CALCUTTA HIGH COURT

Srimati Rani Hemanta Kumari Devi

Vs

Maharaja Jagadindra Nath Roy

(Richardson, C.J. S S Huda, J.)

08.01.1920

JUDGMENT

Richardson, C.J.

1. The question on this appeal is whether the appellants, the plaintiffs in the suit, are entitled as Zemindars of Pukhuria to malikana in respect of certain temporarily settled estates held by the defendant respondent as accretions to his taluk known as Palasuti Digar.

2. The Taluk was carved out of the Zemindari before the Permanent Settlement and the relation of the one to the other has been the subject of long litigation extending over a century and only recently terminated by a decision of the Privy Council adverse to the plaintiffs: *Hemanta Kumari Debi v. Jagadindra Nath Roy*[1] In a previous case which also went before the Privy Council the plaintiffs had sued unsuccessfully for the enhancement of the rent of the taluk [*Hemanta Kumari Debi v. Jagadindra Nath Roy*[2]. It is now finally settled that the taluk is independent of the Zemindari and the separation effected by the Board of Revenue in 1909, in accordance with the decree of 1805 of the Sadar Dewani Adalat, stands ratified.

3. During this period from 1805 to 1909 the lands specified in the two schedules attached to the plaint, emerged as Chars from the rivers Brahmaputra and Jamuna, the lands in the First Schedule between 1834 and 1842, and those in the Second Schedule in 1881. Government resumed there Chars under Regulation II of 1819 as accretions to the taluk and subsequently formed them into separate khas Mahals or estates with separate Tauji numbers. The estates so formed were temporarily settled from time to time, for the most part with the talukdar for the time being. The prior right of the Zemindars to settlement was recognized but they generally refused to take it on the condition on which it was offered to them, namely that they should not disturb the possession of the talukdar (Paragraph 4 of Collectorate Rubkari of 15th July 1875, Exhibit 6-b). On the one hand, therefore, the lands have been uniformly treated as accretions to the taluk. On the other hand when set laments were made with the talukdar or third parties, the proprietors of Pukhuria were always allowed malikana calculated at the rate of 10 per cent. on

the assets after certain deductions had been made. On the one or two occasions when the estates or some of them were settled with the latter, they merely became the channel through which the revenue was paid to Government and nothing in the shape of profits went into their pockets except a sum equivalent to the malikana which they would otherwise have received. The amount allowed for expenses of collection as well as the 10 per cent. for talukdari profit went to the talukdar as being in possession. This appears, for instance, from paragraph 22 of the Collectorate Rubkari of 21st February 1874, (Exhibit E 20) and from the final report regarding the re settlement of Estate No. 8549, dated 19th July 1904 (Exhibit 6).

4. When a fresh settlement of the estates was being made, the Board of Revenue decided in 1910 (Exhibit F 5) that in consequence of the separation of the taluk and its independent status, the plaintiffs, as Zemindars of Pakhuria, were no longer entitled to malikana, the estates appertaining not to the Zemindari but to the Taluk. The present suit was brought in 1911 as a declaratory suit to contest this decision.

5. The Quinquennial Register of 1795, prepared under Regulation XLVIII of 1793 shows in the column headed "Mauza and Kismat", the only column provided for the purpose, the assets of the Pakhuria estate or Pargana Pakhuria, on which a fixed revenue (Mokarara Jama) was assessed. The entries consist mostly of Mouzas properly so called, that is village areas. Two entries occur, however, Jal Hatua and Jal Jamuna, which prima facie denote fishing rights in areas described as Hatua and Jamuna. The lands in dispute have formed in a part of these areas ever the whole of which water flowed at the time of the Permanent Settlement. The plaintiffs contend, on the strength of the word 'Matza' in the heading, that what was permanently settled with their predecessor comprised not only the fisheries but also the river-beds. We are not disposed to attach so much virtue to the mere use of such a word in the heading of a column in a register. In the state of things suggested the talukdar would have had no right to the lands as accretions to the taluk and the Zemindar would have been entitled to hold them as part of his Zemindari without paying any additional revenue. No such claim was made when the lands first emerged. It may, however, be fair to add that after the changes in land levels produced by the earthquake of 1897, some litigation occurred concerning Jal Hatua as a fishery, and that each side has row found it advantageous to adopt what was then the argument of the other side (judgment of District Judge of Mymensingh dated 20th April 1903, Exhibit F3). The exigencies of self interest sometimes demand such a change of fronts. But it is useless to pursue the subject further because the right of the Government to assess the lands to revenue is not now challenged, and the plaintiff's admitted before us that they must long ago have lost by lapse of time and the law of limitation any rights which they might originally have claimed on the footing of their present contention either as against the Government or as against the defendant, save and except the right to malikana. The contention was apparently put forward not for any direct advantage which it might bring, but as an excuse for the not very meritorious case which they finally made.

