(1865) 05 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 1495 of 1863

Kattemonee Dossee		APPELLANT
	Vs	
Ranee Monmohinee Dabee and Others		RESPONDENT

Date of Decision: May 26, 1865

Judgement

1. By the gradual encroachment of the river Pudda in former years, the village Koopodoba belonging to the plaintiff"s zamindary, and a part of the defendants" village of Soldoba, were carried away. In subsequent years the river gradually receded, and the chur, which is the subject of dispute in the present suit, has been formed. The chur occupies, we understand the Judge to find, the site of the lands formerly washed away. It has been formed by gradual accession to the defendants" village from the recess of the river; and it appears, therefore, to be an increment within the express provision of cl. 1, s. 4 of Regulation XI of 1825, and to belong wholly to the defendants. The defendants" right is undisputed to the portion of the newly formed land which occupies the place where the old land of their village of Soldoba stood; it is admittedly an increment to their old estate. But the new land beyond those limits, is claimed by the plaintiff as his property, because it stands where his village of Koopodoba formerly stood. It is not denied that this land is an alluvial formation like the portion already mentioned, but although like that, it has been formed by gradual accession, it is, according to the plaintiff"s argument, not land "gained by gradual accession" within the meaning of the clause referred to, but a re-formation on the old recognized site of his village, and therefore his property. The Judge has found that Koopodoba was entirely washed away upwards of twenty-five years ago, and that not a vestige of the village remains. Any recognition of the land is now impossible, and it is only upon the identity of site that the plaintiff"s claim is based. The Division Court has referred the case to a Full Bench in consequence of the decision in Romanath Thakoor v. Chunder Narain Chowdhry 1 Mars., 136 which has been understood to sanction the construction of the law for which the plaintiff contends. It is said to have been there held that cl. 1, s. 4, applies only to cases of laud gained, that is to say, formed upon a site which cannot be recognized as that of the estate of any former proprietor; and that where

the accretion can be clearly recognized as having been re-formed on that which formerly belonged to a, known proprietor, it remains the property of the original owner. Regulation XI of 1825 is a declaratory law, whereby the previously well-established rules and customs for the determination of claims to laud gained by alluvion or by dereliction of a river or the sea were formally enacted as written law. It contains a recital that "in consequence of the frequent changes which take place in the channel of the principal rivers that intersect the Provinces immediately subject to the Presidency of Fort William, and the shifting of the sands which lie in the beds of those rivers, churs or small islands are often thrown up by alluvion in the midst of the stream or near one of the banks, and large portions of lands are carried away by an encroachment of the river on one side, whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side." The Regulation then declares (s. 2) that certain disputes relative to alluvial lands between proprietors of contiguous estates divided by a river shall be decided by immemorial and definite local usage. Where no such local usage exists (s. 3) the rules declared by the subsequent sections are applicable. The first of these (cl. 1, s. 4), is the rule in question relating to land gained by gradual accession. Accession is an increase or addition to something previously belonging to us. The proprietor of the land becomes also, by virtue solely of his old proprietorship, the owner of the alluvial soil gradually added by the river to his land. The imperceptible increase of his property in no way affects his ownership of every portion of it. That which has been recently added is his, because he is the proprietor of the older portion. In every title founded on accretion, it is essential that the ownership of the adjacent lands should be established by the claimant. This first clause of the section provides that, "when land may be gained by gradual accession, whether from the recess of a river, or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed." We read this clause to declare that what is added by gradual accession must in all cases be considered an increment to the old estate without regard to the site of the increment. Whether the new land is a re-formation on an old site, or whether it is formed where no land ever previously existed, its ownership is determined, when the ownership of the adjacent land to which it has by imperceptible degrees accreted is ascertained. If, therefore, in the present case the ownership of the adjacent land has been duly ascertained to be in the defendant, and the newly formed land is found to have been gradually gained from the river by accession to the defendant"s adjacent land, we think that the plaintiff cannot lay claim to any portion of the latter by showing that it occupies the site of his village Koopodoba, and that it is needless to remand the case for a more distinct finding as to the identity of site.

