

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Prosonno Gopal Pal Chowdry and others v. Brojonath Roy Chowdry and others, from the High Court of Judicature at Fort William in Bengal; delivered Thursday, 6th July 1876.

Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is a suit brought by Sree Gopal Pal Chowdry, Prosonno Gopal Pal Chowdry, and Brojendro Gopal Pal Chowdry. They seek to recover possession of two thirds of a putnee tenure, created in 1840, in an estate called Chowrashy, and the question is, whether they, as the representatives of Nilcomul their father, are entitled to recover two thirds of that talook.

It appears that Sohocharam Panty, the common ancestor, left three sons, Kristo Chunder, Shumboo Chunder, and Ramneedy Pal Chowdry. Kristo Chunder and Shumboo Chunder claimed the whole of the property, including the estate called Chowrashy, stating that the mother of Buddinath, the wife of Ramneedy, had conveyed the share of Buddinath, the son of Ramneedy, to them. Buddinath instituted a suit in the Supreme Court as far back as the year 1811, to have the conveyance by his mother set aside, and to have it declared that the three brothers were jointly interested as a Hindoo family in the property left by their father. A decree was passed in his favour on the

12th December 1820, declaring that the family was a joint and undivided Hindoo family, and directing an account to be taken. Subsequently, on the 3rd December 1824, Buddinath filed a supplemental bill praying for a partition of the property which had been declared in his favour to be a joint family estate. Pending the suit, and after the Bill filed for a partition, Joychunder, a grandson of Shumboo Chunder, granted to Sreemunto Koondoo, benamee for Nilcomul, another grandson of Shumboo Chunder, and the ancestor of the Plaintiffs, the putnee now in dispute. On the 5th August 1850 a decree was made by the Supreme Court, directing a partition to be made, and it was in these terms: "It is ordered that a partition be made of the said joint real estate in the schedule A and C annexed to the said Master's report," that being the joint real estate which was the subject of the suit, and in those schedules the zemindary Chowrassee was mentioned. It was further ordered that a commission should issue, and certain Commissioners were appointed to divide the estate; they were to make a division of the estate with the appurtenances into three equal parts or shares, and to divide the same by metes and bounds where they should see occasion. It was further ordered, that the said Commissioners "should allot one equal third part or share of the premises to the complainants in that suit, to be enjoyed by them in severalty, and the remaining two third parts or shares to the Defendants, to be enjoyed by them in severalty in the manner prescribed by Hindoo law; and further, that after such partition should have been so made, the said Complainants and the said Defendants should convey such several one third and two third parts or shares of the said premises to each other

“ respectively, to be held in severalty as
 “ aforesaid.”

The Commissioners made a return to the Court, which will be found at page 126 of the Record. They stated that they had divided the estates into three equal parts or shares, or as near thereto as might be, and had, in pursuance of the said commission, allotted and appointed and did thereby allot and appoint unto the representatives of Buddinath, who, after the death of Buddinath, had been made parties to the suit by bill of revivor, “ all and singular
 “ the following lands, tenements, and premises,” describing them, to have and to hold the same unto them, and their heirs, representatives, and assigns, to be held and enjoyed by them in severalty for ever, in the manner prescribed by Hindoo law, as in the said commission was directed. Amongst the lands so described was the said estate called Chowrashy (p. 129).

Upon that an order was passed, which will be found at page 159 of the Record, the material parts of which are these: “ It is ordered that the said Defendants,” including the representatives of Nilcomul and Joy Chunder, who were grandsons of Shumboo Chunder, Nilcomul also being the father of the Appellants, “ do
 “ within ten days of the service upon them
 “ respectively of the order put the Com-
 “ plainants in these causes into possession of
 “ the lands, tenements, and premises allotted to
 “ the said Complainants, under the return,
 “ dated the 27th day of January 1853, to the
 “ commission of partition issued in these causes
 “ on and bearing date the 18th day of August
 “ 1850, and under and by virtue of the decree
 “ made in these causes on and bearing date
 “ the 5th day of August 1850, and which are
 “ in the possession of the said Defendants or
 “ any of them, or of their servants or agents,

“ or of the servants or agents of any of them,
 “ not disturbing the possession of any of the
 “ ryots or other tenants, but without prejudice to
 “ the Plaintiff’s right to sue and proceed against
 “ any ryots or other tenants by regular action
 “ or suit, or otherwise, according to the course
 “ of practice of the Courts of the East India
 “ Company.” The effect of the order was that
 they were to put Buddinath’s representatives
 into possession of the zemindary Chowrassee,
 “ not disturbing the possession of any of the
 “ ryots or other tenants, but without prejudice
 “ to the Plaintiff’s right, to sue and proceed
 “ against any ryots or other tenants by regular
 “ action or suit, or otherwise, according to
 “ the course of practice of the Courts of the
 “ East India Company.”

