam title-deeds could not vest in the inamdars a subject-matter not vested in them by the grant; consequently the Government was entitled to impose royalties on stone quarried in the village. It was further held that the terms of the grant being in evidence neither the inam title-deeds nor certain admissions made by the Government in land acquisition proceedings were evidence as to its effect. At most those proceedings could amount to no more than action taken under a misapprehension of the Government's legal rights and this could not make the law one way or the other, nor could it affect the Government's title. It was further stated by Sir Lawrence Jenkins in delivering the judgment of the Board that the rules of English law as to real property in England could afford no guidance as to what passed under the grant of a village in inam. This latter point has frequently been insisted upon and I think it may now be said that the feudal laws of England are no guide to the principles affecting land tenures in Bengal.

17. The learned Subordinate Judge has been at some pains to draw an analogy between the present grant and an estate tail in England and because the tenant in tail enjoys the mineral rights he infers that the holder of a putra putradi tenure

can enjoy the same rights. But the analogy is not supported by authority nor would it, in my opinion, bear close inspection. A tenant in tail has a freehold estate and is for all practical purposes on an equal footing with a tenant in fee simple. Under the present grant it appears to me that the interest created, although not strictly a lease as defined in the Transfer of Property Act, bears most of the essential features of an interest created between landlord and tenant a rent being reserved and the reversion in the event of failure of lineal male heirs remaining in the landlord. On the face of it the document is a maintenance grant and the presumption upon the authorities quoted must, I think, be that the minerals did not pass without words of express grant or by clear implication. From the terms of the grant itself it would appear that the enjoyment of the rents was the main object of the grant. From the authorities quoted I think the principle emerges that where the reversion remains in the grantor the minerals do not pass without express words. If this is so even in the case of a permanent lease, I think the same principle should apply to the present grant where the interest terminates on the failure of male lineal descendants.

18. An argument was addressed to us upon the meaning of the words "sab sudha" "all included" or "including everything" which it was contended were sufficient to pass not merely the surface rights but also the minerals. But this part of the case appears to me to be concluded by the decision of the Privy Council in the case of *Raj Kumar Thakur Giridhari Singh v. Megh Lal Pandey* AIR 1917 P.C. 163 in which it was held that similar words (*mai hak hakuk*) (with all rights) in a *mukarrari* lease did not add to the true scope of the grant or cause minerals to be included within it. In my opinion there is nothing to be gathered from the terms of the grant itself which indicates an intention to pass the mineral rights.

19. It was argued, however, that the parties being governed by the Mitakshara law the property of the Raj remained joint family property except in so far as the custom of the family modified the Mitakshara law. It was, therefore, contended that a *khorphosh* grant, which the younger sons were entitled to insist on, was analogous to a partition and that they took, under such a grant, the whole of the proprietary rights in the estate within the area of the grant itself and that on the failure of male descendants of the grantee, the estate granted did not revert to the parent estate as in the case of a lease but went back by survivorship. In support of this contention the case of *Baijnath Prashad Singh v. Taj Bali Singh* AIR 1921 P.C. 62 was relied on. There the previous decisions including the case of *Katama Natchir v. Raja of Shivagunga* [1861] 9 M.I.A. 539 and *Sartaj Kuari v. Deoraj Kuari* [1888] 10 All. 272 were reviewed and it was held that the successor to an impartible estate which is ancestral property of a joint Hindu family governed by the Mitakshara law is designated by survivorship subject to the custom of impartiality; the eldest member of the senior branch of the family, therefore, succeeds in preference to the direct lineal senior descendant of the common ancestor if the latter is more remote in degree. It seems to me, however, that the right of the junior members of the family to maintenance out

of an impartible estate does not arise out of co-ownership but out of the custom which is a modification of the ordinary Mitakshara law. In *Rama Rao v. Raja of Pittapur* AIR 1918 P.C. 81, frequently referred to as the second Pittapur case, it was held that in the absence of special custom the grandsons of a deceased zamindar are not entitled to maintenance put of the impartible estate in the hands of his successor. The right to maintenance is a personal and not a real right, otherwise the younger sons would be entitled to a charge upon the property for their maintenance in the hands of a transferee of the proprietor for the time being which is not the case. Moreover, the argument that the khorposh estate goes back to the parent Raj by survivorship and not by reversion, although it has certain attractions, will not bear examination. Alienability is an incident both of the parent estate and of the khorposh grant. Suppose a Maharaja should transfer his estate to another the reversion to the khorposh grant in the event of failure of male descendants of the grantee would pass to the transferee who certainly could not take by survivorship. Again if the khorposh grant should be alienated the transferee would take subject to defeasance on failure of the direct line of the original khorposhdar. In this case also it could not be said that the khorposh grant went back to the parent estate by survivorship.

20. Reliance was also placed on the fact that the two main junior branches of the family had their gaddis called quarkari gadi and thakurai gadi just as the Maharaja has the raj gadi, and from this we were asked to infer that they held some special proprietary interest in the property constituting their khorposh grants. This suggestion, however, is discounted by the witness who speaks to it, for he says that there is no difference in the rights possessed in their khorposh grants by the first three sons and those of the junior ones and he adds that the assignment of khorposh properties to the first three sons does not amount to a partition of the raj. The word "gadi" conveys an idea of superiority in the possession of the holder thereof. He adds:

The estate in my possession cannot be called gadi.

21. This was the evidence of one fourth son of the Maharaja.

22. A point was also made of the fact that in a previous suit in 1915 the plaintiff in giving evidence had described the second and third sons as the maliks of their gaddis. A chance expression of this sort may be appropriate enough in the context in which it was used, but it does not necessarily mean more than that the persons so designated have complete powers of disposal over the interests which they hold. The question of mineral rights was not then under consideration; nor can such an expression afford any guide to the intentions of the grantor expressed in a document made by the deponent's father nearly fifty years earlier.

