

(1874) 11 PRI CK 0004

Privy Council

Case No: None

Hursuhai Singh and
Others

APPELLANT

Vs

Syud Lootf Ali Khan

RESPONDENT

Date of Decision: Nov. 6, 1874

Citation: (1874) 2 IndApp 28

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier,
Lawrence Peel, JJ.

Judgement

Montague E. Smith, J.

1. Their Lordships, considering the turn that the argument has taken, do not think it necessary to go at any length into this case. The suit was brought by the Appellants, the proprietors of mouzah Muteor, in Tirhoot, against the Respondents, the proprietors of mouzah Ramnuggur, to recover the possession of a large quantity of land which had been submerged by the River Ganges. It appears that the river flowed between the estates of the Plaintiffs and the Defendants, and in its course between the two estates there were from time to time various changes. There were two or three defined channels, which at times the river overflowed, and formed a pool or lake. The land which is the subject of the present suit was submerged, and when it first became free from water and reappeared, it adhered to and adjoined the estate of Ramnuggur, and prima facie the accretion was to that estate; but upon an inquiry made by the Judge of Patna, who went to the spot, heard evidence, and took great pains to survey the district, he came to the conclusion that the submerged land, although it had re-formed close to mouzah Ramnuggur, I was, in point of fact, land which belonged to mouzah Muteor, and that there were means by which he could identify, and did identify, the land as having been, before its diluviation, part of that mouzah. I He found those facts, and applying the law as he understood it to the facts, namely, that when submerged land can be identified upon its reappearance as belonging to a particular estate, the proprietor of that estate is entitled to it because in truth he had never lost the land, the land was always his, and the difficulty of

identification being removed by evidence--the land being in fact identified--there was no reason why the property should not be regained by him. He acted upon this principle of law, which had been at that time affirmed by the High Court of Calcutta in a case in which Sir Barnes Peacock, with two other Judges, had given the judgment. That, however, was the judgment of a Division Bench; and the High Court, upon appeal in the present suit, decided that they were bound by a subsequent decision of a full bench of the High Court, which had come to a contrary conclusion, and had held that land which reappeared under circumstances like the present must be held to belong to the proprietor of the estate to which it had apparently accreted; and they remanded the cause to the Judge of Patna, who, without altering his finding on the facts, decided according to this view of the law, and his judgment was, as might be expected, upheld by the High Court, in the judgment now under appeal, on the case again coming before it upon the appeal of the present Appellants.

2. The question of law involved in these decisions, which is a very important one, was brought before this Committee, in a case of *Lopez v. Muddun Mohun Thakoor* 13 Moore Ind. App. Ca. 467, in which the principles which should govern cases of this description were very fully discussed and elucidated, with the result that it was laid down by the authority of this Committee that where land which has been submerged re-forms, and can be identified as having formed part of a particular estate, the owner of that estate is entitled to it. It is admitted by Mr. Leith, the counsel for the Respondents, that the authority of this case, and others which have followed it before this Committee, cannot be disputed. Their Lordships think the principles laid down in those cases are perfectly correct, and are distinctly applicable to the present; and that, if the facts are to be taken as they were found by Mr. Justice Anslie, the judgment below must be reversed. Their Lordships, for the reasons they gave during the argument, think it is impossible those facts could be disputed with any effect at their bar, and therefore both law and fact are in favour of the Appellants.

3. Mr. Leith endeavoured to distinguish between the lands which were the permanently settled lands of Muteor and some lands which had been in themselves an accretion, and which were temporarily settled only with the proprietor of Muteor. Their Lordships think, however, that this distinction cannot prevail. There is evidence from which it may be presumed that those lands accreted to the estate of Muteor, and it may be inferred from the mode of accretion that the Government settled with the proprietor upon the ground that they had so accreted, and therefore that he was entitled to the settlement.

4. On these grounds their Lordships think that the judgment of the High Court must be reversed, and they also think that the decree originally made by the Judge of Patna before the remand is the correct decree. They find there is no formal petition of appeal against the decree of the High Court which remanded the suit, but this judgment ought not to be allowed to stand in the way of the proper decree to be made in the cause, and will be nullified by the course their Lordships propose to take, viz., humbly to advise Her Majesty to reverse the judgment of the High Court now under appeal, and the second

judgment of the Zillah Judge, and to direct a decree to be made in the suit to the effect of the original decree of the Zillah Judge. The Respondents must pay the costs of the litigation in India, and of this appeal.