Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Secretary of State for India in Council v. *Nellakutti Siva Subramania Tevar, from the High Court of Judicature at Madras; delivered 21st November* 1891.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MORRIS.
SIR RICHARD COUCH.
MR. SHAND (LORD SHAND).

[*Delivered by Lord Watson.*]

This appeal is taken by the Secretary of State for India in a suit instituted before the District Court of Tinnevelly by the Respondent, the Zemindar of Singampatti, for cancellation of a decision of the Government Survey Officer, dated the 10th April 1880, and for a declaration of his title to certain tracts of mountain land, covered with forest and jungle, as being parts of his zemindary.

The villages and cultivated lands of the zemindary are situated on the plains, and are contiguous to lands and villages belonging to the Government of India. These lands lie at the northern base of a mountain range whose crest or watershed runs nearly due east and west, rising to an elevation varying from 3,850 to 4,900 feet above sea level. The watershed is a well defined natural line, and forms the northern boundary of the territory of Travancore.

The Respondent was a minor when he succeeded

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to the zemindary, and did not attain majority until the year 1880. Until 1867 his estate was managed by his mother; and from that date until 1880 it was under the management of the Court of Wards.

For a considerable period antecedent to the year 1865, it appears to have been well known to the Government that the Zemindars of Singampatti claimed as their property the extensive hill tract lying between their cultivated lands and the Travancore boundary. In that year the Government began, for the first time, to suggest doubts as to the validity of their right; and, in 1870, a demand was made for production of the evidence of their title. A report was thereafter made by Lieutenant Campbell Walker, which was submitted to the Government pleader; but no further steps were taken in the matter until October 1879, when an order was issued directing a Survey Officer, empowered under the Boundary Act, to take up the settlement of the case.

That order was carried out by Mr. Baber, who, after making inquiries, and personally surveying the tract in dispute, issued his report and decision on the 6th April 1880, with a relative plan prepared by him, which shows the whole area then claimed, and also that portion of it which he held to be part of the zemindary. The latter, roughly estimated, comprehends about one half of the area claimed, and forms the north-western portion of that area. The lands which Mr. Baber held to be Government property consisted of a tract varying in breadth lying outside the eastern and southern boundaries of the lands assigned by him to the Zemindar.

In this suit, which was brought by the Respondent in July 1880, after he became of full age, the Government concede, as they have all along done, his right to the land to which he was found to be entitled by the decision of their

Survey Officer. The subjects now in controversy are described in the plaint as consisting of three parcels. The first, which has been termed in these proceedings the eastern tract, does not include the whole area to the east which was claimed before and disallowed by Mr. Baber, but only that portion of it, about 12 square miles in extent, which lies to the north of the River Varattar. The second, termed the central tract, about one square mile in extent, is bounded on the north by the land now admitted to be the Respondent's, on the east by the Kusavankuli river, which is also, in that locality, the eastern boundary of the admitted land, on the south by Travancore, and on the west by the third tract claimed. That third or western tract, which extends to 35 square miles, is bounded on the north by the lands awarded to the Zemindar in April 1880, on the east by those lands and by the central tract now claimed, on the south by the Travancore boundary, and on the west by the River Tambraparni, which is also the western boundary of the lands to which he has already been found to have right.

The title of the Respondent is a sunnud, dated the 22nd of April 1803, granted by Lord Clive to his ancestor, Nallakutti Teven, then Zemindar of Singampatti. The sunnud contains the usual recitals, one of these setting forth that the object of the grant was to confer upon the Zemindar, his heirs and successors, "a permanent property in their land in all time to come." It contains no specification or description of the lands which it was intended to carry, but is a grant in general terms of the zemindary as then held and possessed by the grantee. There is a marginal note specifying the names of three villages then composing the zemindary; and it was suggested in the argument for the Appellant that the effect of the note is to limit the grant to

these three villages and a limited area in their immediate vicinity, and to exclude the claim of the Respondent for any land beyond these limits which is not shown to have been subsequently acquired from the Government by prescription. Their Lordships do not think that a marginal specification of the villages existing at its date can control the plain terms of the grant, or can be taken as definitive of the extent of land, cultivable or not, which was then held and possessed by the Zemindar of the villages enumerated. In their opinion, the Respondent must prevail in this suit, if he has been able to show, either by direct evidence or as matter of reasonable inference, that the lands now in dispute were held and possessed by the Zemindar at the time when he obtained a permanent title from the Government.