23. The learned Subordinate Judge has also been greatly influenced by what he describes as the peculiar circumstances existing when the grant was made. At that time both the plaintiff and the Maharaj Kumar were children under a year

old having been born within a month of each other in the previous year. Their father, the Maharaja Jagannath Sahi Deo who was then over sixty years of age and apparently of somewhat weak intellect, had a few years earlier placed his nephew and heir presumptive Upendra Nath Sahi Deo, known as Burra Lal, in charge of his estate as manager, but owing to a quarrel between the Maharaja and his nephew in 1863 the latter was dismissed and ill feeling arose between them. In 1865 the Maharaja left his ancestral home at Palkote and settled at Bhanro in another part of his estate and his two sons were born in the following year. The chances of Burra Lal succeeding to the Raj were thus put an end to, but he appears to have circulated rumours to the effect that the plaintiff and his brother were not the sons of the Maharaja and his Ranis, and in 1869, on the death of the Maharaja he sued the Ranis and the Court of Wards, under whose management the estate had been placed, to establish his title thereto on the allegation that the two sons were supposititious children. In this he succeeded in the trial Court but the judgment was reversed on appeal. A copy of the judgment of the trial Court has been put in evidence on behalf of the defendants and marked Ex. F (1). From this document further particulars of this incident may be gathered. I have referred to it merely because the learned Subordinate Judge has attached great weight to it as showing that the Maharaja in 1867 was apprehensive that the Raj might be wrested from his sons by the machinations of his nephew and, therefore, in order to secure some property at least to the family, in case his fears should prove well founded, he made the grant of Tori to his younger son. From this the learned Judge deduces that there could be no room for doubt that the Maharaja intended to convey full rights to the grantee subject to the reservations expressly mentioned.

24. With great respect to the learned Judge I think the intention must be gathered from the language of the grant itself and not from considerations of such a speculative nature. Had it been his intention by this grant to secure the future welfare of both his children, as the learned Judge finds, I hardly think he would have made provision for the younger of his children only. It would have been, equally easy to secure the future of his elder son by a similar grant and, had he felt any real apprehension as to the succession being diverted, I think the strong probabilities are that he would have made provision for both. The story told by the defendant as to what he heard from the Ranis concerning the Maharaja's intentions is at most hearsay. It is contradicted by the plaintiff and I do not think any reliance can be placed on it. I presume the evidence was admitted by the learned Judge as evidence of contemporanea expositio. But where the document is produced in evidence and contains no latent ambiguity extrinsic evidence of intention can hardly be admissible.

25. The learned Judge also found that the plaintiff in 1893 abandoned his right to the minerals. (His Lordship then examined the evidence and proceeded.) I must hold, therefore, that there was no relinquishment by the plaintiff of his mineral rights in pargana Tori in favour of his brother.

26. In 1908 the Tori estate was being administered by a manager under the Encumbered Estates Act, In order to pay off the debts and get the estate released the Maharaja Kumar obtained a loan from Sirkar Bernard and Company of rather more than a lakh of rupees on mortgage and promised to release the minerals in pargana Tori to the lender. A prospecting lease was in fact granted to Sirkar Bernard and Company but it was never registered and nothing came of it.

27. The next transaction was in 1921 when the Maharaj Kumar granted a prospecting license to the defendants 2 and 3, dated the 17th May of that year. The present suit was instituted in August 1922. The learned Subordinate Judge said he was inclined to the view that a suit for a declaration was barred by Article 120, Schedule 1, Limitation Act, by reason of the fact that the cause of action arose in 1900 and in 1903 when the Maharaj Kumar asserted a right to lease the minerals to Mr. Anderson and that in any event even if a fresh cause of action arose in 1921 he was of opinion that this was not a case in which the Court would be justified in passing a declaratory decree. I think on both points he was wrong. In 1893 the situation was entirely different. The parties then purported to compromise the dispute existing between them and on the strength of that compromise the plaintiff agreed to grant a prospecting lease in favour of Mr. Anderson and to share the proceeds with his brother. The compromise between the plaintiff and his brother now turns out to be inoperative owing to lack of registration and the Maharaj Kumar himself is repudiating it and claiming to be exclusively entitled to the mineral rights.

28. Thus an entirely new situation arose in 1921 and in my opinion a fresh cause of action accrued and a suit for a declaration would not be time barred. Further if the plaintiff can make out his title to the minerals I can see no reason why he should be refused the relief sought in the circumstances of this case merely because in declaratory suits the Court has, in proper circumstances, a discretion in the matter. That discretion should not be arbitrarily exercised. The discretionary refusal to grant declaratory relief would not determine the question of title and the only effect of exercising a discretion in favour of the defendants would be to involve the parties in additional expense and litigation as soon as the defendants began to work the minerals and deprive the plaintiff of possession. The facts necessary to arrive at a determination have been fully gone into in the present suit and I can see no reason for refusing the relief claimed as a matter of discretion in the present suit if we consider that the plaintiff has established his title.

29. The only question of limitation raised and determined in the lower Court was that to which I have referred and which is based on Article 120 of the schedule to the Limitation Act. No issue as to adverse possession was raised or determined, although the point was taken in para. 5 of the written statement of the defendants 2 and 3 but there is no evidence in the case to support the view that the defendants or any of them, by working the minerals acquired any adverse title. In my opinion the suit is not barred by limitation.

30. The learned Judge expressed the view that the mineral rights passed to and vested in the defendant 1 by virtue of the immemorial custom obtaining in the family and the grant as evidenced by the deed of 1867. I do not know on what grounds the learned Judge concluded that the mineral rights passed by custom. There can be no instance of the mineral rights passing before 1867 as up to that time the minerals had not been worked and it is difficult to see how there could be any custom one way or the other. The Maharaj Kumar himself when asked in cross-examination whether in Chota Nagpur putra putradi grants conveyed minerals stated that he could give no opinion and apart from his own case he did not know of any other.

