
(1879) 04 CAL CK 0013

Calcutta High Court

Case No: None

Mohesh Chunder Sen

APPELLANT

Vs

Juggut Chunder Sen

RESPONDENT

Date of Decision: April 24, 1879

Citation: (1880) ILR (Cal) 212

Hon'ble Judges: McDonell, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

The plaintiff, who was the auction-purchaser of a taluk, sued to recover from the defendants, who were very numerous, a certain quantity of land. He claimed this land of course as having been a part of the originally settled estate.

2. As to the title set up, the plaintiff, in the particular case which has been argued before us, relied chiefly upon a thakbust map, which bore the signature of one Anundo Chuckerbutty, who was the defendant's predecessor in title.

3. The Judge (who reversed the judgment of the Munsif) refused to consider this thakbust map so adduced as being absolutely conclusive evidence, and so dismissed the plaintiff's suit.

4. The plaintiff on second appeal before us objects, that the Judge has described this map as evidence quantum valet, which he seems to consider an inadequate application of the thakbust map as a piece of evidence; and it is contended, on the authority of a decision to which I was a party, that a survey map is sufficient, when there is no rebutting evidence to make out the title of the plaintiff. The special appellant's vakeel admitted that he could not put his case so high as to argue that the Court below was absolutely bound to give judgment in his favour upon this piece of evidence, but he was very anxious to show that the Judge was entangled in the meshes of pernicious error which, we are told, is founded upon the judgment in the case of *The Collector of Rajshahye v. Doorga Soonduree Debia* 2 W.R., 210,

which error was dispersed by the judgment of myself and another Judge of this Court already referred to.

5. Now I have no doubt that, in general, where the question is simply one of title, and the available evidence is proof of possession at a particular period, a survey map ought to be, and is most cogent evidence. But the matter of which the plaintiff had to bear the burden of proof in this case, as observed by the Judge, is not title in general, but he had to prove that the land which he claimed, which is not in his possession and was not in the possession of the last owner of the taluk, was land which formed part of the taluk at the time of the permanent settlement; and in my judgment the mere circumstance that a particular owner had possession of a piece of land at a specified time, some years before the bringing of the suit, is not conclusive, or nearly conclusive, evidence of that fact. I do not find any indication of the error under which the Judge is supposed to be labouring, and I do not think, considering the way in which he has dealt with the evidence in disposing of the appeal before him, we should be justified in disturbing his judgment, unless we are prepared to say, and I am certainly not prepared to say, that, in such a case as this, a survey map is conclusive evidence. The special appeal is dismissed with costs. This judgment will apply to the other two appeals, Nos. 1852 and 1869, of 1878.