

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Ranee Shornomoyee v. Watson and Co. and  
others (No. 16 of 1868), from the High Court  
of Judicature at Fort William in Bengal ;  
delivered 22nd May 1873.*

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Present :

SIR JAMES W. COLVILLE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

IF ever there was a clear case this is one which falls within that description. The suit is brought to recover 15,000 beegahs of chur land to the east of Chilmaree Dara. It is claimed by the Plaintiff as part of a khas mehal purchased by her from the Government of Bengal on the 15th January 1864.

The Defendants are in possession of the land and were found by the magistrate in a proceeding under the code of criminal procedure to be in possession. The Plaintiff seeks to turn them out. The suit is in the nature of an ejectment suit, and the Plaintiff must recover upon the strength of her own title and not upon the weakness of that of her adversary. It is immaterial, therefore, in this case to consider whether the land is the property of the Defendants or not, because whether it is their property or not, unless it is proved to be the property of the Plaintiff, she is not entitled to turn them out; nor is it necessary to consider whether it ever was the property of Government or not, because unless the Plaintiff can make out that being the property of the Government, the

Government conveyed it to her, she is not entitled to recover. The question depends upon what was sold by Government and what was bought by the Plaintiff. The certificate of sale is in these words, signed by the collector :—  
 “I do hereby notify that the under-mentioned  
 “ Government khas mehal, in the district of  
 “ Moorshedabad, at a public sale held in the col-  
 “ lectorate of Moorshedabad under orders of the  
 “ Board of Revenue, has been purchased on the  
 “ 15th January 1864 by Ranee Shornomoyee,”  
 that is the Plaintiff, “as *sebit* of Luckhee Narain  
 “ Deb Thakoor.” The description is “No. of  
 “ towjee 560”; “name of mehal,” “Chur  
 “ Doomreah Island, Pergunnah Goas,” “Sudder  
 “ Jumma, 2,409 Rs. 13 As. 11 P.” That is,  
 whatever the Plaintiff bought as Chur Doomreah  
 Island was to be subject to a sudder jumma,  
 payable to the Government of Rs. 2,409.

It is important to remark that what the Government sold and what they professed to convey by the certificate was a khas mehal. The question is whether the khas mehal which the Government sold included the 15,000 beegahs which the Plaintiff claims in this suit. It was necessary to go into evidence to show of what the khas mehal “Chur Doomreah Island, towjee No. 560,” mentioned in the certificate of sale, consisted.

Going then into the evidence, we find that in the agreement which the Plaintiff signed for the purchase of the estate (page 8 of the second supplemental record, No. 11,) the land is described in the same way as it is in the certificate of sale, but with this addition, vizt., that the quantity of land is stated to be 10,377 beegahs 10c. 2g. Now it is not disputed that the Plaintiff has got as much as 10,377 beegahs; but she claims to have 15,000 beegahs to the east of Chilmaree Dara in addition as included in her purchase. It would require very strong and very clear evidence to satisfy the minds of a court of justice, that under a description of an estate said

to contain 10,377 odd beegahs of land, the Government officers were so negligent of their duty as to sell, and the Plaintiff so fortunate as to purchase, 25,000 beegahs, more than double the quantity expressed. If the Plaintiff could satisfy us that she did buy, and that the Government did sell and had the right to sell that quantity she would make out her case.

Now, the way in which the Plaintiff attempted to make out that she did purchase the 15,000 beegahs of land claimed is this. It is said that the number of the towjee is described as 560, and that the survey map of 1853 includes the whole of the land claimed as the 15,000 beegahs, and that at the foot of the map there is an entry "No. of the towjee 306 of the former resumption and No. 560 of the present:" consequently it is said that the lot sold to the Plaintiff being No. 560 in the towjee included the whole of the land claimed, and that it cannot be cut down by showing that in the agreement signed by the Plaintiff she admitted that what she purchased was 10,377 beegahs odd.

