Privy Council Appeal No. 92 *of* 1927.
Patna Appeal No. 22 *of* 1926.

Sir Charu Chandra Ghose – – – – – – – – *Appellant*

v.

Kumar Kamakhya Narain Singh and others – – – – *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST OCTOBER, 1930.

Present at the Hearing:

LORD ATKIN.
LORD MACMILLAN.
SIR JOHN WALLIS.

[*Delivered by* SIR JOHN WALLIS.]

This is an appeal from a decree of the High Court at Patna reversing the decree of the Additional Subordinate Judge of Hazaribagh and decreeing the suit brought by the Court of Wards on behalf of the minor *zemindar* of Ramgarh for a declaration that the suit villages forming the Jagodih estate are an ordinary *jagir* of the Raj resumable on failure of the direct male line of the grantee, and are not a *shamilat* or *shikmi taluk* of the Ramgarh estate as recorded in the "Khewat" or record of rights of the *zemindari* made by the Settlement Officer under the provisions of the Chota Nagpur Tenancy Act, 1908.

The adjoining *Perganas* of Chai and Champa, one to the north and the other to the south of the Barrakur river, form part of the Ramgarh *Zemindari* in the Hazaribagh district of Chota Nagpur. The Jagodih estate is situated in Chai, and is one of several estates in these *Perganas* which were recorded in the settlement as *shamilat taluks*—that is to say, *taluks* in which the *talukdars* or proprietors now pay the Government revenue to the *zemindar* instead of paying it directly to Government.

Although this dependence is strictly limited, these estates have also acquired the name of *shikmi* or belly *taluks*, as being now in the maw of the *zemindar*, who has sometimes been tempted to claim them as portions of his own estate held on *jagir* tenure and resumable in certain events. In recent years the question has assumed increased importance as affecting the ownership of minerals.

In this, as in the *Barsote* case, *Surendra Nath Karan Deo* v. *Kumar Kamakhya Narain Singh* (1929), not reported at present, the Raja of Ramgarh is seeking to establish that this estate is held under him on *jagir* tenure. In the *Barsote* case the Board, agreeing with the Subordinate Judge, allowed the defendants' appeal and dismissed the suit on the ground that as no suit had been brought in the Revenue Court to rectify the entry in the *khewat*, that entry under s. 87 of the Chota Nagpur Tenancy Act was to be presumed to be correct until it was proved to be incorrect, and the plaintiff had failed to discharge the onus imposed upon him. In this case also the plaintiff is subject to the same onus, and the question before their Lordships is whether the appellate court was right in holding on the evidence before them that he had satisfactorily discharged it.

It is alleged in the plaint that Maharaja Bishun Singh, the proprietor of the Ramgarh Raj, which comprises several *Perganas* including Pergana Chai, granted certain villages, including the suit villages, in *jagir* to Raja Lall Khan, the predecessor in interests of defendants 1 and 2 under a *patta* of 1762. No rent, it is stated, was fixed at the time of the grant, but it was fixed subsequently at Rs. 656-12, and a *kabuliyat* dated Kartek Sudi, 1839, Sambat (1782), was taken from the said Raja Lall Khan. It was further pleaded that the question whether the estate was a *jagir* was raised in a suit between the predecessors of the parties in 1792 and was decided in the affirmative, and that the question is now *res judicata*.

The principal written statement was filed by Rai Debender Chunder Ghose, the father of the appellant here, and other defendants claiming as transferees from Hira Khan, a former owner of the Jagodih estate. They denied that the *taluk* Jagodih was a tenure created by the proprietor of the Ramgarh estate, or formed part of it, and alleged that it has been in existence since the time of the Mahomedan Emperors and that since the country was taken by the British it has been a *shamilat* or *shikmi taluk* and consequently not resumable. The owners of the *taluk* have never paid rent to the proprietor of Ramgarh, but at the time of the settlement made by the British it was arranged for purposes of convenience that the revenue payable for the *taluk* or *Raj* Jagodih should be paid through the proprietor of the Ramgarh estate. It was also denied that the judgments relied on by the plaintiff operated as *res judicata* as regards the question raised in this suit.

After a very lengthy hearing and a full consideration of the judgments of the Courts below, and the arguments of counsel here, their Lordships find themselves in agreement with the conclusion of the Subordinate Judge that the plaintiff has failed to prove that the entries in the *khewat* are incorrect.

