

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of (1) Bholu Nath Nundi and others ; (2) Digambur Nundi and others ; (3) Keshub Chunder Chatterji and others ; (4) Modhu Sudan Goswami and others ; (5) Beni Madhub Karak and others ; (6) Gungadhur Mundul and others, and (7) Brojo Mohun Dey and others (Appellants) v. The Midnapore Zemindary Company, Limited (substituted for Robert Watson and Company, Limited), (Respondents), from the High Court of Judicature at Fort William in Bengal ; delivered the 26th February 1904.*

---

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

These are Appeals from a Judgment of the High Court of Bengal setting aside Appellate Decrees of the Subordinate Judge of Midnapore, who concurred with the Moonsif of Gurbetta, the Judge of First Instance, in his findings on the facts, and affirmed, with a slight variation, the Decrees of the Lower Court.

After the Appeals were presented, Robert Watson and Company, Limited, who were Respondents to England, and had been Defendants in the Court of First Instance, went into liquidation. Their estates, which were formerly the

property of Messrs. Robert Watson and Company, the well-known indigo planters, were transferred to the Midnapore Zemindary Company, Limited, and that Company has now been substituted on the Record as Respondents in the place of Robert Watson and Company, Limited.

There were originally seven suits. The Plaintiffs were different. The lands which were the subject of controversy were different. But the question involved was the same in all. The suits were consolidated for the purpose of the hearing, and disposed of by separate Decrees.

The Plaintiffs were cultivators by occupation belonging to nine villages appertaining to turuf Paschim, Pergunnah Bagri, formerly held by Messrs. Robert Watson and Company, and afterwards by the Defendant Company in Putni right. They averred that from time immemorial they and their predecessors had enjoyed the right of pasturage over the waste lands of the villages to which they belonged, and, in some cases, over waste lands of adjoining villages. Their complaint was, that in consequence, as they alleged, of some dispute about planting indigo the Putnidars had denied their title and interfered with the enjoyment of their ancient and undoubted rights.

The case, as presented by the Plaintiffs, on the face of it and in substance, seems simple enough. It appears to their Lordships that on proof of the fact of enjoyment from time immemorial there could be no difficulty in the way of the Court finding a legal origin for the right claimed. Unfortunately, however, both in the Moonsif's Court, and in the Court of the Subordinate Judge, the question was overlaid, and in some measure obscured, by copious references to English authorities, and by the application of principles or doctrines, more or less refined,

founded on legal conceptions not altogether in harmony with Eastern notions. The result is that, although the Decrees appear to be justified by the main facts, which both the Lower Courts held to be established, it is impossible to say that the judgments delivered are entirely satisfactory.

In the High Court the learned Judges set aside the Decrees of the Subordinate Judge, and remanded the case to him in order that he might decide it in accordance with their observations. The learned Judges did not take upon themselves to dismiss the suits, though the drift of their remarks seems to lead to that result. At the same time they pointed out, properly enough, that they had "not the power to go into facts." It is by no means easy to see what conclusion other than that embodied in the Decrees could be arrived at on remand so long as it remains an incontrovertible fact that the right of pasturage claimed has been enjoyed by the Plaintiffs and their predecessors from time immemorial—from the time of the Hindu Rajahs—long before the Watsons had anything to do with the property. The learned Judges, in their Lordships' opinion, were justified in rejecting the notion which seems to have been advanced in argument and was adopted by both the Lower Courts that the right claimed was a right in gross, but they appear to have been under some misapprehension both as to the character in which the Plaintiffs sued and as to the effect of the Decrees pronounced by the Subordinate Judge. It was certainly not the intention of the Subordinate Judge or the Moonsif that the Decrees should prevent the Defendants improving their property. And, indeed, the Moonsif expressly states that the Plaintiffs admitted the right of the Defendants to improve their property provided sufficient pasturage were left. Their Lordships think it

will be advisable to insert a provision to that effect in the Decrees of the Subordinate Judge. It will tend to prevent disputes in future. With this variation the Decrees seem to be unobjectionable. Mr. Jardine, for the Respondents, said everything that could be said on their behalf. But it was obviously impossible to support the Order of the High Court or to argue that the result would be different if the case went back to the Subordinate Judge on remand.

While their Lordships are unable to concur in the view of the learned Judges of the High Court, they wish to guard themselves against being supposed to adopt all the reasoning on which the Decrees of the Subordinate Judge appear to be based.

Their Lordships will humbly advise His Majesty that the Decree of the High Court ought to be discharged with costs, and that the Decrees of the Subordinate Judge ought to be restored, with an amendment in terms providing in each case that the Decree is not to prevent the Defendants or their successors in title from cultivating or executing improvements upon the waste lands in question so long as sufficient pasturage is left for the Plaintiffs and the other persons entitled to the right of pasturage claimed, with liberty to the parties from time to time, in case of difference, to apply to the Subordinate Judge as they may be advised.

The alteration in the Decrees will make no difference in the costs, as the right which it is now proposed to protect by express words has never apparently been disputed. The Respondents must pay the costs of the Appeals.

---