

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Leelanund Singh v. Rajah Mohendernarain Singh and Rajah Jyemungul Singh, from Bengal; delivered 10th December, 1869.*

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Present :

THE MASTER OF THE ROLLS.

SIR JAMES W. COLVILLE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR JOSEPH NAPIER.

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SIR LAWRENCE PEEL.

THE Appellant is the present possessor of the large Zemindary known as the Kurruckpore Mehals, which includes the whole of Pergunnah Singhol; and one of the Mouzahs composing that Pergunnah is called Kusbeh Budholee. This Zemindary formerly belonged to one Rajah Kadir Ali, from whom it descended, first to his son Ikbul Ali Khan, and afterwards to his grandson, Ruhmet Ali Khan: but in 1842 it was sold for arrears of Government revenue, and was then purchased by Rajah Bidanund Singh, the father of the Appellant.

Abutting upon Pergunnah Singhol, and on the west and south of it, is Pergunnah Chundun Bhooka. This includes the Mouzahs of Jankeepore, Ahsur Chand *alias* Kuchwa, and Ahsur Biscoond. The two former of these form part of the Zemindary of the Respondent Mohendernarain Singh, who is the son and successor of Rajah Nirbye Singh. The other village forms part of the Zemindary of the other Respondent Rajah Jyemungul Singh, who is the representative and successor of Rajah Nuwab Singh.

The question in the suit is one of boundary between the two Pergunnahs Singhol and Chundun Bhookha, *i.e.*, whether the 5,000 beegahs of which the Appellant, as Plaintiff, seeks to recover possession form part of Kusbeh Budholee, and therefore lie within the proper boundary line of Pergunnah Singhol; or whether they are included partly in the villages of Jankeepore and Kuchwa, and partly in that of Biscoond, and therefore lie within the proper boundary line of Chundun Bookha.

From this statement, however, it follows that the portions of the disputed land which are held by the Respondents respectively may be so held by them by different titles; and that although the principal question of fact, *viz.*, the true position of the boundary line between the two Pergunnahs, is common to both, the one may, in respect of long possession, be in a more favourable position than the other; and that that which may be evidence against the one may not be evidence against the other. And this being so, it is perhaps unfortunate that the Appellant's claims against the two Respondents should be litigated in one and the same Suit. The Suit is brought not only for the recovery of the lands in question, but, as a necessary step towards that object, to set aside certain awards passed by the officers employed to conduct the revenue survey in this district, and to obtain a rectification of the boundary line as defined by them. The suit was brought within the period in which the law allows such awards to be contested in a regular Suit. But their Lordships need hardly observe that the Plaintiff in such a case has to overcome the strong presumption which the decision of such a question as this by competent officers after full local inquiry, made with the aid of a scientific survey of the locality, is calculated to raise against him.

It may be convenient, in the first place, to state shortly what is the effect of the survey proceedings which are impeached. The line laid down by the survey as the northern boundary of Pergunnah Chundun Bhooka, and the southern of Pergunnah Singhol, is not a river, but seems to be almost identical with the chain of hills which on the map of Hoolas Roy (A), which has been so much discussed in this Case, are delineated as running east and west between the Jorbarara and the stream which he calls the

Punjhairee Khoord. To these hills we may give the name, which is applied to them in some of the proceedings, of Suhoodree.

There was throughout the survey proceedings a dispute between the Appellant and the Respondent Mohendernarain Singh, or Nirbye Singh his father, touching the possession of the lands sought to be recovered from the last-named Respondent. The earlier proceedings treated that portion of the land in dispute as falling within the Monzabs of Pergunnah Chundun Bhooka, which belong to Mohendernauth. Mr. Brown was dissatisfied with this finding as being inconsistent with Hoolas' Map A; he objected to Birjobookun's Map B, and directed that there should be a further investigation, and a comparison of the country with the Map A. He also proposed to go himself to the spot and decide the question of possession. He never did so; and the question was finally decided by Mr. Quintin, after local inquiry and investigation, in his proceeding of the 24th of December, 1847.

The case as to the lands sought to be recovered from the Respondent Jyemungul Singh is somewhat different. When the survey of these lands first took place the Appellant raised no claim to them. The contest was between the Respondent Mohendernarain Singh, saying that they belonged to his village of Ahsur Chand alias Kuchwa, and Jyemungul Singh, saying that they belonged to his village of Biscoond. The decision was in favour of the latter.

In the final proceeding of December 1848, before Mr. Wood (Appendix, p. 256), and two years after the commencement of the dispute between the Respondent, the Appellant did intervene as third party, and ineffectually claimed the lands as part of Pergunnah Singhol. But his omission to come forward before that time affords a strong presumption that he was at the commencement of the survey out of the possession of these lands, if he had ever been in it.

These survey awards are founded on evidence of the actual possession. They are not, if questioned in time, conclusive on the question of title.

Their Lordships will now consider upon what evidence of title the Appellant seeks to impeach them.