31. A cross-objection was filed on behalf of defendant 3 complaining that issues 6 and 9 as originally framed were improperly deleted by the Subordinate Judge and should be restored for hearing and determination. It was admitted, however, by this defendant when the matter was dealt with by the learned Subordinate Judge on the 17th June 1925, that the villages comprising pargana Tori appertained to the Chota Nagpur Raj. The point raised, however, is that unless the Chota Nagpur Raj is a permanently settled estate the minerals do not belong to the plaintiff. The defendants other than those numbered 2 and 3 did not dispute at the trial that the Chota Nagpur Raj was a permanently settled estate and indeed the interest claimed by the principal defendant himself, through whom the others claimed, depends upon the assumption that the plaintiff's father was in possession of the minerals and able to pass them by the grant of 1867. The title of defendant 3 himself also depends upon the right of the defendant 1 through whom he claims. The plea, therefore, will not avail him unless he can show some title apart from that derived from the Maharaj Kumar. The argument is that the defendant 3 is in possession of the minerals and is therefore entitled to resist the plaintiff's claim in the absence of proof of the plaintiff's title. There is, however, no evidence on the record to show that defendants 2 and 3 or any of the other defendants are in possession of the minerals and the claim asserted by these defendants must stand or fall upon the rights of defendant 1 who does not himself dispute that the Chota Nagpur Raj is a permanently settled estate or that the mineral rights were vested in the plaintiff's predecessor before the grant of 1867.

32. In my opinion the decree of the trial Court should be reversed and the appeal should be allowed with costs here and in the Court below against the contesting defendants and the cross-objection should be dismissed with costs, the costs to carry interest at 6 per cent. per annum from this date until realization. The plaintiff is entitled to a declaration of his title to the mines and minerals in pargana Tori and to an injunction restraining the defendants other than defendant 4 from entering upon, working or removing any mines or minerals within the said pargana or from interfering with the plaintiff, his servants or agents in doing all acts reasonably incident to the enjoyment of the plaintiff's right in the mines and minerals in the said pargana.

Kulwant Sahay, J.33. The principal questions for determination in this appeal are: first, whether the defendant 1 acquired rights to the mines and minerals in pargana Tori under the grant of February 1867 or by custom; secondly, if the plaintiff had abandoned or relinquished his rights, if any, to the mines and minerals in pargana Tori; and thirdly, whether the suit was barred by limitation.

34. I shall first deal with the question of interpretation of the deed of February 1867 which has been marked as Ex. 8 in the case (Then while construing the document his Lordship proceeded.) Great reliance was placed upon the word "sab sudha" translated as "all included" occurring in the document. It was contended on behalf of the respondent that "sab sudha" meant everything comprised in the land. The contention of the respondent was that the word "sudha" in Sanskrit meant the soil, the earth, and that "sab sudha" meant all the earth, and that, therefore, it included the subsoil rights. It is true the etymological meaning of the word "sudha" in Sanskrit is earth, but the popular significance of the word "sab sudha" is "everything included." The word "sab sudha" follows the words "four boundaries" Now the grant of "four boundaries" would be meaningless. What was actually intended to convey was everything included within the four boundaries. Reliance has been placed upon the word "darobast " which occurs thrice in the document. "Darobast" is a Persian word and means entire, and the grant was of the darobast pargana Tori Khas Bhandar darobast original with dependencies. The word "darobast" does not carry the defendants any further. It merely means that the entire pargana Tori with the entire Khas Bhandar was granted. "Bhandar" according to Fallon's Dictionary means villages managed by the Raja or zamindar himself, his own peculiar estate not rented or farmed to others. "Khas Bhandar," therefore, means such villages as were held by the grantor in his own direct possession and were not let out or farmed to others. This was in contradistinction to the villages settled in jagir with the elakadars and the deed expressly says that the grantee was to realize the rents and profits of the villages of the Khas Bhandar as well as those held by the elakadars under jagirs granted by the grantor.

35. On a construction of the terms of the deed, therefore, it seems clear that there was nothing in it to indicate that the grant was of the subsoil or mineral rights. It was a grant of rents and profits of the villages included in pargana Tori. The grant was a "putra pautradi" grant and such grants mean that the grantee's male descendants in direct line were to hold the pargana, and that in the event of failure of male descendants in the direct male line the properties were to revert to the grantor, If reversion be left in the grantor then in the absence of express grant minerals remain with the grantor. The defendants' evidence shows that at the time of making the maintenance grants in the family calculation is made on the basis of the income derivable from the property granted, and the object of the grant is to secure to the grantee sufficient income in order to enable him to maintain himself in accordance with his dignity and this, it appears, is the case even when grants are made to the third and succeeding sons of the Maharaja. At the time the grant was made it was never in

contemplation of the grantor to grant the minerals. The generality of the terms used cannot be held to include the corpus in the grant because it gives the grantee only the right to the usufruct and no power is given to him to consume the property itself and the general enumeration must be taken to be ejusdem generis. The word "sab sudha" appears to have the same meaning as the word "hakhakuk" which was construed by the Privy Council in *Giridhari Singh v. Megh Lal Pandey* AIR 1917 P.C. 163 as not to increase the actual corpus of the subject affected by the grant. Having regard, therefore, to the plain meaning of the terms used in the document, I am unable to say that the grant included the minerals or subsoil rights.

