

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Robert Watson & Co. v. Mohesh Narain
Roy, from the High Court of Judicature
at Fort William in Bengal; delivered
Saturday, April 17th, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS was a suit to recover possession of lands as upon the determination of a subtenure. The Plaintiffs were the zemindars, and the real question between them and the Defendant was, whether a pottah granted in 1854, nominally to one Subhodra Burmonya, but really, as it manifestly appears, to one Ramdhun Roy, conveyed an estate for life only, or an estate of inheritance. In order to determine this question, their Lordships must arrive as well as they can at the real intention of the parties, to be collected chiefly, no doubt, from the terms of the instrument itself, but to a certain extent also from the circumstances existing at the time of its execution, and further by the conduct of the parties since its execution.

It is contended on behalf of the Plaintiffs that this document conveyed an estate *pur autre vie*, that is, for the life of Subhodra. Their Lordships may observe upon that that an estate *pur autre vie* is very unusual, and, they might almost say, scarcely known in India, and there appears to be some antecedent improbability that such an estate was meant to be created.

The circumstances existing at the time of the document being entered into, so far as they are material to the present enquiry, were these: Ramdhun Roy, who was a brother-in-law of Subhodra, in whose name the lease was granted, had been together with other members of his family the holder of a jote within the zemindary of considerable extent, and including the lands in question. It was a patrimonial property held before him by his ancestors for some generations. The zemindar brought an action against Ramdhun Roy and the other jotedars for enhancement of rent, and succeeded in establishing the right to enhance the rent to such an extent that the jotedar, declined to hold the property on those terms, and accordingly relinquished it. This is stated in the pottah. Their Lordships have not, however, the deed of relinquishment before them, nor a precise statement of the terms under which the relinquishment was made. It would seem by the recitals in the pottah that upon this relinquishment a re-settlement was made with Ramdhun Roy, contracting in the name of Subhodra, of a portion of the property which had been relinquished, and at a much lower rent than the enhanced rent; and then the pottah proceeds in these terms: "When I caused notice to be given for the settlement of the above land and jummah you appeared through your mokhtar, and applied for a pottah of the land and jummah. Your application is approved; and after deducting" certain quantities, a portion of land amounting to 1785 beegahs is granted "at a settled rent"—that is the expression—of 618 rupees. There is a further provision that if any loss arises from inundation and so forth the tenant shall continue to pay the rent; and then

follows a provision not immaterial to consider: "Over and above the said rate at which I have fixed the rent and granted this pottah neither I nor my heirs shall upon any account enhance the rent of the said land and jummah, or allow it to be enhanced."

Undoubtedly it may be said that it is not very probable this land should have been granted at a comparatively low rent never to be enhanced; but it may be that the rent had been enhanced to such an amount that no tenant could be found to pay it, and it may have suited the landlord's convenience to accept this tenant at a permanent tenure upon a moderate fixed rent, which the tenant himself should never be able to diminish, whatever loss by inundation or otherwise he might sustain. But some light is thrown upon this matter by subsequent occurrences. We have not the precise date of Ramdhun Roy's death, but it appears beyond all question that upon his death he was succeeded in the possession of the property by his widow Rebati Burmonya as guardian of his minor son, and that the son upon attaining his majority took possession himself. It is also abundantly clear that the Watsons recognised this possession, for on the 14th January 1862 they filed a petition to this effect: "Petition of objection by Mr. Robert Watson. The representation is this: My zemindary within Turruf Boira in Toke Chaudpore in Pergunnah Rokunpore is the jote land of the late Subhodra Burmonya." Therefore it would appear that they were under the impression at this time that Subhodra was dead. It would appear also that they were under a wrong impression; but when we come to enquire into the state of their mind, it is immaterial whether their impression was right or wrong provided they entertained it. They supposed Subhodra