The issue settled in the District Court for the trial of the cause upon its merits was, simply,—"Whether the right to and possession of "the property in dispute belonged to Plaintiff "or to Government?" Documentary and oral evidence was adduced by both parties, into the details of which their Lordships find it unnecessary to enter, because of the unanimity of the conclusions in fact which both Courts below have derived from it. It is sufficient to say that there is evidence of both kinds tending to prove that the Zemindars had, for a period beyond living memory, or at least for fifty years past, uniformly asserted their right to all the tracts now claimed, by including them in leases of their hill land. Not only so, but in the year 1843 the Government collector, who was at that time in possession of the zemindary for arrears of revenue, granted a lease of the hill lands and their products, in which these tracts were expressly included; and a collector who was in possession in the years 1857–58 also dealt with

them as forming part of the zemindary. On the other hand, there is no evidence tending to prove that, before the challenge which ultimately led to the present litigation, there was any similar assertion of right, either on the part of the Government or of any other person.

Whether there has been a persistent claim of right to a tract of land is, their Lordships need hardly say, a question of fact. Such assertion being proved, all questions as to the amount of use and enjoyment of the tract by the claimants, and as to the sufficiency of such use and enjoyment to constitute possession of the whole extent claimed, are also, in the opinion of their Lordships, pure questions of fact.

The District Judge held it to be established by the evidence that, throughout the third or western tract, the Zemindars of Singampatti had all along exercised the exclusive right of grazing cattle, cutting timber, and collecting mountain produce. With regard to the first or eastern tract, he found that the Zemindars had exercised rights of precisely the same kind over the whole tract, but not to the exclusion of a certain amount of user by inhabitants of Government villages. Upon these findings, the learned Judge came to the conclusion in law, that the possession of the western tract by the Respondent and his predecessors ought not to be ascribed to a title of property, but that it was sufficient to give him right to exclusive easements of pasturage, cutting timber, and collecting mountain produce, over its whole area. As to the western tract, he held that the Respondent was entitled to easements over it, of the same character, but not exclusive. The only observation upon the second or central tract which occurs in his judgment is to the effect that "it appears to be of comparatively little "value, and no evidence regarding it was pro-"duced on either side."

The result was that the learned Judge set aside the decision of the Survey Officer, which found that the Respondent had no interest in the disputed lands; and pronounced no further order beyond finding neither party entitled to costs.

On appeal, the High Court adopted the findings of the District Judge with respect to the Zemindars' exclusive possession of the western tract, but rejected his legal inference that the right thereby constituted was in the nature of easement, and held that it amounted to a full right of ownership, In that view of the law their Lordships entirely concur. Having regard to the character of the subjects in controversy, the exclusive possession which the Zemindars are, by concurrent judgments, found to have enjoyed, appears to them to have in no particular fallen short of proprietary possession. There is no ground for presuming that a proprietor whose title was clear, and who was desirous of turning his estate to the best account, would have occupied or used the subjects in any other way than they did. When that circumstance is taken in connection with the fact that the Zemindars had a title which will aptly include these subjects, and that their acts of possession have invariably been ascribed to that title, the inference drawn by the High Court appears to be inevitable.

The learned Judges of the High Court also expressed their concurrence in the findings of the District Judge with respect to the Zemindars' possession of the eastern tract, but came to the conclusion that their possession alone was that of proprietors, and that the proved acts of user by ryots from neighbouring villages were not of that character. On examining the judgments of the two Courts, their Lordships were satisfied that the possession of the Zemindars as found by both would, in the absence of conflicting pos-

session sufficient to cut down or qualify their right, entitle the Respondent to a declaration of his proprietorship. But it did not seem to be equally clear that the two Courts were altogether agreed as to the extent and character of the stranger ryots' possession; and they accordingly permitted the Appellant's Counsel to bring before them all the evidence bearing on that point. Their Lordships are unable to affirm that there was any difference of opinion in the two Courts upon that point; but, whether that be so or not, they are satisfied, upon the evidence, that the decision of the High Court is right. Beyond what may be implied in the acts themselves, there is nothing to show that aught done by these stranger ryots was in the assertion of right; and, assuming the statements of the Appellant's witnesses to be absolutely true, the acts of user to which they speak are neither in amount nor quality sufficient to displace the proprietary title of the Zemindar. Whether the evidence would *per se* be sufficient to raise rights of easement, and if so in whose favour, are issues which do not arise in the present case.

The High Court, differing from the District Judge, held that the Respondent has proved his title to the second or central tract claimed; and in that finding also their Lordships concur. It is not easy to understand why the tract was made the subject of a separate claim. It adjoins the hill lands which have been found to belong to the zemindary; it lies within their natural limits, namely, the Kusavankuli river on the east, and the watershed on the south. There is nothing to suggest that it was ever claimed or possessed by any other person; whilst it was persistently claimed and treated by the Zemindars as part of their estate. In these circumstances their Lordships are of opinion that their proprietary possession of the hill lands adjoining is sufficient to establish their title to the central tract.

The High Court, upon these findings, allowed the appeal, reversed so much of the decree of the Court below as dismissed the Respondent's claim, and decreed the claim as made, with costs in all Courts. Being of opinion, for the reasons already indicated, that the decision of the High Court is right, and ought to be affirmed, their Lordships will humbly advise Her Majesty to that effect. The Appellant must pay to the Respondent his costs of this appeal.