The earliest piece of evidence is the proceeding of 1816 before a Mr. Sutherland, described as a Registrar of the Civil Court of Monghyr, who appears, under the law then in force, to have exercised a jurisdiction in questions of possession similar to that which is now exercised by the Magistrates under Act IV of 1840.

The complaint was brought by Rajah Kadir Ali against the lessees of part of Pergunnah Chundun Bhooka, and seems to have been directed rather against encroachments upon wild and jungle land, for the purpose of collecting the forest products, than against any actual occupation of cultivated soil. One Rajah Juswunt Singh, however, describing himself as the proprietor and Zemindar of Pergunnah Chundun Bhooka, intervened; and the question, what was the true boundary between the Pergunnahs, was thus raised between the two Zemindars.

Those stated by the Zemindar of Singhol were :—  
 “To the west is Gheedha Ghaut and Churhee Khoord (by which we understand a line drawn from Geedha Ghaut to Churhee Khoord), to the east is Dabeedah and to the north is a great mountain, and south is Punjhairee Khoord.”

The statement of Juswunt Singh was that the boundary of his lands extended “from the west of Dabeedah straight along as far as the Soordhobee and Sunkareerekh and Sireekabutan.” It is not easy to identify all these names; but the conclusion to which their Lordships have come is, that this statement makes the southern boundary of Singhol that line of hills above called Suhoordree, which is admitted by the Respondents to have been the dividing line as regards actual possession and enjoyment, and has been fixed as such boundary by the Survey Proceedings. If this be so, it follows that Juswunt Singh asserted no title to the land lying to the north of these hills, and between them and the Jorbarara; and that he did not treat that stream, or any other stream, under the name of Punjhairee Khoord, as the boundary between the two Pergunnahs. On the other hand, the issue thus raised between the parties seems to admit that the Punjhairee Khoord was to the south of that line of hills; and that the controversy was about the lands claimed in the present suit, or part of them.

Mr. Sutherland's decision was in favour of Kadir Ali, and directed that the disputed land should remain in his possession according to the before-mentioned boundaries, until the decision should be rescinded by an action under Regulation 10 of 1793. In 1817, one Budhnarain was sent by Mr. Sutherland to mark out the western boundary between the Pergunnahs, in accordance with the last-mentioned decision; and that, starting from Geedha Ghaut and proceeding southward to some point or another, he did place certain boundary pillars is undisputed. His own statement made on oath in January 1830 is, that they extended southward as far as the Punjhairee Khoord, and that that stream is south of the Punjhairee Kalan.

Juswunt Singh and Nirbye Singh, who then first appears on the stage, declined to take any part in this demarcation, and intimated that they intended to dispute Mr. Sutherland's order in a regular suit. No such suit was, however, brought.

It will be convenient here to inquire upon what parties this proceeding of 1816 was binding, and what lands did it cover?

It may be taken to have bound Juswunt Singh who was a party to it, and those who claim through him. It may, therefore, be taken to have bound Nirbye Singh, and after him the Respondent Mohendernarain Singh. But is it binding on Jyemungul Singh, or was it binding on his father and predecessor, Nuwab Singh? That depends on the question how far either derived title from Juswunt Singh; and the evidence is unfortunately either very scanty or altogether silent on their connection with Juswunt Singh, and as to the time at which, and the manner in which, Pergunnah Chundun Bhooka became divided between two distinct Zemindaries. The Principal Sudder Ameen, in his Judgment, speaks of Juswunt Singh as the "moories" of the *Defendants*. And "moories" is, we apprehend, the same word as "meeras," which, in Professor Wilson's Dictionary, is defined to be the person through whom an inheritance is derived. On the other hand, the Judgment of the Sudder Court speaks of the proceeding of 1816 as made against the ancestor of *one* of the *Defendants*. Again, the Report of Hoelas Roy alludes to the proceedings on a partition between Nirbye Singh and Nuwab Singh, and

speaks of Juswunt Singh as the elder brother of both. Chunderchain Singh (Appendix, p. 260, line 34), a witness of Jyemungul Singh, also speaks of such a partition.

That the Respondents, therefore, held their respective portions of Pergunnah Chundun Bhooka under a title which, up to some date, is a common one, seems probable; but there is little, if any, direct evidence of the fact, and still less of the date at which the separation in title commenced.

There is no statement in the Proceeding of 1816 of the specific quantity of the land then in dispute; and the complaint seems to have been of invasion on the part of the tenants of Juswunt Singh occupying lands to the west of the westward boundary. Juswunt Singh, however, claimed all the land which lay south of the line of hills which he said was the southern boundary of Singhol and west of Debeedah (which we take to be the range of hills on the east of the now disputed land). The question was, whether south of the line of hills the eastern boundary of Pergunnah Chundun Bhookah was the Dabeedah range, or a line prolonging the line from Geedah Ghaut to that line of hills up to the Punjhairee Khoord; and the controversy so stated seems to embrace the whole of the lands now in dispute.