But let us see whether the entry in the map shows that No. 560 of the towjee at the date of the conveyance on the 5th February 1864 did include the 15,000 beegahs of land claimed. Assuming for the sake of argument that No. 560 of the towjee in 1853 did include the land claimed, it does not necessarily follow that No. 560 of the towjee on the 5th February 1864, when the certificate was signed, also included it.

Now in order to see what was included in the certificate of sale as Chur Doomreah Island, we must refer to the proceedings which took place before Mr. Octavius Toogood, the officiating deputy collector of Zillah Moorshedabad, on the 30th January 1856. He says, "It is evident  
 " from a perusal of the papers of the settle-  
 " ment record of Chur Doomreah resumed by  
 " the Government, comprised within Pergunnah  
 " Goas, that, from the investigation held by the

“ former collector of this district, it was found  
“ that 25,000 beegahs of land having been thrown  
“ up in the vicinity of Doomreah, by the rivers  
“ Pudma and Mohanunda, were held possession  
“ of by Rajah Oodwunt Sing, the Zemindar of  
“ Hoodda Anyepore, when the said collector, in  
“ conformity with the directions of the members  
“ of the Sudder Board, dated the 24th January  
“ 1826, A. D., preferred a claim to the said lands  
“ on behalf of Government under regulation 2  
“ of 1819. Upon which an itlanamah having  
“ been served on the possessor, Defendant, call-  
“ ing upon him to adduce evidence, and the  
“ said Defendant having produced his docu-  
“ mentary evidence, &c., the claim of the  
“ Government was dismissed on the 26th Sep-  
“ tember 1828, and the papers of the record  
“ forwarded to the said Board. Subsequently  
“ the duties of the Revenue Board having  
“ become dischargeable by the Revenue Com-  
“ missioner, the Revenue Commissioner dis-  
“ satisfied with the decision of the said collector  
“ preferred an appeal therefrom to the Court  
“ of the Special Commissioner at Calcutta.  
“ Whereupon the said Special Commissioner  
“ having found that out of the lands in dispute,  
“ beegahs 6,723, all around which the rivers  
“ Pudma and Mohanunda flow, were regarded as  
“ new accretions under the designation of jazeera,  
“ reversed the decree of the collector, and gave  
“ a decree in favour of Government, forward-  
“ ing the resumption decree to the Commis-  
“ sioner of Revenue.” From this it appears to  
have been found that out of the lands in dis-  
pute, 6,723 beegahs formed an island, which  
under regulation XI of 1825 belonged to the  
Government. It then went on to show that  
6179 beegahs of the said land were settled in  
ijara or lease to Mr. Dalrymple at an annual  
jumma of 2294 rupees for a term of ten years,  
and that before the expiration of the said term  
Mr. Abercrombie, the collector, went into the  
Mofussil, and that he then found that a por-

tion of the lands which had existed at the time of the lease to Mr. Dalrymple were diluviated; that new accretions had formed, and that some portion had been settled with ryots. It goes on thus: "The former ijaradar (that is Mr. Dalrymple) having been desirous of entering into an ijara settlement at the old rate, a report was submitted to the said Commissioner, asking for specific directions as to whether a settlement of the said mehal should be entered into with the former ijaradar at the old rate, or whether a settlement thereof should be made *after making a fresh measurement and assessment of rent*. In reply thereto the said gentleman forwarded a letter, No. 50 of the 18th December 1854, *directing a fresh measurement and jumwabundee (rent roll) to be made*, and the said collector accordingly, with the sanction of the Commissioner, conveyed in his letter of the 27th January 1855, appointed Bissonath Dutt, ameen, together with a mohurrir or to make a fresh measurement and jumwabundee."

There was an express direction that the land to the east of the Chilmaree Dara was not to be measured or included in the ijara. It appears that the ameen subsequently measured the mehal and found it to contain 11,381 beegahs odd, including waste, land under water, roads, &c., and that a fresh ijara settlement was entered into with Mr. Dalrymple, the former ijaradar for a term of ten years, commencing from the 1st of May 1855, at an annual rental of Rs. 2,409 : 13 : 11.