6. Nothing turns on the action of the Government in forming the lands in dispute into separate

estates. All the lands were resumed and have been held as accretions to the taluk. Act XXXI of 1858 merely regularized a practice which had previously been in vogue. This is shown by documents exhibited in the suit and by the preamble of the Act itself. No doubt Section 1 of the Act lays down that when alluvial land is assessed and settled as a separate estate with a separate jama, it "shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate." For example, if the new estate falls into arrears of revenue, the Government may sell it apart from the parent estate. So, here, it may be doubted whether the separation of the taluk from the Zemindari in itself effected a similar separation of the resumed estates. But the title to the latter, now that the separation of the taluk is an accomplished fact, is another matter. The Act of 1855 has no bearing on the question which arises, whether the plaintiffs still have any shred of proprietary right in these estates which would entitle them at a new settlement to malikana. We must look to the origin of the estates, the mode in which they have been held and enjoyed, and the legal effect of the decree of 1805 and the state of things which followed it. The provisions of Regulation XI of 1825 have also to be kept in view.

7. That the estates must now be regarded as accretions to the taluk is indeed assumed and conceded in the argument to which the plaintiffs were driven. It is said that the taluk having been declared independent by the decree of 1805, the plaintiffs had no legal right to malikana from the time when the defendant acquired, by adverse possession or otherwise, a proprietary right to the estates as accretions to his taluk. That state of things in which the plaintiffs were wrongly treated as proprietors and malikana was wrongly paid to them, continued for more than twelve years and they, on their part, have thus acquired by adverse possession a proprietary interest in these estates extending to the right to receive malikana in respect of them.

8. If it be granted, without in any way admitting, that a right to malikana may be so acquired, nevertheless the argument does not come well from the plaintiffs who for more than a hundred years resisted the separation of the taluk. If the decree of 1805 had been carried out in the ordinary course, the plaintiffs would never have received any malikana.

9. The effect of that decree is stated in the Privy Council judgments of 1894 and 1918, above cited. The position which was accepted and adopted by the parties as the result was this:--The taluk was to be be detached from the Zemindari, in word3 which occur in the decree, it was fit to be separated" and until the separation took place, the talukdar was to continue to pay to the Zemindar the rent of Sicca Rs. 16,369-8-11. This amount, equivalent to Rs. 17,460-13-8 in current coin, was taken by the Board of Revenue on the separation of the taluk in 1909 to respresent the revenue payable by the talukdar directly to Government, a corresponding deduction being made from the revenue payable for the Zemindari, before separation, therefore, the Zemindar received from the talukdar as rent what is now found to be the quota of the Government revenue due from the taluk. The consequence is evident. Until separation the lands comprising the taluk continued to be Malguzari lands of the Zemindari ; the talukdar remained the tenant of the Zemindar, who was temporalily or provisionally the proprietor or Sadar

Malguzardar of the taluk. being the person through whom the revenue was paid. It is inaccurate to say that the suit for additional rent was dismissed because the taluk was independent. It was dismissed because the decree of 1805 was found to be a subsisting decree which still governed the relations between the parties. The taluk was independent because the talukdar was entitled to have it separated.

10. Under Regulation XI of 1825 the talukdar took the same interest in the accreted lands as he had in the parent taluk, no more and no less. So the Zemindar became also the temporary proprietor of the resumed estates. Under Regulation VII of 1822, Section 5, clause second, malikana accrues to the proprietors of estates let in farm or held khas. The Zemindar, as things were, came within the clause and was, therefore, in bare acknowledgment of his position allowed malikana. When once or twice he took settlement of an estate himself, he received in addition only the revenue assessed on the estate. The position, therefore, as regards the resumed estates corresponded closely to the position as regards the taluk. It is true that the talukdar has in fact held the taluk and the estates as proprietor in all but name, but the name is not without importance.

11. On one occasion the Collector proposed to ignore the Zemindar and to settle an estate with the talukdar as proprietor. The Board of Revenue referred him to Chapter XX, section IX, Rule 7, of their Rules of 1866 (Exhibit E 20, paragraph 19). The rule deals with alluvial accretions to dependent tenures and lays down that while the dependent tenure-holder is entitled, on payment of a fair increment to his superior landlord, to hold the accretion for the term of his engagement, the Settling Officer should treat with the superior as the party responsible for the Government share of the rent. The rule continues: "Should the Zemindar prove recusant the settlement may be made with the under tenant or the lands held under direct management or let in farm and treated as a separate estate, as may be most expedient." Clearly, therefore, the Board, of Revenue regarded the taluk as for the time being a dependent taluk and dealt with the parties on that basis according 'to their strict legal rights.

12. But now that the taluk has been separated the legal position is altered. No question, therefore, of adverse possession arises. The title to the resumed estates again follows the title to the taluk. The plaintiffs, as Zemindars, have ceased to have any shadow of proprietary right in the estates and can no longer claim malikana.

13. We agree with the Subordinate Judge that the plaintiffs fail. This appeal must be dismissed with costs.

Cases Referred.

151 Ind. Cas. 148 : 23 C.W.N. 149 (P.C.)
222 C. 214 (P.C.) : 21 I.A. 131 : 6 Sar. P.C.J. 473 : 11 Ind. Dec. (N.S.) 144