There is a strong body of evidence in support of the defendants' case that the suit villages form part of the ancient *zemindari* of Jagodih in Pergana Chai, of which Lall Khan, the alleged grantee of the *jagir*, and his ancestors for many generations had been the proprietors, though in the troubled times which preceded the grant of the *diwani* to the East India Company in 1765 they were often forcibly dispossessed by the Rajas of Ramgarh, and eventually only succeeded in retaining or regaining possession of the 21 villages which were their *zemindari nankar*—that is to say, lands which as *zemindars* they were allowed to hold revenue free in the usual way as remuneration for their services.

That Lall Khan and his ancestors from 1719 onwards, long before the alleged grant of a *jagir* to him in 1762 or 1763, were recognised as the rightful *zemindars* or *talukdars* of *Jagodih* by the ruling power is clearly shown in the report made in September, 1771, by Maharajah Shitab Rai to the Board of Revenue, which contains an account of the Perganas of Chai and Champa from 1719 to 1769. Shitab Rai was placed in charge of Berar, including Chota Nagpore, by Lord Clive in 1765, and so continued until 1772.

The report begins by stating that Raja Megar Khan of Jagodih, had paid revenue to Government, and, when Khandar Khan, the Raja of Narhut and Samoy, rented these countries, Megar Khan had always paid the revenue to him. In 1719, Megar Khan was murdered by the then Raja of Ramgarh. The rest of the report shows that the Raja of Jagodih and the other Rajas of Chai and Champa were again and again forcibly dispossessed by the Rajas of Ramgarh and were restored by the armed intervention of the Nawab and the renters under him. In 1762, Boally Khan, a kinsman of Cassim Ali, the new Nawab, defeated Raja Bishun Singh of Ramgarh and put Lall Khan of Jagodih and the other Chai *zemindars* in possession of their *zemindaris*, but, as the report says, they only enjoyed their heritage for six months and were again dispossessed by Bishun Singh. It was admitted by Lall Khan in the 1792 suit that he was dispossessed of his *malguzari* or revenue-paying lands in 1762, and it was found to be proved that he had never afterwards been restored to them.

This brings the narrative down to the alleged grant by Bishun Singh to Lall Khan of the suit villages on *jagir* tenure. The plaintiff has filed an alleged duplicate of a *sanad* of the year 1763, not 1762, the date given in the plaint, and also a copy from the record in the 1792 suit, which contains

certain additional figures which have not been satisfactorily explained. It purports to be a *patta* granted by Bishun Singh to Lall Khan in respect of villages yielding an income of Rs. 1,500, but in terms is only a grant of five villages in the adjoining Pergana of Champa, yielding Rs. 752. The five villages are entered as *baiswan*, which is said to be equivalent to *jagir*, and, even as to these, it is not shown that the *patta* was ever acted on. Assuming that it was, and that it was intended that the income of these five villages should make up with the income of the Jagodih *nankar* or unassessed villages which were to be left in Lall Khan's possession, an income of Rs. 1,500, it is not shown that Lall Khan or the other Chai Rajas with regard to whom similar *pattas* have been exhibited, executed *kabuliyats* agreeing to hold the *nankar* lands which formed part of their ancestral *zemindaris* on *jagir* tenure under the Rajas of Ramgarh. It seems most improbable that they did so, and the evidence shows that they never ceased striving for the restoration of their *zemindaris*.

Bishun died about this time, and was succeeded by his brother Makund Singh, who was the Raja of Ramgarh in 1765, the date of the accession of the East India Company, and the following years. The difficulties experienced by the Company at this time in getting in the revenue and the measures they adopted, such as setting aside the old *zemindars* who were in arrear and granting *pattas* to strangers, are matters of history. It is only material to note here that, when the *zemindars* were set aside, they were commonly allowed to remain in possession of their *malikana* or allowances, including their *nankar* or revenue-free villages.

In the years immediately following, the revenues of the Chota Nagpur plateau, including Ramgarh, were again rented by Khandur Khan, the *zemindar* at the foot of the hills, and by his son after him, but they failed to collect the revenue from Makund Singh or to restore the Chai *zemindars*, as ordered by the Company. Shitab Rai states, at the end of his report, that in 1769 Captains Goddard and Camac were sent to collect the revenue and Makund Singh was reduced to submission. The report stops at this point, and the next evidence is that in 1771 Makund Singh was granted a *patta* for Chai and Champa at a *jama* of Rs. 9501, and in September, 1772, a three years' *patta* for Chai Champa and Ramgarh at a *jama* of Rs. 27,000, as well as separate settlements for Palmanau and Chota Nagpur. None the less, a few months later he was again in rebellion, and was put to flight by a military force under Captain Camac; and Tej Singh, a member of the senior branch of his family, who had joined forces with the Company, was installed in his place.

