Privy Council Appeal No. 73 *of* 1920.
Patna Appeals Nos. 60 *of* 1917 *and* 35 *of* 1919.

Raja Rai Bhagwat Dayal Singh, since deceased (now represented by Rajkumar Barhamdeo Narain Singh) - - - *Appellant*

v.

Ram Ratan Sahu and others - - - - - - *Respondents.*

Ram Ratan Sahu and others - - - - - - *Appellants*

v.

Rajkumar Barhamdeo Narain Singh and others - - - *Respondents.*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH NOVEMBER, 1921.

Present at the Hearing:

LORD BUCKMASTER.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD BUCKMASTER.]

Twenty-six years ago in the month of November, 1895, one, Raja Rai Bhagwat Dayal Singh, bought three villages known as Chianki, Ganke, and Lalgara, which were situate within the jurisdiction of the Subordinate Judge of Palamau in the District of Ranchi. Together with these villages he bought litigation, which has ensued from that day until this. He found that the villages were occupied by persons who claimed an absolute title under conveyances that had been

made by a Hindu widow with a limited estate. It was consequently necessary for the Raja to take proceedings for the purpose of obtaining possession. He accordingly instituted a suit which was heard before the Subordinate Judge, who allowed his claim to possession and also mesne profits as from the proper date. That judgment was made the subject of an appeal to the High Court of Judicature at Fort William in Bengal, and upon that appeal the judgment was reversed. From the decree of the High Court at Fort William an appeal was brought before their Lordships, who restored the judgment of the Subordinate Judge. They advised that the appeal should be allowed, and that the appellant should recover possession together with mesne profits, which were to be ascertained in the execution proceedings; but they did something more, which has caused the first of the questions that has been argued upon the present appeal. It appeared that although the persons whom the purchaser in 1895 ejected had no title to the property against the Raja, yet the widow had, before the sale under which they claimed, raised money for necessities, ancestral worship, and other similar matters for all of which she was pefectly entitled to charge the estate. Mortgages had been executed to secure these monies, and when the properties were sold by the widow, these mortgages were paid off. The Subordinate Judge, when the matter first came before him, decided that certain parts of these mortgages which he gathered together under two heads, amounting in the one case to Rs. 11,198, and in the other to Rs. 6,400, should be allowed, and that these sums should carry interest at the rate of 6 per cent. When the matter was before their Lordships they confirmed the finding of the Subordinate Judge, both as to possession and as to those sums, and found that the sums that were to be paid should carry interest at 6 per cent. per annum.

The first question that has been raised upon this appeal is as from what date the 6 per cent. should run. The proceedings have emerged from a finding originally made by the Subordinate Judge, who held that according to the true construction of this order the interest should run from the date of his own original decree, but the High Court of Judicature at Patna has said that the effect of the order is to take the interest back to the date of the mortgages. It is unnecessary for their Lordships to settle in detail the question which led to that conclusion, for this reason: that the order of their Lordships on the former appeal was the subject of review, and an application was made to them for the purpose of ascertaining what it was that was meant by the allowance of interest at 6 per cent. when no date was mentioned as the date from which it should run, and upon the matter coming again before their Lordships on the 11th February, 1909, upon an application by the respondents for modification of the judgment, they made it clear that what they meant was that the interest should run concurrently with the mesne profits; that as one sum was allowed on the one hand for the mesne profits, the sum for interest should be allowed upon the other. This relieves