36. I may here refer to the contention of the appellant to the effect that the grant is really a lease, and as such the minerals could not pass. In this connexion I am disposed to agree with the learned Subordinate Judge that the deed Ex. 8 cannot be held to be a lease. It is not a transfer for a certain time express or implied or in perpetuity. It is contended on behalf of the appellant that the grant was of a tenure and the relationship between the parties is that of a landlord and tenant, and reference was made to three suits for rent instituted by the plaintiff against defendant 1 under the provisions of Section 139(3), of the Chota Nagpur Tenancy Act (6 of 1908 B.C.). Ex. 3 is a plaint of a suit for rent against defendant 1 where the rent is claimed in respect of a tenure or jagir in lieu of services for 1970, 1971 and 1972 Sambat. Ex. 7 is a written statement in that suit, Ex. 4 is the judgment, and Ex. 5 is the decree in that suit. It is argued that in the written statement (Ex. 7) there was no denial of the relationship of landlord and tenant between the parties, or that the suit was not one u/s 139 of the Chota Nagpur Tenancy Act. Ex. 4(a) is a judgment in another rent suit for the years 1974-76 Sambat. Ex. 4(b) is the judgment in a third rent suit. Now, these documents do not go to establish that the deed Ex. 8 was a lease. Section 139 of the Chota Nagpur Tenancy Act applies not only to cases of, rents properly so called, but also to dues which are recoverable as if they were rents. These suits do not go to establish that the relationship between the parties was that of landlord and tenant and that the defendant 1 was holding as a lessee under the plaintiff. It was contended that it was a lease in perpetuity subject to a condition of reversion in the case of failure of male issue. In my opinion, having regard to the terms of the document, it cannot be considered to be a lease in perpetuity. Reference may in this connexion be made to the decision of *Sir Lawrence Jenkins in the Municipal Corporation of Bombay v. Secretary of State* [1905] 29 Bom. 580. I would, therefore, hold that there is no substance in the contention of the appellant that the deed was really a lease. It is a khorposh grant for a term which is not certain and not a grant in perpetuity.

37. The learned Subordinate Judge has held that the words used in the deed are ambiguous, and in order to ascertain the intention of the grantor he has considered the circumstances existing at the time the deed was executed and the subsequent conduct of the parties, Mr. Pugh on behalf of respondent 1 has also referred to those circumstances and to the subsequent conduct of the parties.

Reliance has been placed by the learned Subordinate Judge upon the fact that Chota Nagpur Raj forms an impartible estate and the succession thereto is governed by the rule of primogeniture and that no females are entitled to succeed. It is the common case of the parties that according to the custom of the family grants for maintenance of portions of the estate are made either by the Maharaja in his lifetime to his sons, or if no grant is made to the sons by the reigning Maharaja then after his death the eldest son who succeeds to the Raj makes grants of maintenance to his younger brothers. It appears from the evidence that the eldest son of the Maharaja succeeds to the Raj. His second son is called the Kuar, the third son is called the Thakur and other younger sons are called Lals. The eldest son who succeeds to the Raj has the Rajgi Gadi assigned to him. The second and the third sons also appear to have gadis in this Raj which are called the Kuarkari Gadi and the Thakurai Gadi. It is the case of the defendants that the properties given as maintenance to the second and to the third sons are really portions of the original estate which are severed from the Raj and allotted to the second and the third sons as appertaining to their respective gadis, and that the maintenance grant is not a grant of the rents and profits of the villages only but it is a complete severance or partition of the villages from the Raj and they belong to the gadis of the second and the third sons and that the occupiers for the time being of the Kuarkari and the Thakurai gadis are absolute proprietors of the villages comprised in the grant in the same way as the Maharaja for the time being is the proprietor of the main estate assigned to the Rajgi Gadi.

38. Mr. Pugh contends that such grants to the Kuar and to the Thakur really amount to a partition of the joint family estate under a peculiar custom of the Chota Nagpur Raj family, and that although the Chota Nagpur Raj itself is impartible, yet by custom there is a partition so far as the maintenance grants are concerned. The rules of succession to the Rajgi Gadi and to the Kuarkari and the Thakurai Gadis are the same, i. e., the rule of primogeniture and the exclusion of females applies to all the three gadis. Reference was made to the deposition of the plaintiff given in a previous suit, a certified copy whereof has been admitted in evidence and marked as Ex. A (1.) and printed at p. 58 of part 3 of the record, where the Maharaja admits that, there are three gadis in his family, viz., the Maharaja Gadi, the Kuarkari Gadi and the Thakurai Gadi, and that the occupiers for the time being of these gadis are the malika of their respective gadis. Reference was also made to the fact that the Tori pargana which was granted to defendant 1 was itself a separate Raj at one time subordinate to the Chota Nagpur Raj and it was resumed by the Maharaja some time in the year 1819 and then re-granted to defendant 1, who holds a very dignified position, is himself the holder of a gadi and enjoys the privilege of danka and nishan as it appears from the evidence in the case. The history of the Tori pargana is given in the Final Report of the Survey and Settlement Operations in the District of Palamau by Mr. T.W. Bridge at p. 47, para. 19 and the subsequent pages of the Report. It is contended that it is not a grant to a petty

tenure-holder but the grant of a pargana which was a Raj in itself, and that, therefore, the grant was an absolute grant conveying the proprietary interests including the subsoil and the mineral rights in the villages. The Tori pargana consists of a large number of villages having an area of 665 square miles.

39. Mr. Pugh's contention is that it is settled law that the members of the family of an impartible Raj are governed by the Mitakshara Law as regards succession, that they are members of a joint Hindu family and the succession is governed by the rules of succession obtaining in joint Hindu families, the only difference being that according to the particular custom of the Raj only one member of the family succeeds to the Raj and the others get maintenance allowance, but, argues Mr. Pugh, the maintenance allowance to the junior members of the family in this particular Raj always consists of portions of the estate, and that by such grant the portions allotted are really severed from the parent estate and made over to the junior members of the family, and this rule amounts to a partition of the joint family according to the peculiar custom in the family. The grants are always putra pautradi grants and revert to the Raj on the failure of male descendants of the grantee, but this reversion is not really a reversion to the grantor in the true sense of the term but the grantor takes the estate on the failure of the male line of the grantee by right of survivorship in the same way as on the death of the Maharaja for the time being the eldest son of the Maharaja takes it by survivorship according to the rules governing Mitakshara joint Hindu families. Mr. Pugh distinguishes the case of khorposh grants from the ordinary mukarrari grants in Chota Nagpur and the adjoining estate of Ramgarh, and contends that such grants have no resemblance to thika or mukarrari grants.