It was apparently with reference to the period of Tej Singh's accession that Lieutenant Robertson, in his report on the land-tenures of Hazaribagh, prepared in 1876 for the purposes of the Statistical Survey of India, stated that the Rajas of Chai "endeavoured to get settlements made with them direct, but

their efforts failed, and, though they were maintained each in his Raj, they were directed to pay their tribute, which was then converted to a fixed rental, to the Ramgarh Raja. The Rajas of Rampur, Jagodih, Purona and Ikthori, accepted these terms and have been made *shikmi talukdars*."

That this is what was intended appears from the letters exhibited from the record in the 1792 suit, but, as already stated, Lall Khan only obtained possession of his *nankar* villages. In a letter of the year 1773, Tej Singh stated that he had sent to Captain Camac and made all possible efforts to have the case of the Rajas of Chai taken up, and that, when the *tilak* of Raj or robe of investiture was conferred upon him, he promised that he would give the Raj to all the three Rajas, and would receive the proper amount of rent from them and would pay it to Government. If this had been done the whole of these estates would have become *shamilat taluks* of Ramgarh.

There is a letter of about the same date from Captain Camac to Raja Lall Khan of Jagodih and the other Chai Rajas stating that he had been under the impression that they were already in enjoyment of their heritage, and that he would be glad to see a settlement of the revenue made with them, but that, if not, they would have their *malikana*, which would, of course, include the *nankar* or revenue-free villages which are the subject of this suit.

That they did, in fact, get possession of their *nankar* or revenue-free villages and held them as such and not in *jagir* as contended for the plaintiff, appears from the letter of Tej Singh's successor Paranath Singh in 1777. In it he states that the *hukmi* of the *nankar* villages, then held by Lall Khan, had always been remitted and there was to be no interference with this. This letter is really destructive of the plaintiff's case that the suit villages were in possession of Lall Khan, not as his old *zemindari nankar*, but as a *jagir* granted to him by Bishun Singh.

Further, the evidence shows that four years later these villages were assessed by the Government as *nankar*. As the Subordinate Judge has pointed out, it was the policy of the Company, afterwards embodied in the Permanent Settlement Regulations, that these *nankar* lands were no longer to remain free from assessment, but were to be annexed to the *malguzari* or revenue-paying lands. There is a letter of the 5th December, 1781, from the collector, Mr. Chapman, to Lall Khan and a fellow Raja, stating that he had appointed Lala Subun Rai to collect one-fourth of the *jama* of their villages, and that they were to pay him this one-fourth and appropriate the remaining three-fourths for themselves. In imposing this very light rate of assessment, the Collector was obviously giving effect to the Company's orders for the assessment of the *nankar* lands. It is unnecessary to refer in detail to the other letters, which

show that at this time it was in contemplation to restore the Chai Rajas to their *malguzari* or revenue-paying lands as well, as they are not the subject of the present suit, and these letters are the only evidence that their title was recognised.

That the Jagodih Raja never paid the Raja of Ramgarh in respect of these villages more than the amount of the *nankar* assessment imposed by the Collector, is shown, in their Lordships' opinion, by the *ekranama* or deed of settlement of 1786, in the suit brought by the Raja of Ramgarh against the Rajas of Jagodih and Rampur for one-fourth of the *malguzari* of the villages held by them, which is the amount of the assessment imposed by the Collector. Under the compromise the Jagodih Raja was to give the Raja of Ramgarh possession and enjoyment of six of his twenty-one villages. The six villages are expressly stated to be equivalent to a one-fourth share and the fifteen villages retained to be equivalent to a three-fourths share. It is further stated that the *khamil jama* or estimated profits of the six villages surrendered to the Raja was Rs. 655—8, and this figure is practically identical with Rs. 656—12, the amount of the *hukmi* or rent in the bond alleged by the plaintiff to have been executed by the Raja of Jagodih on the 21st October, 1784. In their Lordships' opinion, this evidence goes to show that all the Jagodih Raja was liable to pay Ramgarh was the amount of the assessment imposed by the Collector on his *nankar* villages as to which both title and possession were in him, and consequently that the tenure was not *jagir* but *shamilat*.

