

*Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeals of Babu Nam Narain Singh v. Bhim Ganjhu and others (nine appeals consolidated) from the High Court of Judicature at Fort William in Bengal; delivered 9th December 1898.*

Present:

LORD HOBHOUSE.

LORD MORRIS.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

IN these Appeals their Lordships are perfectly clear that there is no course before them except to recommend Her Majesty to dismiss them.

It appears that the question in the Appeals is entirely one of fact: namely, whether the various Defendants hold upon one kind of tenure or another. Both Courts have found that they hold on a tenure which disentitles the Plaintiff to recover the villages. Mr. Cohen very properly does not attempt to dispute those findings, but he endeavours to distinguish the case against two of the Defendants, on the ground that there are special circumstances connected with their holdings. But then it turns out that those circumstances were never relied upon in the pleadings. They form no part of the Plaintiff's case; no issue was directed as to them; there has been no proper examination of the case with respect to them. Therefore the High Court, very justly, when these circumstances were brought before its attention on Appeal, said that the Plaintiff had no right to raise the point.

It would be exceedingly unjust to the Respondents if the Plaintiff were allowed to raise the point now. Their Lordships must hold that the case is closed. Therefore they will humbly advise Her Majesty to dismiss the Appeals.

The consolidated Appeals having been heard *ex parte* there is no order as to costs.