2. The language of the Court in the judgment which has been quoted, appears to limit the operation of this clause, so as to exclude from its provisions land formed again by accretion on an old site which can be clearly recognized. If we are to understand the Court to have held that "land formed on the site of an old estate," belongs to the person who was the owner of the old estate, and not to the owner of the adjacent dry land, to which it has by slow degrees accreted, we must dissent from this opinion. The law

recognizes no right of property in a mere site, nor any such mode of acquisition as that which would confer on the proprietor of an old estate (every particle of which may have long ago disappeared or passed away) the ownership of laud since formed on that site, however clearly the identity of the site may be established. It is only where the original owner retains his property in his old estate, that he can lay claim to the surface where it re-appears above the water; and his title to this is not necessarily by accretion (because he will be equally the owner, whether the land is exposed by a sudden recess of the river, or by a gradual deposit of soil on its surface), but by virtue of his old ownership remaining undisturbed. The judgment in the case quoted, when it speaks of "the recognition of a site," may perhaps be understood to refer to the case of a still continuing ownership in land which has disappeared by submergence beneath the surface of the water. This is probable from the following passage in the judgment:-- "It never could have been intended that, when the surface of an estate is washed away, and the lower portion of it is covered with water and formed into a portion of the bed of a river, the ownership of that portion of the estate which has become inaccessible in consequence of its being covered with water, should be lost; and that, when the surface is re-formed, it should become the property of an entirely different owner, because he may happen to be the owner of the estate adjoining." The suit itself was one instituted to recover land claimed by the plaintiff as gained by accretion to his estate. The plaintiff seems also to have claimed the land as a re-formation on the site of lands formerly belonging to him, but which had since been washed away. The judgment only, and not the argument of the pleaders, has been reported. We are, however, able to state (Bayley, J., having been a member of the Court) that the argument for the defendant (against the plaintiff"s right to the land as re-formed on the site of his old land) was carried to the length of contending that in no possible case (not even where the existence of a mine or some clear means of recognition enabled the identity to be established beyond dispute) could the old rights of property in land, the surface of which was wholly washed away, subsist so as to be the foundation of a title to newly formed land. The judgment should perhaps be read with reference to this argument, which is clearly untenable. The ownership of land is not ordinarily lost, because the land itself may be submerged or inundated. The case of Mussumat Imam Bandi and Wajid Ali Khan vs. Hurgovind is a striking illustration of this. The land there in dispute is thus described in the judgment:-- "The whole of the district adjoining the land in dispute, as well as that land itself is flat and is very liable to be covered or washed away by the waters of the Granges, which river frequently changes its channel. The land in dispute was inundated about the year 1787: It remained covered with water till about 1801; it then became partially dry till in the year 1814 it was again inundated. After this period it once again re-appeared above the surface of the water, and by the year 1820 had become very valuable land." These frequent changes and the lapse of time were deemed not to affect the question of title, for the judgment continues:-- "The question then is to whom did this land belong before the inundation? Whoever was the owner then remained the owner while it was covered with water and after it became dry." So, in the case supposed in the passage of the judgment under consideration which we have quoted, the surface stratum may be swept away and lost without disturbing the old

ownership in the laud or mines beneath, (unless, perhaps, when what is left forms the bed of a navigable river). Where the remaining land can be sufficiently identified, no change takes place in its proprietorship, and whatever becomes annexed to it belongs to the old owner, if he is known. But this principle cannot, we conceive, govern the case which has been referred to us. The old right of property cannot remain in existence after the lapse of any length of time, however considerable, nor unless something beyond mere identity of site is brought forward in proof of it. To defeat or prevent the right by accretion which the law gives to the adjacent owner, the claimant is required to prove some continuing right of property to himself; it is not enough for him to rely merely on identity of site. If he can show no assertion of ownership, such as the condition of the property admits of, for a great number of years, it may fairly be concluded that he has relinquished all right and claim to the remnant of what once belonged to him. In this case upwards of a quarter of a century has passed since the plaintiff''s village was washed away, and there is no suggestion of any evidence in support of the continued existence of any portion of his old estate, beyond the (alleged) identity of site, or of any right of the plaintiff therein. With this expression of our opinion of the law as applicable to cases, like that before us, we remit the case to the Divisional Bench.

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(1)See 13 M.I.A. 467 (Privy Council) , overruling the decision in this case; and Pahalwan Singh v. Maharajah Muhessur Buksh Singh, 9 B.L.R., 150