For the plaintiff, strong reliance is placed on the fact that in the *hukmi* bond the suit villages are described as *jagir*. Mr. de Gruyther for the appellant has cited authority to show that the term *jagir* was sometimes applied to *nankar*. Even if it were not, the use of this term in this document which was executed by someone else on behalf of the Jagodih Raja is at most evidence of an admission which in their Lordships' opinion is of very small evidentiary value in view of the rest of the evidence. Nor do their Lordships attach any weight to the circumstance that in a report submitted by Mr. Leslie, the Collector to the Board of Revenue in 1788, Lall Khan was entered as a *jagirdar* holding fifteen villages with a *khamil jama* of Rs. 1,982 and as paying 2 annas per rupee on the *khamil jama*. The report gives these particulars with regard to a very large number of estates in the *zemindari* and was no doubt intended to show the collections of the *zemindari* with a view to the decennial settlement which was in preparation. The entry was probably drawn up from statements furnished by the Raja of Ramgarh, and it is not shown that the Raja of Jagodih had any notice of them.

With regard to this part of the case, it is only necessary to add that it is well settled that if the Jagodih Raja was the proprietor of these *nankar* villages, his title was unaffected by his estate being included in the permanent settlement or any of the

previous settlements with the Raja of Ramgarh (*Juggutmohinee Dossee* v. *Sookhemony Dossee* (1871). 17 W.R. 41. P.C.), and that his failure to apply as such proprietor for the separation of his estate under Regulation 8 of 1793 within the time limited by Section 14 of Regulation 1 of 1801 merely deprived him of the right to separation, as the section expressly left his other rights unaffected.

Lastly, their Lordships desire to say that where, as in this case, there is a controversy as to the meaning of such words as *hukmi malguzari, jama* and the like, which may mean rent or revenue, it is desirable that the word used in the vernacular should be inserted in brackets after the English rendering, so as to assist the Court in determining which meaning is applicable in the particular case.

As regards the only remaining question, their Lordships are unable to agree with the Appellate Court that the issue in this case is *res judicata* by reason of the judgment of the Court of Sudder Dewany Adalat, in the suit of 1792, between the then Rajas of Jagodih and Rampur and the Raja of Ramgarh. When that suit was instituted, the Jagodih plaintiff had been in possession of the Jagodih *nankar* lands for some twenty years, and had no grievance about them. On the other hand, he was out of possession of the *malguzari* or revenue-paying lands of the estate. The plaint states that the Raja of Ramgarh was in possession of the *milkiat* and *malguzari* rights, Rs. 6501, besides the *zairats* (home farm lands), "which is the old *jama* of the five *mahals*," and prays that their then *milkiat* and *malguzari* rights may be restored to them. The old *jama* was the *jama* of the *malguzari* or revenue-paying lands, and did not arise out of the *nankar*. In these circumstances, their Lordships are unable to agree with Mr. Upjohn's ingenious contention that the plaint must be read as asking not only for relief in respect of the *malguzari* lands, but also for a declaration as to the *nankar* lands which were already in the plaintiffs' possession. Still less can they agree with the contention that the plaintiffs might and ought to have asked for such a declaration, a relief scarcely known in those days, so as to bring them, within the operation of Explanation IV, to Section 11 of the Code of Civil Procedure. Even now failure to sue for a declaration in no way bars a claim for substantive relief when it arises.

As was usual, the plaint set out the documentary and other evidence on which the plaintiffs relied in proof of their titles, and mentioned their possession of the *zemindari nankar* as part of such evidence. This was met, on the other side, by a denial that they had any such *nankar*, and an assertion that their villages were held on *jagir* tenure.

If the merits had been gone into, this question might have had to be investigated, but all the three courts held that they were precluded by section 14 of the Regulation of 1793 from going into the merits, because as stated in the judgment of the

Court of Sudder Dewany Adalat, the plaintiff appellants had "admitted that they were out of possession of the *zemindaris* claimed by the plaintiffs before the accession of the East India Company, and it has been proved by the evidence of the witnesses that they never got possession thereof since then."

In their Lordships' opinion, this judgment cannot be read as giving rise to any plea of *res judicata* with reference to the *nankar* lands.

In the result, their Lordships are of opinion that the plaintiff has failed to discharge the statutory burden imposed on him, and that the appeal should be allowed, the decree of the High Court reversed, and the decree of the Subordinate Judge restored, and they will humbly advise His Majesty accordingly. The respondents must pay the appellant's costs throughout.

In the Privy Council.

SIR CHARU CHANDRA GHOSE

v.

KUMAR KAMAKHYA NARAIN SINGH AND OTHERS.

DELIVERED BY SIR JOHN WALLIS.

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