

Gudadhur Paul Chowdhry and Others Vs Bhyrub Chunder Bhattacharji and Another

Court: Calcutta High Court

Date of Decision: Feb. 12, 1880

Citation: (1880) ILR (Cal) 918

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

Bench: Division Bench

Judgement

Jackson, J.

The grant was of great antiquity, and could not be regularly proved. It was therefore necessary to consider very carefully

whether it came from proper custody, whether it had on any occasion seen the light before, and whether the previous circumstances were

consistent with the fact of their having such grant; and upon the estimate of the evidence in this point of view, the Judge's judgment appears to us to

be open to objection. The District Judge does not admit the reasons given by the Munsif for believing in the genuineness of this grant, and it is

impossible to conceive that he could have approved of them. They appear, indeed, to be puerile. The defendants felt the necessity of showing that

this document had seen the light before, and it was therefore stated that it had been produced on some former occasion in the Office of the

Collector of Tipperah. On that the Judge says: It is, however, quite clear that it was filed in the Court of the Collector of Tipperah, and the legal

presumption is in favour of its having been filed for a proper purpose. A certified copy was taken of it, and it is absurd to require the defendants to

prove with what object it was filed, the legal presumption being in their favour."" We are, quite unable to acquiesce in this view of the legal

presumption. The presumption spoken of probably is, that which applies to proceedings of Courts, and even if we assume that the presumption

applies equally to the proceedings of a Collector's office, it has no application whatever to the conduct of a person who puts in a document in that

office and causes a certified copy of it to be taken. It ought to appear, in order to serve the defendants' purpose, that this grant had been filed in

the Collector's Office in order to the adjudication of some question of which the Collector had cognizance, and that had come under the

cognizance of the Collector. Then, as to the conduct of the respondents, the Judge, in considering how far that was consistent, merely as evidence,

with the possession of the grant, deals with it as if it had the effect of an estoppel, and finding that it did not work as an estoppel, he does not take

any further notice of it. These appear to us to be serious errors in the decision, and considering that the Judge altogether disagreed with the finding

of the Munsif as to the question of possession By cultivations for a period of thirty years or, at least, more than twelve years, it seems to us evident

that the Judge had not correctly appreciated the importance of the inquiry on this point to the plaintiffs. We think, therefore, that the judgment of

the lower Appellate Court should be set aside, and the case must go back to the lower Appellate Court for a proper trial, after careful

consideration of the observations that I have made. The costs of this appeal will follow the result.