

(1928) 06 CAL CK 0005

Calcutta High Court

Case No: None

Gopal Chandra Goldar
and Another

APPELLANT

Vs

Shashi Bhusan Dutta
and Others

RESPONDENT

Date of Decision: June 6, 1928

Citation: AIR 1928 Cal 852

Judgement

1. This appeal arises out of a suit for recovery of khas possession of some lands -on a declaration of the plaintiffs" title thereto. It appears that the lands in dispute in the present case are included within a bigger area which formed the subject-matter of a previous litigation in the year 1889. The suit between the parties in the year 1889" was compromised and a decree was made therein in accordance with the petition of compromise that was filed. By that decree of compromise it was decreed that the lands consisting of plots Ka, Kha, Ga, Gha and Una lying just on the west of plot No. 1 as shown in Gangesh Babu, the Commissioner"s map that was prepared in the case and which was found to belong to one Rajamuddi Sheikh were to be divided in the proportion of 11 and 8 and the 11/19ths share lying on the east was to go to the plaintiffs and the remaining 8/19ths share to go to the defendants. In the year 1902 there was another litigation between the parties relating to a small plot of land and in that litigation there was a Commissioner appointed who relaid the map prepared by Gangesh Babu in the first litigation namely of the year 1889. According to the plaintiffs in the present case the lands in dispute lie within their 11/19ths share of the subject-matter in dispute in the litigation of 1889 while according; to the defence the disputed lands lie net within the plaintiffs" share but within the share of the defendants. A Pleader, Babu Abinash Chandra Maker. jee, was appointed a Commissioner in the suit which has given rise to the present appeal. Abinash Babu relaid the western "boundary of plot No. 1 in the map prepared by Ganesh Babu and the "Court of first instance accepted the map prepared by Abinash Babu and on the basis of Abinash Bibu"s map came to the conclusion that the lands in dispute were

included within the defendants' share and not within the share of the plaintiffs and on that finding the trial Judge dismissed the plaintiffs' suit. On appeal, the lower appellate Court reversed the decision of the trial Judge and holding that Gangesh Babu had committed a mistake when measuring Rajamuddi's land came to the conclusion that the lands in dispute fell within the share of the plaintiffs and on that finding allowed the "appeal and decreed the plaintiffs' suit. Defendants 1 and 3 have appealed to this Court.

2. The principal contention on behalf of the appellants before us has been that the lower appellate Court was not justified in law in going behind the compromise decree whereby the land lying just on the west of plot No. 1 as shown in Gangesh Babu's map was divided in the proportion of 11 and 8 between the "parties. This contention is, in our opinion well founded and should prevail. In the "decree that was made in the suit of 1889 it was directed that the land that was to be divided between the parties in the proportion of 11 and 8 was the land lying just on the west of plot No. 1 as depicted on Gangesh Babu's map. It is true that in the decree it was also stated that plot No. 1 was the land of Rajamuddi. But there is nothing in the decree to show that the land was just on the west of Rajamuddi's land, was to be divided between the parties in the proportion of 11 and 8. That being so, if the compromise decree in the litigation of the year 1889 is to be given effect to, the lands lying just on the west of plot No. 1 as shown in Gangesh Babu's map must be held to have been the land that was directed to be divided between the parties. Whether Gangesh Babu had made any mistake in plotting plot No. 1 in his map was not a question which could be legitimately gone into in the present litigation. The compromise decree was based on Gangesh Babu's map and no matter whether the map of Gangesh Babu wherein he showed where the western boundary of plot No. 1 was, was right or wrong, the lower appellate Court ought to have proceeded in determining the case on the basis of that map of Gangesh Babu. This map prepared by Gangesh Babu has been relaid in the present litigation by a pleader Commissioner as observed before and this pleader Commissioner has in his map depicted the western boundary of plot No. 1 in the map of Gangesh Babu. It appears that no exception was taken to this work of relaying as done by Babu Abinash and if Abinash Babu's map showing in it the western boundary of plot No. 1 as it is to be found in the map prepared by Gangesh Babu is accepted as correct there can be no dispute that the disputed property would fall within the share of the defendants and not the share of the plaintiffs. We are, therefore, of opinion that the lower appellate Court ought to have proceeded to determine the case on the basis of the map as prepared by Gangesh Babu which was the basis of the compromise decree in the litigation of 1889 and that the learned Additional District Judge was wrong in law when he went behind the compromise decree and proceeded to consider the question whether Gangesh Babu had committed any mistake when measuring the land of Rajamuddi.

3. In view of the aforesaid observations the appeal must be allowed, the decree of the lower appellate Court set aside and that of the Court of first instance restored. The appellants will be entitled to their costs in all Courts.