40. Reference is made by Mr. Pugh to the decision of their Lordships of the Privy Council in Baijnath Prasad Singh v. Tej Bali Singh AIR 1921 P.C. 62. In this case Lord Dunedin reviewed almost all the cases dealing with the subject of succession to impartible estates, and on a review of the cases beginning with the Shivagunga case [1861] 9 M.I.A. 539 which was decided in the year 1863 and ending with the case of Rajah Rup Singh v. Rani Baisni [1884] 7 All. 1 which was decided in the year 1884, his Lordship observed that up to this point the law was all one way and affirmed these propositions:

(1) The fact that a raj is impartible does not make it separate or self-acquired property.

(2) A raj, though impartible, may in fact be self-acquired or it may be family property of a joint undivided family.

(3) If it is the latter, succession will be regulated according to the rule which obtains in an undivided joint family, so far as the selection of the person entitled to succeed is concerned, i. e., the person will be designated by survivorship, although then, according to the custom of impartibility, he will hold the raj without the others sharing it.

41. His Lordship then referred to the case of Sartaj Kuari v. Deoraj Kuari [1888]

10 All. 272 which was decided in the year 1888. The question raised in this case was as to whether the holder of an impartible raj could alienate the properties appertaining to the Raj oven when there were no purposes of legal necessity, and it was hold that he had the power to alienate. This finding was based on the principle that there was no such coparcenary in an estate impartible by custom, as, under the law of the Mitakshara governing the descent of ordinary property, attaches to a son on his birth. His Lordship then refers to V.S.M. Rama Krishna Rao v. Court of Wards [1899] 22 Mad. 383 and to Rama Rao v. Raiyat of Pittapur AIR 1918 P.C. 81 and do the other cases subsequent to Sartaj Kuari's case [1888] 10 All. 272, and the conclusion come to was that the zamindary being the ancestral property of the joint family, though impartible, the successor falls to be designated according to the ordinary rule of the Mitakshara law, and that the respondent in that case being the person who in a joint family would, being the eldest of the senior branch, be the head of the family is the person designated in the impartible Raj to occupy the gadi.

42. The contention of Mr. Pugh is that what has been laid down by the Privy Council in the case of Baijnath Prasad Singh v. Tej Bali Singh AIR 1921 P.C. 62 is that the members of the family of the Maharaja for the time being of an impartible Raj are members of a joint Hindu family, unless there is a separation and partition amongst them, and that the maintenance grants of the nature with which we are. concerned in the present case are really allotments of a portion of the estate to the members of the joint family, and that they are absolute conveyances which revert to the raj not by right of reversion but by right of survivorship as in an ordinary Hindu family.

43. The argument is ingenious; but in my opinion there is no substance in it. It is true that the members of the family of an impartible raj are governed by the rules of a joint Hindu family, but such rules apply only for the purposes of succession and there is no coparcenary in an impartible estate such as exists in ordinary Mitakshara families and there is no such co-ownership as to entitle the junior members of the Raj to demand a portion of the estate by partition, as appears to be laid down in Satraj Kuari's case [1888] 10 All. 272 and as was held by the Calcutta High Court in Protap Chandra Deo Dhanbal Deb Vs. Sri Raja Jagadish Chandra Deo Dhabal Deb, . Lord Dunedin referring to Sartaj Kuari's case [1888] 10 All. 272 observed as follows:

Even, however, if their Lordships thought the decision in Sartaj Kuari [1888] 10 All. 272 wrong--an opinion which they do not pronounce--the case has stood too long to be now touched.

44. The rule of law laid down in Sartaj Kuari's case [1888] 10 All. 272 must be considered to be good law even now; and if Sartaj Kuari's case [1888] 10 All. 272 lays down the correct law then it is clear that in impartible estate there is no real co-ownership in the proper sense amongst the members of the family of the holder of an impartible Raj and in determining the question of succession the right of survivorship is to be presumed, but only for the purposes of succession

and for nothing else. The principle of Sartaj Kuari's case [1888] 10 All. 272 was applied to wills in V.S.M. Rama Krishna Rao v. Court of Wards [1899] 22 Mad. 383. In Tara Kumari v. Chaturbhuj Narayan Singh AIR 1915 P.C. 30 it was found that there had been a complete separation and that, therefore, the widow of the last holder was entitled to succeed to the estate in priority to the next male reversioners. Towards the end of the judgment in that case Sir John Edge observed that the learned Judges of the High Court had overlooked the fact that Bhupat Narayan Singh and his son who were the junior members of the family had no coparcenary rights in the impartible estate and no rights in that estate which entitled them or either of them to a partition of the impartible estate. They could not have prevented Thakur Ranjit Narayan Singh, the holder of the impartible estate, from alienating that estate in such a way as to determine any contingent interest they had in it under the custom, and that their contingent interest under the custom, was liable to be defeated by an alienation of the estate of Thakur Ranjit Narayan Singh even if the family remained joint. I am of opinion that in an impartible raj the junior members of the family have not the ordinary coparcenary rights which members of a joint Hindu family have; and the grant of maintenance by the holder of the Raj to the junior members of the Raj cannot and does not amount to a partition and such grants do not by themselves amount to a conveyance of full proprietary rights including rights to minerals and subsoil rights.

45. Sir Binode Mitter on behalf of the appellant points out that the contention of Mr. Pugh that on the failure of male descendants in the line of the grantee the holder of the raj takes the property by survivorship is fallacious, because if there is a separation the Maharaja for the time being could not take the property by survivorship. If the grantee sells the properties given to him to a stranger then in the case of failure in the main line the Maharaja cannot be held to take it by survivorship but he takes it only in exercise of his right of reversion. If the Maharaja for the time being transfers the entire raj the transferee could not enforce the right of survivorship but takes it only by right of reversion. The contention of Mr. Pugh must, therefore, fail.

