

(1880) 11 CAL CK 0006

Calcutta High Court

Case No: None

Hurri Prasad

APPELLANT

Vs

Jaumna Prasad and  
Another

RESPONDENT

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Date of Decision: Nov. 26, 1880

Citation: (1881) ILR (Cal) 453

Hon'ble Judges: Richard Garth, C.J; Field, J

Bench: Division Bench

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### Judgement

Garth, G.J.

1. The plaintiff, who is the owner of Mouza Mokimpore, brings this suit for the purpose of having a certain boundary ascertained between his mouza and the mouza at Chuck Gopal, which belongs to the defendants.
2. He says, that this boundary was determined in a suit which he brought against Roghubar Singh and others, the proprietors of the defendants mouza, to which Lalji Sahu, the father of the defendants, was a party.
3. In answer to this claim the defendants' case is, that they had made an application to the Collector, under Beng. Act V of 1875, to have the boundary between the plaintiff's land and their own laid down in accordance with the map made in a butwara-proceeding, which took place many years ago between the proprietors of the defendants' mouza.
4. The defendants further say, that, upon the application so made by them to the Collector, the boundary was laid down by an Ameen in the first instance; that the plaintiff appeared and made objections to it; that eventually the Collector made an order laying down the boundary in accordance with the Ameen's views; and that the plaintiff has not appealed against the decision of the Collector, as he should have done (see Section 62 of the said Act), before he could bring this suit.

5. The lower Courts apparently considered, that the case depended upon whether the proceedings of the Collector were regular or not, and whether by reason of Section 62 the plaintiff's suit was barred; and they both decided that the order of the Collector was binding upon the plaintiff, and that he had no right (under Section 62), not having appealed against the Collector's order, to bring this suit.

6. It has now been contended before us, that the order of the Collector is not binding upon the plaintiff at all; that the Collector had no jurisdiction under the circumstances to enter upon the enquiry; and that, although the plaintiff may have taken part in the proceedings, the order of the Collector was not binding upon him.

7. The defendants, on the other hand, contended that the proceedings of the Collector were perfectly legal.

8. First they say, that the case was one coming under the provisions of those sections of the Act which immediately precede Section 45. But I think that this is clearly not so. In order to bring the case within those sections, it must appear that there was a survey going on u/s 3, and that the order of the Collector had been made under the survey-proceedings.

9. Then, secondly, they say, that u/s 45 the Collector has power to lay down a boundary in any one of these three cases:

10. (a) Where the boundary has been determined by a competent Court; or (b) where it has been laid down on a map in the course of a previous revenue survey or settlement or other proceeding of a revenue officer for any special purpose, and against which no objection has been preferred to any authority competent to decide upon such objection; or (c) where it has been laid down by a survey under this Act.

11. In any of these cases the Collector may, if he thinks it desirable that the boundary so laid down shall be relaid, proceed to relay it in the manner prescribed by Section 44. The defendants say that the boundary which the plaintiff desires to have ascertained in this suit is one which has been determined by a competent Court, because it was determined in the suit between himself and certain of the proprietors of the defendants' mouza, of whom the defendant's father was one. But the boundary which the Collector was asked to lay down was not the boundary which was determined in that suit between the plaintiff and the proprietors of the defendants' mouza; on the contrary, it was a very different one, which was laid down, not in that suit, but in the butwara proceedings, which took place between the, several proprietors of the defendants' mouza and to which the present plaintiff was no party.

12. Then it is said that the case comes within Clause (b) of Section 45, because the defendants' alleged boundary was laid down in the butwara, which was a proceeding taken by a revenue officer for a special purpose.

13. But in my opinion this is not so. I consider that Clause (b) applies only to a survey or some similar proceeding taken by a revenue officer for some public purpose, and against which any party who may be affected by the boundary laid down by such officer would have a right to object. The latter part of the clause clearly points to this, because, speaking of the boundary, it says, "against which no objection has been preferred to any authority competent to decide such objection."

14. Now the defendants' butwara was not a proceeding taken for any public purpose. It was taken for the purpose of a division of private property as between the owners of it; and the boundary which was laid down was one to which neither the plaintiff, nor any other person besides those interested in the defendant's estate, had any right to object.

15. For these reasons I think that the Collector had no power, under Act V of 1875, to determine the boundary laid down in the butwara-proceedings so as to bind the present plaintiff; and therefore the latter is not prevented from bringing this suit by Section 62.

