

(1871) 06 CAL CK 0010

Calcutta High Court

Case No: Regular Appeal No. 273 of 1870

Durg Bijai Sing

APPELLANT

Vs

Bhagabat Prasad Sing
and OthersRESPONDENT

Date of Decision: June 12, 1871

Judgement

L.S. Jackson, J.

The plaintiff sued to recover possession of 95 bigas of land in a diara, which land he alleged to have been gradually formed by accretion, by the receding of the river Ganges, and as an accretion to his original holding of 9 bigas and 9 biswas of land in the same diara. The defendants are partly persons now claiming to hold this land under lease from the zamindars, and partly the zamindars themselves.

2. It may be mentioned, although the argument does not turn upon that part of the allegations, that the plaintiff is himself a co-proprietor of the estate in which these lands are situated, and that the plaintiff, as well as the defendants, claim to hold, in the way of individual occupation, parcels of lands being parts of that estate.

3. The plaintiff alleged that he held the lands after accretion, and that such holding had been recorded by an Ameen deputed by the settlement officer, and he also referred to certain disputes and litigation which had gone on between him and some of the defendants in respect of part of these very lands. He further stated that a second Ameen having been deputed by the settlement officer, he measured and recorded these lands as being held by the defendants; that he, the plaintiff, complained of these proceedings, but his complaint was disallowed by the Deputy Collector, and afterwards by the Collector; that since the recording just mentioned by the second Ameen, some of the defendants had been in possession of the lands, and paid the rents to the other defendants.

4. The defendants' case, generally speaking, was a denial of the kasht or holding of the plaintiff,--a denial that the plaintiff had any right to hold the land as an accretion to his original holding, and an assertion of the right of the defendants in occupation, who were

holding by permission of the landlord.

5. The Judge of Patna, Mr. Ainslie, before whom this case came on for trial, found that the ryots on the diara were not liable to be ousted at will; and, secondly, that the plaintiff was more than a tenant-at-will: he also found that the land in question was an accretion to the plaintiff's original holding, and he held that, by clause 1, section 4, Regulation XI of 1825, the plaintiff was entitled to that accretion as part of his holding, and therefore considered that the plaintiff was entitled to recover the land.

6. This decision has been assailed wholly upon grounds of law. The vakeel for the appellant has not in his argument before us touched the findings of fact by the Judge, nor questioned the Judge's opinion upon the evidence. We must therefore assume the facts as found by the Judge, and apply the law to them.

7. It seems to me quite clear that the plaintiff's original holding being assumed, and the land being found to be an accretion to that holding, the plaintiff is entitled to such accretion by the distinct and positive terms of section 4, Regulation XI of 1825. Great stress has been laid upon a recent decision of the Privy Council in *Lopez v. Maddan Thakoor* 5 B.L.R., 521. In that case, the Judicial Committee, overruling the decision of a Full Bench of this Court, determined broadly that a zamindar was not entitled to claim lands as an accretion to his estate, when such lands are capable of being identified as a re-formation of land belonging to another owner upon their original site. It appears to me that that case does not apply to the present circumstances. There is no contest here, to use the words of the Judicial Committee, "between surface and site." It is not the case here that the plaintiff is claiming to recover this land as an accretion to his holding, and the defendants are claiming it as a re-formation on their own holding upon the original site, but the defendants now in occupation claim it under a title made from the zamindar. It appears to me that, as between the ryot and the zamindar, if the tenant can show that the land in dispute is an accretion to his original holding, he is entitled to succeed. Then it is said that the original holding is a mere tenancy at will, and that consequently, as the plaintiff could not enforce a claim to be put in possession of such holding, he cannot, a fortiori, be entitled to recover possession of land which has accreted to his holding. Now it is not very clear (but it is not necessary to determine here) how a party, who is a joint owner of an estate, and in possession of land within the limits of that estate, can be called, in respect of such occupation, a tenant-at-will under the proprietary body. But however that may be, and assuming for the moment that the plaintiff is a mere tenant-at-will, that will not entitle the zamindar to dissociate the accretion from the original grant, and to turn the plaintiff out of the accretion, while he still retains, as tenant, the original holding itself. If the zamindar desires to oust the plaintiff from the accretion that he holds, he must do so by attacking the original holding. He has not attempted to proceed in that way, nor has there been any issue whether the zamindar would be entitled to oust the plaintiff from the holding or not. So long, therefore, as the plaintiff occupies his original holding, I conceive he is entitled to occupy the accretion, which under the law forms part of it, and therefore he is entitled to be restored to possession of

it by decree of the Civil Court. For these reasons I think the decision of the Court below is quite correct, and that the appeal ought to be dismissed with costs.