46. The learned Subordinate Judge observes that the circumstances existing at the time the deed of February 1867 was executed and the subsequent conduct of the parties go to show that what was granted was an absolute estate and that the subsoil and the minerals also passed. The circumstances referred to by the learned Subordinate Judge are that there is evidence of a custom in the family that the Maharaja for the time being makes grants to sons or brothers of portions of the estate for their maintenance, and that this custom is capable of being enforced by arbitration and if necessary by suit. This circumstance does not lend support to the contention that the grants of maintenance include the subsoil rights in the properties granted.

47. On the other hand the evidence is that account is taken of the rent and profits of the properties proposed to be granted, and that the extent of the

properties granted is such that the income thereof may be sufficient for the maintenance of the grantee.

48. No doubt there is evidence of the fact that there are three gadis in the Chota Nagpur Raj and that the plaintiff in his evidence in a previous suit (Exhibit A 1) has stated that the holders of the Kuarkari and the Thakurai gadis are the maliks of the properties granted to them; but this to my mind does not take the case further. The evidence on the record is not sufficient to establish a custom that the grants to the holders of these gadis are absolute grants, and the term "malik" by itself does not; indicate that an absolute interest, including the subsoil rights, is granted to the holders of these gadis. It is true that the grants are not mere life grants but devolve upon successive male heirs in the main line of the grantees; but this contention also does not go to show that the intention of the grantor was to grant more than the right to enjoy the usufruct of the properties granted. No doubt the properties granted can be transferred to strangers, but they can do so only so long as the male line of the grantee continues, and on extinction of male line the property reverts to the grantor. The learned Subordinate Judge has held that the estate created by grants like these are peculiar to the family, being the off-spring of immemorial custom, and such estates created by such grants are unknown to and not recognized by the ordinary Hindu law and that they are peculiar estates similar to estates tail of the English law. The circumstances set forth above, either singly or taken together, do not lend support to the contention that grants, such as the one now under consideration, pass the minerals in the properties granted.

49. The other circumstance referred to by the Subordinate Judge as existing at the time of the grant is the fact disclosed by the plaint (Ex. E 1) and the judgment (Exhibit F 1) of the suit brought by Opendra Nath Sahi Deo against Rani Luchun Kower and Rani Komal Kower, the widows of the late Maharaja and the mothers of the plaintiff and the defendant 1, respectively.

50. In the first place the judgment (Ex. F 1) is not legal evidence as regards the circumstances alleged to exist at the time of the grant. This judgment was admittedly set aside on appeal and a copy of the judgment of the Court of appeal has not been produced. Moreover, the judgment is of a date subsequent to the date of the grant in question in the present suit and it is not evidence of circumstances contemporaneous with the execution of the deed. There is no evidence that at the time of the grant there was any litigation which would induce the then Maharaja to have recourse to proceedings which would amount to an absolute transfer of a portion of the estate. If this was the intention of the Maharaja in making the grant such intention could have been expressed and given effect to in a much more definite and conclusive manner than the method adopted by the Maharaja in making the grant under the deed (Ex. 8). The oral evidence of the circumstances referred to by the learned Subordinate Judge existing at the time of the grant is not such as to enable one to hold that the father of the plaintiff and the defendant 1 intended to make provision for the

defendant 1 and through him for the plaintiff also in case Baralal Opendra Nath Sahi Deo succeeded in wresting the raj from him, and that the object of the grant was that the Maharaja intended to convey full rights thereby to the grantee.

51. As regards the subsequent conduct of the parties the evidence to my mind is not such as to load to the conclusion that the intention of the parties to the grant was that full rights, including sub-soil rights, did pass. The letter Ex. D--1(c) of the Deputy Commissioner to the Manager of the Chota Nagpur Estate and letter Ex. D -1(d) from the Deputy Commissioner to defendant 1 do not in any way refer to the minerals. It appears that the estate of the plaintiff as well as that of defendant 1 were under the Court of Wards and that the direction given in the latter Ex. D--1(e) was merely a direction as regards the management of the respective estates. There is nothing in these letters to indicate any conduct of the parties which would go to show that the minerals passed to the defendant 1. Moreover, any admission made by the Deputy Commissioner as representing the Court of Wards would not be binding upon the plaintiff.

52. Furthermore, although evidence of subsequent conduct of the grantor or the grantee can in certain cases be taken into account in order to find the intention of the grantor and the grantee, the conduct of other persons is of no value for this purpose. (His Lordship then discussed the other circumstances and documents and after dealing with the evidence as regards alleged custom proceeded). I am of opinion that the evidence on the record is not sufficient to prove the custom alleged by defendant 1

53. The learned Subordinate Judge then observes that the estate granted to defendant 1 resembles estates-tail of the English law and that as the ordinary Hindu law does not recognize an estate such as that created by the grant under consideration and as no light can be had in the matter from the provisions of the Hindu law and as in all cases for which no specific statutory directions are to be found in the Indian law the Courts are to act according to justice, equity and good conscience, and as the principles of justice, equity and good conscience applicable in such circumstances should be identical with the corresponding relevant rules of the common law of England and as the nearest approach to the estate created by the grant under consideration is to be found in the estate known as an estate-tail male in the common law of England, he proceeds to examine the nature of such an estate under the common law of England and to hold that as estates-tail male in England carry the right to work mines and quarries beneath and within the lands, the grant under consideration also included the right to the mines and the subsoil rights in the villages comprised in pargana Tori. In this connexion I need only observe that it is not safe to apply the principles of the common law of England to the grant under consideration. As was observed by Jenkins, J., in *Kalidas Ahiri v. Girdhari Singh* [1907] 34 Cal. 358 to draw an analogy from the English law of real property is wholly misleading. There is a fundamental difference between the land tenures in England and India

and peculiarities of the feudal system of England are not to be found in India. I would, therefore, not base my decision on the point under consideration on a reference to the law of real property of England.