their Lordships entirely from the necessity of considering what, without the assistance of that interpretation, they might have decided that the order meant, and they can only express their sincere regret that the litigant parties in these proceedings did not think right at the earliest moment to have obtained the information which has not been placed before a single one of the Courts from whom this dispute has proceeded, and indeed was only placed before their Lordships this morning after the case had been part heard. It at any rate disposes entirely of the first part of the appeal, and the order that is appealed from in that respect must be modified so as to bring it into agreement with the declared intention of their Lordships in the earlier proceedings. But this does not dispose of the whole of the appeal, for there still remains a further matter for consideration that arises in this way. When the inquiry was directed with regard to the mesne profits, a question arose as to whether part, at least, of the mesne profits had not been due to permanent improvements that had been executed upon the property by the purchasers whose title had been dispossessed by the Raja, who had bought in November, 1895. There has never been any contention before their Lordships as to the right to obtain some allowance in respect of these improvements, if in the circumstances of this case such a right was capable of being established. The Commissioner before whom the matter was first heard disposed entirely of the two villages, Chianki and Ganke, with regard to which no further question now arises; but with regard to Lalgara he stated that the purchaser from the widow had made improvements, and that in consequence of these improvements the jama of the village was raised to Rs. 2,400. There seems no doubt that these improvements were in their very nature of a permanent character. They were the erection of tanks for the purpose of irrigation, and the construction of a dyke. It seems quite impossible to believe that any estate that had received the advantage of seven or eight big tanks and the irrigation consequent upon their use would not have had the jama thereby increased. The learned Commissioner in his determination made a finding that the amount of the mesne profits for which the person in possession would be made liable amounted to a sum which in respect of this village was Rs. 35,057, and he then added that if he was entitled to a deduction for the improvement, then a deduction of Rs. 4,000 should be made therefrom, and if not, it should not. In other words, what he attempted to do was to make the deduction for the capital spent in the improvements and not the amount by which the mesne profits themselves had been increased by the expenditure. The matter then went back before the Subordinate Judge, and he confirmed the report of the Commissioner as a matter of form. The case then came before the High Court of Judicature at Fort William, and they dealt with the objections and remanded the matter with this direction :—

> " Neither party will be entitled to challenge the figures arrived at by the Commissioner nor the findings arrived at by him, except that with regard to the improvements, the judgment-debtors will be at liberty to

show on the materials on the record that the Commissioner has not given them credit for any particular improvement which they are justly entitled to. But they will not be entitled to take exception to the findings of the Commissioner as to their value, and no fresh Commission will be issued nor any further evidence will be allowed to be given by the parties."

It appears that the further objections that were taken upon this remand were first of all to the allowance of any money at all, and secondly, it was argued that an allowance could not be made because the improvements had in fact been executed by the person who had been the original purchaser from the vendor who had the limited estate, and that he had again sold and that it was the purchaser from him who was in possession at the time when the final purchase of the property was made. Their Lordships are of the opinion that there is no substance in these contentions. The increased rent that is properly attributable to the improvements can be properly set off against the mesne profits, even although it was not actually executed by the person in possession at the moment when the decree for possession was made, and the only question that is left is to determine whether or no any sum should be allowed. The Subordinate Judge held that there should be no sum allowed at all, and the High Court at Patna has fixed a sum of 10 per cent. on the rents. With regard to the adequacy or the accuracy of a 10 per cent. allowance, their Lordships are not in a position to speak; they cannot possibly know the circumstances, but the sum of 10 per cent. appears to be a perfectly fair and reasonable sum to allow in the circumstances of this case. The facts found by the Commissioner are those upon which all the judgments must proceed, and among these is the statement that the improvements have increased the value. Their Lordships are clearly of opinion that that is not only the finding of the Commissioner, but that it is the only reasonable inference that can be drawn from the character of the improvements, and they therefore think, in that respect, that the judgment of the High Court must be affirmed.

That disposes of all the matters upon this appeal, but their Lordships cannot part with this case without expressing once more their regret as to the interminable course of litigation in India. It cannot be for the welfare of any community that the purchaser of property bought in good faith should be liable to endless quarrels arising out of his purchase, which continue, as they do in this case, and as they must in many, beyond the period of his natural life. The man who bought this property never knew what it was to be free from the anxiety of a law suit until the day he died; even then the litigation was not ended, and has been pursued until the present appeal. This has itself taken four years to come here from the High Court, and of course no explanation has or ever can be offered of why these delays occur. Their Lordships refer once more to this matter in the earnest hope that a condition of things which they regard as constituting a serious blot upon the administration of justice should be removed.

With regard to the costs of this appeal, their Lordships have

given careful consideration to what order justice requires, and they have come to the conclusion that there ought to be no costs of the appeal or of the cross appeal ; that the costs of the High Court, although the order of the High Court has been varied, should in the circumstances of this case be allowed to stand. They will therefore humbly advise His Majesty that the order of the High Court be varied to the extent that has been already indicated, namely, by declaring that the interest of 6 per cent. should run concurrently with the mesne profits, but that the costs should be dealt with as above mentioned.

In the Privy Council.

RAJA RAI BHAGWAT DAYAL SINGH, SINCE DECEASED (NOW REPRESENTED BY RAJKUMAR BARHAMDEO NARAIN SINGH)

v.

RAM RATAN SAHU AND OTHERS.

RAM RATAN SAHU AND OTHERS.

v.

RAJKUMAR BARHAMDEO NARAIN SINGH AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY LORD BUCKMASTER.

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