The Respondent Jyemungul Singh, whether bound or not by the Proceedings of 1816, is certainly not bound by those from 1829 to 1832, in which Hoolas Roy and Motu Roy made their conflicting reports. These Proceedings were occasioned by a dispute which arose between Rajah Nirbye Singh and the then Zemindar of Singhol, after the supposed partition between Nirbye Singh and Nuwab Singh (Appendix, p. 47, line 60), and were confined to that portion of the disputed land which is west of the Punjhairee Kalan (Appendix, p. 46, line 7). It did not, therefore, embrace the land which the Appellant now seeks to recover from the Respondent, Jyemungul Singh.

It was in these Proceedings that, in order to get rid of the effect of the Order of 1816, Nirbye Singh first raised the point that the Punjhairee Khoord mentioned in that Proceeding was identical with the stream marked in Map A as the Jorbarara. Neither the Respondent Jyemungul, nor his immediate ancestor, Nawab Singh, was a party to that

issue, nor is the former responsible for the inconsistency which it involves, in claiming a boundary inconsistent with the admitted possession. On the contrary, some of the witnesses produced by him in this cause speak of the southern boundary of Pergunnah Singhol as the line of hills which has been assigned as such boundary by the Survey Proceedings, and such was the boundary asserted by Juswunt Singh in the Proceeding of 1816.

We cannot find that Jyemungul Singh has in any way made the identity of the little Punjhairee and the Jorbarara a material question, unless it be by the 13th paragraph of his answer. And in that he seems merely to raise the question whether Budhnarain had lain down the western boundary, or the dispute of 1816 had extended further to the south than the latter stream. He does not admit that the southern boundary of the Singhol is the little Punjhairee, whether north or south of the line of hills. On the contrary, by paragraph 15, he distinctly asserts that the line of hills is the true boundary.

If the case rested here their Lordships, considering the scanty evidence afforded by the proceeding of 1816, would have felt that no sufficient ground had been laid for setting aside the survey proceedings against the Respondent, Jyemungul Singh, or even against Mohendernarain Singh. The real difficulty in the case has been occasioned by the way in which the cause has been conducted in the Courts of India by the Counsel for the parties, who seem in argument to have accepted as a fact that the southern boundary of Pergunnah Singhol was a river called the Punjhairee Khoord, and to have disputed concerning the position of this stream, and the accuracy of the map of Hoolas Roy. They probably took this course because they felt pressed by the effect of the proceeding of 1816. The Principal Sudder Ameen's Judgment proceeds almost entirely upon the preference which he gives to the map of Hoolas Roy over that of Brijobookun. But the map of Hoolas Roy is really a document of very slight authority. He differed from the other Arbitrator who was appointed conjointly with him to settle that particular dispute; and no final order was passed in that matter. His map and report were before the revenue authorities when they made the survey and the survey awards, and were ultimately

disregarded by them. When this case came on appeal before the *Sudder Dewanny Adawlut*, the Judges of that Court observed, as their Lordships think with great justice, that they were bound to treat the survey proceedings as correct so far as the appearance of the country is recorded therein, and failing to find in the survey map any stream which corresponded with the stream set down in *Hoolas'* map, they rejected that map, reversed the *Principal Sudder Ameen's* decision, and dismissed the Appellant's suit. Afterwards, on a suggestion that there was in the survey map a stream which might correspond with the *Punjhairee Khoord* of *Hoolas'* map, they granted a review, and directed a further local investigation into the existence of this stream by an *Ameen*. The *Ameen* made a report in which he describes an intermittent stream, dry in some places, flowing in others, which he traced in the *Jungul*. The Judges of the *Sudder Dewanny Adawlut* upon this report adhered to their former Judgment dismissing the Suit. When the Appeal was heard here we had not before us their reasons for this conclusion, and we caused a communication to be made to India of which the result is, that the final judgment of *Mr. Raikes* is now before us. That Judge, with better means of forming a Judgment on such a point than their Lordships have on the materials before them, came to the conclusion that the stream described by the *Ameen* did not correspond with the *Punjhairee Khoord* laid down in *Hoolas'* map; or with the description given by the Appellant's *Vukeels* of the alleged boundary of his *Zemindary*. Their Lordships, after full consideration of the case, are not prepared to say that that conclusion is erroneous. They must observe that upon a boundary question they would be extremely reluctant to reverse the Judgment of an Indian Court, unless they were clearly satisfied that it was wrong. If it had been shown that there was a well-defined stream corresponding, or nearly corresponding with that laid down in *Hoolas'* map, they might have felt that, considering the proceedings of 1816 and the way in which the parties have conducted their case, the survey awards ought to be reversed. But as the evidence stands, they feel that the position, course, and very existence of the *Punjhairee Khoord* are left in such uncertainty, that if the boundary laid



down by the survey proceedings were altered, it would be impossible, with any certainty, to fix the boundary to be substituted for it. And in these circumstances they must humbly recommend to Her Majesty that the Decree under appeal be affirmed, and this Appeal be dismissed with costs.