was dead. They then say: "A suit under
 " section 4, Act IV. of 1840, having been
 " instituted in respect of the lands of that jote
 " jummah comprised within the boundaries
 " specified below, between Rebati Burmonya,
 " guardian of the minor Mohesh Narain, suc-
 " cessor of the late Ramdhun Roy, and others,
 " and Ramdhun Tewari Defendant, the 25th
 " January has been fixed as the day for hearing
 " the case. Consequently, it being necessary
 " to put in an objection in this case, it is prayed
 " that as the said disputed lands comprised
 " within my zemindary are in the possession of
 " the aforesaid Burmonya;" that is, of Rebati
 Burmonya in her capacity as guardian of Mohesh
 Narain. They assert and confirm the legality
 of the possession of the widow on behalf of the
 minor as succeeding to Ramdhun Roy, and they
 further, on several other occasions more especially
 referred to, in 1865, when it would appear that
 Subhodra really was dead, bring suits for rent
 against Rebati Burmonya and the son of Ramdhun
 Roy, treating the son as succeeding to the father,
 a contention wholly inconsistent with the view
 which has been put forward that they con-
 sidered the pottah conferred an estate *pur autre*
vie merely during the life of Subhodra Bur-
 monya.

That being so, upon the best judgment
 their Lordships are able to come to, it seems
 to them that the intention of the parties was
 to create a permanent tenure, and that the
 Plaintiffs have failed to establish their right
 to eject the Defendant. It follows that the
 judgments of the two Courts, both of whom
 have found in favour of the Defendants, are
 right; and it becomes unnecessary for their
 Lordships to refer to another question on their
 determination of which undoubtedly those Courts
 do to a great degree, though not altogether, base

their judgments, namely, whether or not it was satisfactorily proved, as was attempted on the part of the Defendant, that the Kubuleut which was not produced by the Plaintiffs contained words of inheritance of a more clear and definite character than those contained in the pottah; or what would have been the legal effect of that evidence if it had been believed. Undoubtedly some difficulties have been raised with regard to this latter question which it now becomes unnecessary to discuss.

Under these circumstances their Lordships will humbly advise Her Majesty that the judgment of the High Court be affirmed, and this Appeal dismissed, with costs.

1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900

1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000

1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100

2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
2176
2177
2178
2179
2180
2181
2182
2183
2184
2185
2186
2187
2188
2189
2190
2191
2192
2193
2194
2195
2196
2197
2198
2199
2200

2200
2201
2202
2203
2204
2205
2206
2207
2208
2209
2210
2211
2212
2213
2214
2215
2216
2217
2218
2219
2220
2221
2222
2223
2224
2225
2226
2227
2228
2229
2230
2231
2232
2233
2234
2235
2236
2237
2238
2239
2240
2241
2242
2243
2244
2245
2246
2247
2248
2249
2250
2251
2252
2253
2254
2255
2256
2257
2258
2259
2260
2261
2262
2263
2264
2265
2266
2267
2268
2269
2270
2271
2272
2273
2274
2275
2276
2277
2278
2279
2280
2281
2282
2283
2284
2285
2286
2287
2288
2289
2290
2291
2292
2293
2294
2295
2296
2297
2298
2299
2300

2300
2301
2302
2303
2304
2305
2306
2307
2308
2309
2310
2311
2312
2313
2314
2315
2316
2317
2318
2319
2320
2321
2322
2323
2324
2325
2326
2327
2328
2329
2330
2331
2332
2333
2334
2335
2336
2337
2338
2339
2340
2341
2342
2343
2344
2345
2346
2347
2348
2349
2350
2351
2352
2353
2354
2355
2356
2357
2358
2359
2360
2361
2362
2363
2364
2365
2366
2367
2368
2369
2370
2371
2372
2373
2374
2375
2376
2377
2378
2379
2380
2381
2382
2383
2384
2385
2386
2387
2388
2389
2390
2391
2392
2393
2394
2395
2396
2397
2398
2399
2400

2400
2401
2402
2403
2404
2405
2406
2407
2408
2409
2410
2411
2412
2413
2414
2415
2416
2417
2418
2419
2420
2421
2422
2423
2424
2425
2426
2427
2428
2429
2430
2431
2432
2433
2434
2435
2436
2437
2438
2439
2440
2441
2442
2443
2444
2445
2446
2447
2448
2449
2450
2451
2452
2453
2454
2455
2456
2457
2458
2459
2460
2461
2462
2463
2464
2465
2466
2467
2468
2469
2470
2471
2472
2473
2474
2475
2476
2477
2478
2479
2480
2481
2482
2483
2484
2485
2486
2487
2488
2489
2490
2491
2492
2493
2494
2495
2496
2497
2498
2499
2500