(1868) 12 CAL CK 0007

Calcutta High Court

Case No: None

Ekowri Sing and Others		APPELLANT
	Vs	
Hiralal Seal and Others		RESPONDENT

Date of Decision: Dec. 14, 1868

Judgement

1. This suit is brought to recover about 1,000 bigas of land, claimed as alluvial, and contained within the boundaries given in a map annexed to the plaint. The plaintiffs must succeed or fail on their title to the land as alluvial. It is not competent for them now, the cause having been decided on this title, to raise at the hearing of their appeal a different case, viz., one simply of original ownership of the site of the lands reformed. Had that been the case alleged, some defence might have been made, founded on the nature of a boundary river, the ownership of its soil, the character, sudden or gradual, of the original loss of land, and the effect of change from such causes in the land itself or the ownership in the soil; which defence, as is apparent from the frame of the Regulations of 1825, would admit of variation with varying circumstances of inundations, identification, and accretion. The cause was tried before the Principal Sudder Ameen, who decided in the plaintiffs'' favour. On appeal to the High Court, that decision was reversed, and from that decree of reversal, the present appeal has been preferred. The High Court simply decided that the proofs adduced by the plaintiffs were insufficient to justify a decree in their favour. Had this been a case of ordinary claim to lands, wherein a plaintiff might advance, prove, and recover on a prima facie title, calling for some answer of title in a defendant, and entitling him to a decree in default of such an answer being made and proved, the propriety of the decision of the High Court might have been assailed with more prospect of success. But this is a case of a claim to land washed away and reformed in the bed of a navigable river, the ownership of the soil of which is not commonly in the riparian proprietors of its banks, and which is not proved in this case to have belonged to the predecessor in title of either disputant. The reforming of land in such a stream, after a considerable interval and frequent floods, is not prima facie to be ascribed to a loss from any particular portion of territory, nor is the land which

has been removed by a sudden avulsion reclaimable, unless the circumstances supply evidence of identity, which is wanting in the case before us. This reformed land is not ascribed to avulsion, and several years elapsed between the loss of the plaintiffs'' land and the appearance of this chur. The title by accretion to a new formation generally is not founded on equity of compensation, but on a gradual accretion by adherence to some particular land which may be termed the nucleus of accretion. The land gained will then follow the title to that parcel to which it adheres. It is obvious, therefore, that such a title is not established by mere proof of general inclusive boundaries of land, at a time long preceding the actual formation of the chur, since the lands that have such a fluctuating boundary, as a tidal river, and which are themselves subject to loss and gain of quantity by acts independent of the owner''s concurrence, and which may pass from side to side of the river boundary, have not the ordinary element of fixedness which belongs to immoveable estate, in the common course of things. A detached chur, independent of usage, in such a stream, would belong to neither riparian proprietor; and the circumstances that it was subtended by the land of one, would not be enough to entitle him to it. The decision of this case in the Court below seems to have proceeded on the mere presumptions which would have regulated the decision of a question of parcel or no parcel in an ordinary boundary dispute; for no evidence whatever was given by the plaintiffs of the nature of the original formation of the chur, where it first appeared, to what it first adhered, and the case even now affords no ground for concluding anything with reasonable certainty, as to the original title to it.

2. The defendants, it was conceded by their able Counsel, might be unable to sustain a title to the chur as plaintiffs; but it was urged with force and reason that, by reason of their long enjoyment and being innocent purchasers for value, they were entitled to put every claimant to strict proof of title. They are purchasers for value without notice of any prior or superior claim. Acquisitions of the nature of this chur are often doubtful in their origin; they must depend much on oral testimony, which time is constantly destroying or impairing, and it is often hard to say who is the person to whom the law would ascribe the legal ownership of them. The mere cultivation of them, like that of waste or jungle lands, carries with it no prima facie character of usurpation or wrong. An undisputed possession and cultivation, even though for a few years only, would the more readily induce a purchase, and a purchaser bond fide and without notice might, with perfect honesty, and even with the favourable construction by a Court of Justice of his acts, defend his possession by insisting on strict legal proof of an adverse title.

3. The High Court appears to have acted upon this principle, though the Judges have ascribed too long a possession to the defendants, and may have erred in their view of portions of the evidence. The grounds of their decision seem to their Lordships correct; the ratio decidendi is not a mistaken one, though it is supported in part by mistaken reasons. They have acted in requiring adequate documentary proof in a conflict of oral proof, in accordance with the course adopted by the Judicial

Committee itself on this point, in a somewhat similar case, Musst. Imam Bandi v. Hargovind Ghose, 4 Moore''s I.A., 403. They were dissatisfied with the documentary proof exhibited; they have said that better might have been brought forward, had the case of the plaintiffs been well founded. Their Lordships are not prepared to dissent from either expression of opinion. To admit documents, not strictly evidence at all, to prop up oral evidence too weak to be relied upon, is not a course which their Lordships would be inclined to approve; and none of the chittas which have been laid aside by the High Court are shown to have been admissible in evidence according to the laws of evidence regulating the decisions of those Courts. It would expose purchasers to much danger if their possession could be disturbed by inferences from, or statements in, documents not legally admissible in proof against them. The document (a chitta showing original measurement of plaintiffs'' lands) on page 19 appears to be only a copy, and it is introduced by no evidence preparing the way for its reception. Whatever might be the value of the chittas in general in questions between the zamindar and his tenants or ryots, to receive them as evidence of boundary against a rival proprietor without further account, introduction or verification, would, if it obtained as a practice--and each relaxation is apt to become a precedent for another--tend further to encourage the manufacture of evidence in a place already too prone to the fabrication of it. Their Lordships, therefore, are unable to ascribe any error to the way in which the High Court has dealt with the documentary evidence in this cause.

4. It has not infrequently happened that their Lordships, in a conflict of decisions on questions of fact between the Judge who heard the evidence and the Court which reviewed it, have followed the finding of him who saw the witnesses and heard them give their evidence; but in this case the Judge below appears not to have sufficiently regarded the nature of the claim and the proof it should receive. He appears further to have acted mainly on the report of the Ameen, and that report, like the judgment which was founded upon it, appears to their Lordships to proceed upon a mistaken view of the issue between the parties and of the burthen of proof which the plaintiff in this suit had to support. The conclusions of both are founded more upon the want of proof to support the title alleged by the defendants than upon proof of that title which it was necessary for the plaintiffs to establish in order to disturb the possession of the defendants.

5. The map of the Ameen itself shows that there were lands of other owners than the plaintiffs, so situated that they might have been, in the course of things, a nucleus to the increment; and, therefore, an inquiry into its origin and direction was one that ought not to have been neglected. The case itself is one turning on views of evidence on which their Lordships would be reluctant to differ from the opinion of a Court more likely to know, than their Lordships can be, what weight of proof would satisfy in India the just expectations of a Court of Justice. Their Lordships, therefore, agreeing with the High Court in their disregard of the chittas, and with their conclusion that the case was not sufficiently proved, will humbly recommend to Her

Majesty that the appeal he dismissed with costs.