54. It has been contended on behalf of the appellant that the decisions of the Privy Council as well as of the High Courts in India show conclusively that defendant 1 cannot under the grant of 1867 claim any right to the mines and minerals in pargana Tori; and reference has been made to Tituram Mukherji v. Cohen [1906] 33 Cal. 203, Hari Narayan Singh Deo v. Sriram Chakravarti [1910] 37 Cal. 723, Jyoti Prasad Singh v. Laxhipur Coal Company [1911] 38 Cal. 845, Durga Prasad Singh v. Braja Nath Bose [1912] 39 Cal. 696, Biswanath Gorain v. Surendra Mohan Ghose [1913] 19 C.W.N. 102, Christian v. Tikaitni Narbada Koeri 19 C.W.N. 796, Kunja Behari Seal v. Durga Prasad Singh [1915] 42 Cal. 346, Shashi Bhusan Misra v. Jyoti Prasad Singh Deo AIR 1916 P.C. 191, Rajkumar Thakur Girdhari Singh v. Megh Lal Pandey AIR 1917 P.C. 163, Raghunath Roy Marwari v. Durga Prasad Singh AIR 1919 P.C. 17 and the Secretary of State v. Srinivas Chariar AIR 1921 P.C. 1. Most of these cases have been considered by the learned Subordinate Judge. These cases mostly relate to mukarrari grants of debottar or brahmottar grant.

55. In Tituram v. Cohen [1906] 33 Cal. 203, the grant itself was not available, but from the circumstances appearing from the evidence it was taken to be a life grant. In Hari Narayan v. Sri Ram Chakravarti [1910] 37 Cal. 723, the grant was to an idol. In this case also the deed was not produced. In Jyoti Prasad Singh v. Luchipur Coal Company [1911] 38 Cal. 845, the grant was of a permanent lease and the deed was not produced. It was to a stranger and not to a member of the family. In Durga Prasad Singh v. Braja Nath Bose [1912] 39 Cal. 696, the grant was a dighwari grant, and made to a stranger. The judgment of the High Court which went up in appeal to the Privy Council is reported: as Brojanath Bose v. Durga Prasad Singh [1907] 84 Cal. 753 and Hari Narayan v. Sri Ram Chakravarti [1910] 37 Cal. 723 was followed. In Biswanath Gorain v. Surendra Mohan Ghose 19 C.W.N. 102 the case was of a Khorposh grant to a junior member of the family, and in this case it appears the question was raised as to whether the subsoil rights passed. In Christian v. Tikaitni Narbada Koeri 19 C.W.N. 796 the grant was a maintenance grant to a widow for life. In Kunja Behari Seal v. Durga Prasad Singh [1915] 42 Cal. 346, the grant was a moglai brahmottar grant. In all these cases it was held that the subsoil and mineral rights did not pass. In Shashi Bhusan Misra v. Jyoti Prasad Singh Deo AIR 1916 P.C. 191 the Lord Chancellor after considering some of the cases referred to above observed as follows:

These decisions, therefore, have laid down a principle which applies and concludes the present dispute. They establish that when a grant is made by a zamindar of a tenure at a fixed rent, although the nature may be permanent, heritable and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect.

56. In this case the Lord Chancellor further observed that in considering the question raised in the appeal, viz., as to whether the mukarrari grant in that case carried with it the mineral rights in the soil it is important to avoid giving the words used in connexion with legal transactions in India a special and technical meaning that they possess in England, and the meaning of the word "grant" was not the same in India as in England, The grant which was under consideration by the Privy Council in *Rajkumar Thakur Giridhari Singh v. Megh Lal Pandey* AIR 1917 P.C. 163 is set out in the judgment of the High Court: *Brojanath Bose v. Durga Prasad Singh* [1907] 84 Cal. 753. It was the case of a mukarrari lease and the expression "mai hak hakuk" was used in the lease, and it was held that unless there be by the terms of the lease an express or plainly implied grant of mineral rights they remain reserved to the zamindar, there being no evidence of his having parted with them. The word "sab sudha" in the document under consideration in the present case has the same significance as the word "hak hakuk" in the case before their Lordships of the Privy Council in *Rajkumar Thakur Giridhari Singh v. Meghlal Pandey* AIR 1917 P.C. 163. The grant under consideration was produced in *Raghunath Roy Marwari v. Durga Prasad Singh* AIR 1919 P.C. 17. The terms were:

I hereby grant you rent-free brahmottar land in mauza Jmkai in pargana Jharia. You should enjoy it comfortably by cultivating and by getting the same cultivated by others and to bless me. Hence this patta is granted to you.

57. In the present case also there is a direction to realise rents and profits from the elakadars and to enjoy the income. It was held by their Lordships in the Privy Council that where a zamindar grants a tenure of lands within his zamindari and it does not clearly appear by the terms of the grant that a right to the minerals beneath the soil is included the minerals do not pass to the grantee, and that this principle applies as well to rent-free grants as to grants of tenures at fixed rents.

58. In the *Secretary of State v. Srinivasa Chariar* AIR 1921 P.C. 1, the grant under consideration was an "inam" grant by the Government which existed prior to the British Government to a Brahmin and the grantee was to appropriate to his use the produce of the seasons of each year, the grantee in return being expected to be assiduous in offering up prayers for the lasting prosperity of the empire. It was held that it was not a complete transfer and that the grantee had not the power to consume the subject-matter of the grant by quarrying operations. These cases, therefore, hold that unless there is an express or implied grant of the minerals such grants which formed the subject-matter of consideration in those cases did not pass the minerals. It is noticeable that none of the cases cited is a case of a khorposh grant similar to the one under consideration, except perhaps the case of *Biswanath Gorain v. Surendra Mohan Ghose* 19 C.W.N. 102, but there the fact that the khorposhdars did not possess the subsoil rights was conceded by all the parties other than defendants 1 and 2 and they did not very strenuously contest the point.