It has been held, and their Lordships quite
 agree in that view, that the Defendants, the
 representatives of Nilcomul, were not tenants
 within the meaning of this order, and that,
 according to the terms of it, it was their
 duty to deliver over to the representatives of
 Buddinath the estate called Chrowrashy, free
 from any incumbrances which, pending the suit,
 had been created in their favour. But that
 is not all. The Defendants not having put
 Buddinath’s representatives into possession, a
 proceeding was taken under a writ of execu-
 tion, called a writ of assistance, to compel the
 Defendants to put them into possession of the
 estate; upon which the case went to the Zillah
 Court of the Twenty-four Pergunnahs, the Court
 in whose jurisdiction the lands were situate.

Sree Gopal Pal Chowdry, who is one of the
 present Plaintiffs, made an objection, but that
 had nothing to do with the present question.
 Sreemunto Koondoo, the person to whom the
 putnee tenure in the said estate called
 Chowrashy had been granted benamee for the

Appellants Sree Gopal Pal Chowdry and others, claimed that he was entitled to the putnee which had been so granted. The Judge rejected his claim and said: "The evidence, leaves no doubt
 " on my mind that this objector's claim is founded
 " on no sufficient proof of *boná fide* possession
 " under a *boná fide* transaction; that is, that he
 " is not the third party he claims to be, nor en-
 " titled to hold the possession he declares himself
 " to hold. He is not, therefore, as a third party,
 " in possession protected by the terms of
 " the decree or writ of assistance. I reject
 " this petition accordingly."

Upon that, Sreemunto Koondoo appealed to the Sudder Court, and the Sudder Court upheld the decision that he was not a third party claiming under the putnee, but that he was merely holding it benamee for one of the parties to the suit. If he had established his right as a third party, and had proved that he was holding the putnee on his own behalf and not on behalf of Sree Gopal Pal Chowdry and others, the question would have arisen whether he was not bound by the decision of the Supreme Court, the putnee having been granted to him *pendente lite*. But that question does not arise, as the putnee was held benamee for persons who were parties to the suit, and they were bound by the decree of the Supreme Court. That decree was that the zemindary was to be delivered over to the representatives of Buddinath, and that it was to be conveyed to Buddinath by the persons who are now the Plaintiffs in this suit.

The first Court held that the Plaintiffs were not entitled to recover, and dismissed the present suit. Thereupon the case came on appeal before the High Court, and Mr. Justice Norman, in delivering the decision of the

High Court, says: "Looking at the terms
" of the return to the commission of partition,
" and the circumstances under which the two
" putnees are said to have been granted and
" were held benamee for Nilcomul, I think
" that the Commissioners for the purpose of
" the partition treated, and rightly treated,
" Nilcomul and Joy Chunder as being in
" actual possession of Turuff Chowrassee, alto-
" gether disregarding the putnees, and that
" the heirs of Nilcomul are bound by that
" allotment. I am of opinion that under the
" final decree in the partition suit, the heirs
" of Buddinath Pal Chowdry acquired an
" absolute title to Turuff Chowrassee unen-
" cumbered by any putnee rights in Nilcomul
" or his heirs. The result is, that in my opinion
" the decision of the Court below is sub-
" stantially correct, and the appeal must be
" dismissed with costs." Mr. Justice Ainslie,
who was one of the members of the Division
Court to which the appeal was preferred,
concurred in that judgment.

Their Lordships think that the High Court
came to a correct conclusion, and that the
Plaintiffs are not entitled to maintain this suit.
Under these circumstances they will humbly
recommend Her Majesty that the decision of
the High Court be affirmed with costs.