

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Rajah Jug Mohun Singh v. Doohun, Dabee,
Kustoor, and Doohun, from the Court of
the Judicial Commissioner, Oudh ; delivered
November 24th, 1876.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

THIS is an appeal by the talookdar of a talook called Bunsingpur, in Oudh, against a judgment of the Chief Commissioner of Oudh, by which it was directed that a sub-settlement should be made with the Plaintiffs with respect to the under-proprietary rights which they possessed in that talook. It has been contended that, inasmuch as the village of the Plaintiffs, Gurha, in respect of which they claim under-proprietary rights, was for the first time included in the talook when the talook was settled in 1859 with the Defendant in the case, the talookdar, under Act 26 of 1866, schedule No. 2, the Plaintiffs were not entitled to any sub-settlement. The words at the end of that section of the schedule which have been relied upon are: "To entitle a claimant to obtain a sub-settlement, he must show that he possesses an under-proprietary right in the lands of which the sub-settlement is claimed, and that such right has been kept alive over the whole area claimed within the period of limitation. He must also show that he, either by himself or by some other person or persons from whom he has inherited, has,

“ by virtue of his under-proprietary right, and
 “ not merely through privilege granted on
 “ account of service or by favour of the talook-
 “ dar, held such lands under contract (*pucka*),
 “ with some degree of continuousness, *since the*
 “ *village came into the talooka.*” It is argued
 that, as the village came into the talooka for
 the first time when the settlement was made
 with the talookdar, the Plaintiffs are excluded
 from compensation by the terms of this schedule.
 It appears, however, to their Lordships that
 this argument does not arise, the fact
 being found otherwise. There have been a
 number of proceedings in this case. There have
 been, altogether, no less than six or seven
 judgments; some of them undoubtedly obscure
 and some contradictory; and statements have
 been made both by the Plaintiffs and the De-
 fendants, to a certain degree conflicting with
 their respective claims,—but it appears to their
 Lordships enough to refer to the last proceedings
 which have been taken.

The case came on appeal before Sir George
 Couper, the Chief Commissioner, on the 21st
 September 1871. He remanded it for further
 inquiry on the question, When did the estate first
 pass into the talooka, and who was at that time
 in proprietary possession? The latter question
 does not appear to their Lordships of much im-
 portance. The case was investigated upon this
 remand by Mr. Carnegy, the Officiating Commis-
 sioner, and Mr. Carnegy finds in this way :—
 “ The wasilbakis alluded to by Mr. Wood as
 “ proving that the village was in Defendant’s
 “ estate in 1217–8 F have been duly examined.
 “ I find one wasilbaki as early as 1202 F, when
 “ the village of Gurha is mentioned under
 “ taluka Raipur (now Bunsingpur),”—which is
 the talooka now in question, which was settled
 with the Defendant,—“ so that as far as docu-

“mentary evidence goes (and there is no oral evidence on the point) the village appears in the taluka in 1202 F, 1217-8 F, and 1255-9 F.” Here is a distinct finding of fact, that the village had formed part of the talooka for a long period of time before. On referring to the finding of Mr. Wood, to which reference is here made, it appears that upon a remand to him (page 107 of the Record) he finds:—“The village was in possession of the talukdar’s father for five years within the twenty years preceding annexation; the twenty years rule is taken, because the village was in the taluka prior to 1836 A.D., *i.e.*, in 1217 and 18 F.”

Further, Mr. Perkins, before whom the case came in one of its stages, referred to by Mr. Carnegie, observes: “The Respondent admits before me that the mouzah in suit was in the talook about or before 1217 F.” It appears to their Lordships, therefore, that the question of fact is found distinctly against the Appellant, and that the argument on the point of law does not arise.

Their Lordships would require to be satisfied by very strong evidence that such a finding of fact was wrong, in accordance, as it is, with the talookdar’s own admission in a former period of the suit. The finding appears only to be impeached on the supposition that this mouzah was one of eight villages comprising an estate of Bhowaneeghur, and that it was not originally in Bunsingpur. Even if that were so, their Lordships are of opinion that the talookdar having obtained a settlement of Bunsingpur, including, as it appears to them it was then taken to include, Bhowaneeghur, and Bhowaneeghur having included this mouzah, he cannot now be heard to say that the mouzah was for the first time included in the estate which he settled with the Government.

Under all the circumstances, it appears to their Lordships that the judgment of the Chief Commissioner was right, and that this Appeal must be dismissed.