16. Then, lastly, the defendants contend, that even assuming the proceedings of the Collector to have been invalid under that Act, as the proceedings were taken at the instance of one of the parties and acquiesced in by the other, who took a part in them, his decision between them ought to be binding as an award. But the plaintiff was clearly no party to the proceedings in that sense. He objected to the boundary laid down by the Ameen, because he was under the impression that the Collector had a right by law to decide the boundary; but, there is no reason whatever for supposing that he intended to leave the matter to be determined by the Collector as a private and independent arbitrator.

17. I think, therefore, that the plaintiff has a right to bring this suit in order to have the boundary laid down in the present suit ascertained.

18. The judgments of both the lower Courts will be reversed; and the case must go back to the Munsif's Court for retrial. The costs in all the Courts, will abide the ultimate result.

Field, J.

19. The plaintiff in this case is the proprietor of Mouza Mokimpore. The defendants are the proprietors of Mouza Chuck Gopal. It appears that, at sometime previous to the institution of this suit, an application had been made to the Collector professedly under "The Bengal Survey Act" (V of 1875). The Collector, professing to proceed under this Act, laid down a boundary between Mouza Mokimpore and Mouza Chuck Gopal.

20. The plaintiff alleges that this is an erroneous boundary, and that it has the effect of taking away from Mouza Mokimpore three bighas one cotta and 14 3/4 dhurs of land, and transferring this portion of land to Mouza Chuck Gopal, to which,

according to his contention, it does not belong. He therefore asks that his right and possession in these three bighas one cotta and 14 3/4 dhurs of land may be declared; that the boundary pillars erected under the Survey Act may be removed; and that the map, upon which this, boundary has been marked, may be rectified.

21. In the lower Courts it was objected that the proceedings of the Collector were not in strict conformity with the provisions of Beng. Act V of 1875; and further, that as the plaintiff had preferred no appeal to the revenue authorities, he is debarred by the provisions of Section 62 of the Act from bringing this suit in the Civil Court.

22. If the Collector had jurisdiction, and in the exercise of that jurisdiction committed certain irregularities of procedure, that is a matter which must have, been rectified by an appeal to the superior revenue authorities. It becomes, therefore, unnecessary to say anything further upon this first question.

23. In order to decide the second question, it becomes necessary to consider, in the first place, whether the Collector had, under the provisions of Beng. Act V of 1875, any jurisdiction whatever to deal with the question of the boundary between Mouza Mokimpore and Mouza Chuck Gopal.

24. The jurisdiction given to the Collector in boundary disputes by Beng. Act V of 1875 is a limited one. When the Collector is engaged in the survey of a district, or portion of a district, which has been authorized by the Lieutenant-Governor u/s 3 of the Act, he has then power u/s 40 to deal with boundary disputes arising and necessary to be determined in the course of such survey.

25. It is perfectly clear that no such survey was being conducted in the present case, and that, therefore, the provisions of Sections 40 to 44 have no application.

26. We come then to Section 45. It was at one stage of the argument contended, that the Collector in laying down this particular boundary was merely laying down a boundary which had been determined by a Civil Court in a previous case; in fact the case referred to in Section 2 of the defendants' written statement. But on a reference to the application made to the Collector and to his proceedings, it is quite clear that the Collector never intended, and did not proceed, to lay down any boundary which was determined by the Civil Court in that suit.

27. The respondents' pleader then contended, that Clause (b) of Section 45 is applicable, and that what the Collector was really doing was relaying the boundary determined in previous butwara-proceedings.

28. It is clear, however, that those butwara-proceedings were only for the purpose of partitioning Mouza Chuck Gopal between the proprietors thereof, and that the boundaries which the Collector had jurisdiction to determine in those proceedings were only the boundaries of the respective shares of the proprietors of that mouza. The Collector had not, and could not have, under the law, any power to determine the boundaries between Mouza Chuck Gopal and Mouza Mokimpore. It is therefore

impossible to say that this boundary was determined in the butwara-proceedings, and that the Collector was, under Clause (b) of Section 45 of Act V of 1875, proceeding to relay the boundary so determined.

29. It is clear, therefore, to my mind that, upon the application made to the Collector, he had no jurisdiction under the Act of 1875 to proceed to relay the boundary between Mouza Chuck Gopal and Mouza Mokimpore. I am also of opinion, that the submission of the plaintiff to the proceedings erroneously taken under Act V of 1875, could not give to the Collector a jurisdiction not conferred on him by the Act. I agree, therefore, in setting aside the judgments of the lower Courts and in remanding the case to the first Court for trial upon the merits.