59. The authorities, therefore, do only go to the extent of showing that it is

settled that in mukarari grants or in grants for life or in debottar or brahmottor grants minerals do not pass without an express provision to that effect. To my mind they are not conclusive so far as the question in the present case is concerned and, as I have observed, with the exception of the case of Biswanath Gorain v. Surendra Mohan Ghose 19 C.W.N. 102, no other case has been cited which deals precisely with the point raised in the present case.

60. In Satya Niranjana Chakravarti v. Ram Lal Kaviraj, AIR 1925 P.C. 42, which was a case which went up to the Privy Council from a decision of a Division Bench of this Court, the question turned on the interpretation of a patni lease and on a construction of the lease which contained the words "adha" and "urdha" it was held that the subsoil rights passed. The High Court had held that patni leases stand on the same footing as mukarrari tenures. Their Lordships of the Privy Council, however, considered the cases which have been cited in the present case and observed that not one of these was a tenure of a patni taluq in the hands of a patnidar, and their Lordships were of opinion that the question as to whether patni leases did convey mineral rights was still open and they expressed no opinion on that point.

61. Similarly, the authorities cited in the present case if they do not apply to patni leases they cannot be said; apply to khorposh grants of the nature we are now concerned with. I would, therefore, hold that the authorities cited, except Biswanath Gorain's case 19 C.W.N. 102, do not directly apply to the present case. On a construction of the deed itself, however, and on the evidence in the case I am of opinion that there was no intention to pass the minerals and defendant 1 did not acquire the right to the minerals under the grant.

62. On the question as to whether the plaintiff abandoned or relinquished his rights, if any, to the mines and minerals in pargana Tori, the argument is based upon Ex. B--1/2 and Ex. 10. I have already considered these documents and I am of opinion that it cannot be said that the plaintiff did abandon or relinquish his rights. All that can be said was that the plaintiff agreed to confirm the grant made by defendant 1 to Max Anderson and it related only to the term of the grant to Max Anderson. Max Anderson, however, did not work the mines under the grant and the matter was dropped. There is a clear assertion of title made by the plaintiff in Ex. 10.

63. The next question is the question of limitation. The article applicable is Article 120, Schedule 1 to the Indian Limitation Act and the period of limitation is six years from the time when the right to sue accrues. It is contended on behalf of the defendant that the right to sue for a declaratory decree and injunction accrued to the plaintiff in 1884, and for this purpose reliance is placed upon the deposition of the defendant 1 where he states that when he attained majority in 1884 he commenced working the mines. On the other hand, the cause of action alleged by the plaintiff is the grant of the prospecting license by the defendant 1 to defendants 2 and 3, which is dated the 17th May 1921, and the suit was instituted in August 1922. In my opinion the cause of action accrued to the

plaintiff in 1921, and the suit is not barred by limitation. In the first place the evidence is not sufficient that defendant 1 worked the mines in 1884, nor does it appear that if there was a working of the mines it was of such an open character as to be said that the plaintiff knew about it. In any event the cause of action is a recurring one, and unless it can be shown satisfactorily by evidence that the working of the mines by defendant 1 was of such an open nature as to lead to a presumption that the plaintiff knew about it, or unless there is direct evidence of the fact that the plaintiff had knowledge of the working of the mines by defendant 1 more than six years before they filed the suit, I am of opinion that the present suit cannot be said to be barred by limitation.

64. The only other point left for consideration is the one raised by defendants 2 and 3 in their cross-objection. Issue 6 as originally framed was as to whether the estate bearing Tauzi No. 1 on the revenue roll on the Ranchi Collectorate, commonly known as the Chota Nagpur Raj was a permanently settled estate and as to whether it had the legal status of such an estate; if not, has the plaintiff any right to bring the suit. The question raised by this issue arose upon the pleadings. Paras. 1--3 of the plaint did make an assertion that the estate commonly known as the Chota Nagpur Raj was a permanently settled estate. Paras. 9-11 of the written statement of the defendants 2 and 3 raised the question that the Chota Nagpur Raj is not a permanently settled estate. Upon the pleadings the issue raised did properly arise. It appears, however, that this issue was cancelled by the learned Subordinate Judge by his Order 85 in the order-sheet, dated the 16th June 1925. The issue was cancelled as being irrelevant and unnecessary. This appears to have been done in the absence of defendants 2 and 3. It appears from Order 89, dated 17th June 1925, that defendants 2 and 3 filed a petition praying that the original issue 6 which was cancelled the previous day might be restored. The learned Subordinate Judge rejected this application with the observation that it was admitted by the learned vakil for these defendants that the villages making up pargana Tori do appertain to Tauzi No. 1 of the Ranchi Collectorate as now constituted and that it was not disputed by the said defendants that pargana Tori concerned in the present suit appertained to the Chota Nagpur Raj estate held by the plaintiff and that it was also not disputed that defendant 1 claimed the said pargana by virtue of a grant or lease from the last Maharaja as representing that estate. In view of these facts the learned Subordinate Judge was of opinion that the question of the nature of the estate held by the plaintiff did not arise for decision in the present case and he, therefore, did not see any reason why the original issue 6 should be restored. In my opinion it cannot be said that the learned Subordinate Judge was in error in striking out issue 6.

65. It is argued that if the estate of the plaintiff is not a permanently settled estate the question did arise as to whether he had a right to the minerals in the Chota Nagpur Raj and unless he proved his right to the minerals in the Chota Nagpur Raj it cannot be said that he was entitled to a declaration that he had the rights in the minerals in pargana Tori. The defendants, however, have no title or

possession. Defendant 1 did not dispute the title of the plaintiff apart from the grant of 1867, as in fact he could not do so inasmuch as he claimed title through the predecessor in title of the plaintiff. Defendants 2 and 3 who claim through defendant 1 also cannot raise the question having no title by possession, and in ray opinion there is no substance in the cross-objection.

66. In the result, therefore, I would allow this appeal and decree the suit with costs here and in the Court below and dismiss the cross-objection of defendants 2 and 3.