It is perfectly clear, from the proceeding referred to, that the ijara to Mr. Dalrymple, which was to commence from the first of May 1855, did not include the land to the east of the Chilmaree Dara. It is also clear from the Plaintiff's own petitions, and from her plaint that she never considered that she had purchased anything more than what was included in Mr Dalrymple's ijara.

In the petition which the Plaintiff presented to the collector after the expiration of Mr. Dal-

rymple's second ijara she says, by her agent, "I purchased the above mehal," that is, the mehal called Chur Jazeera Doomreah, "on behalf of the above-named thakoor," that is, the idol, "in the month of Pous 1270, B.S., and I did not receive possession thereof till the 30th April 1865, on account of the ijara settlement of Mr. Dalrymple. On the expiry of the term of this settlement I prayed for possession." She never thought of claiming possession of anything until Mr. Dalrymple's ijara came to an end, and then she thought her title had accrued to receive possession of the land included in the ijara to Mr. Dalrymple. Then, again, in the petition presented under 318 of the Criminal Procedure Code, the Plaintiff, by her agent, said, "Mr. James Dalrymple took a conditional *ijarah of the said mehal* from the collectorate of this zillah on the part of Government." There, again, showing that what she was seeking to recover was the mehal of which Mr. Dalrymple took an ijara.

Then in the plaint she says:—"The island Chur Doomreah, a Government khas mehal, recorded No. 560 in the rent roll of the collectorate of this city of Moorshedabad, was purchased by me at a Government sale on the 15th January of the year 1864, in the capacity of a *sebait* of the aforesaid idol, and I have obtained the bynamah (certificate of sale). The Government concluded successive temporary farming settlements of the *said mehal* with Mr. Dalrymple. The term of the farming lease expired on the 30th of April in the year 1865. I held the proprietary right from the date of my auction purchase up to the expiration of the ijara lease, and on the expiry of the term of the *ijarah* lease, I obtained khas possession through the nazir and ameen under orders of the collector of this district."

It is clear, that the Government merely intended to sell and that the Plaintiff intended to purchase the khas mehal which was held by

Mr. Dalrymple under the *ijarah*, and that on the measurement of the lands included in the *ijarah* those to the east of the Chilmaree Dara were expressly directed to be excluded. The Plaintiff can have no title to those lands whether they belonged to Government or to the Defendants. The authorities which have been cited are not applicable to the facts of this case. The Plaintiff has made out no title to the land which she has claimed.

It is said that the question was never raised on the pleadings, but it is clearly raised, not only in the pleadings but in the issues. In the written statement of the Defendants, Robert Watson & Co., at page three, paragraphs two and three, the question appears to be raised distinctly. They say, "As to the claim to obtain possession of about 15,000 beegahs of land lying within the boundaries specified in the *thak* map of the year 1853, on the allegation that the said lands are *jazeera* (island) Chur Doomreah; these lands are not included in the said island." The same defence was also set up in the written statement of Messrs. Jardine, Skinner, and Co. in the third and fourth paragraphs at page five.

There was also a distinct issue whether the 15,000 beegahs were part of the *jazeera*, and whether the Plaintiff, in virtue of her auction purchase, could claim and obtain possession of the disputed land or not. The defence set up was that the Plaintiff, by virtue of her auction purchase, was not entitled to the 15,000 beegahs, and distinct issues were raised as to whether she was entitled to them or not. The High Court came to the conclusion that she was not entitled, that she never intended to purchase and never did purchase, and that the Government never intended to sell, and never did sell, to the Plaintiff any portion of the 15,000 beegahs to the east of the Chilmaree Dara.

Their Lordships entirely concur in the opinion of the High Court. It is not necessary to go into all the reasons expressed in the judgment of

Mr. Justice Seton Karr, which have been commented upon in the argument at the bar, but their Lordships concur entirely in the opinion at which the learned judges arrived, namely, that the Plaintiff, by reason of her purchase, never got a title to the 15,000 beegahs which she claims on the east of the sota.

Under these circumstances, their Lordships will humbly recommend Her Majesty to affirm the decision of the High Court, with the costs of this Appeal.