
1 Ind. Cas. 376

Calcutta High Court

Case No: None

Sheonandan Singh and
Others

APPELLANT

Vs

Jeonandan Dusadh and
Another

RESPONDENT

Date of Decision: July 30, 1908

Acts Referred:

Evidence Act, 1872 " Section 33(2)

Citation: 1 Ind. Cas. 376

Hon'ble Judges: Sharfuddin, J; Holmwood, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit brought by the Plaintiff zemindar to recover possession of 1 1/2 bighas of land which the Defendant claimed as

his Chowkidari Chakran land. On the findings of fact in the lower Appellate Court there is now no room to question the identity of the land or of

the Defendants' right to occupy it and the appeal is argued before us solely on the basis that the chowkidari register kept under Reg. XX of 1817

is not admissible in evidence. The case of Jarao Kumari v. Laloni 18 C. 224 L.R. 17 IndAp145, where their Lordships of the Judicial

Committee considered the evidential value of the statements of the amins made upon maps and thakbust chittas, has no bearing on the present case.

2. The question here is was the entry of the situation and boundaries of the chakran land made in the register an entry in a public register made by a

public servant in the discharge of his official duty within the meaning of Section 35 of the Evidence Act or ""was it an entry made in the ordinary

course of business within the meaning of Section 32(2) of the Evidence Act. Now it is objected that the entry of the situation and boundaries of the

chowkidari chakran land in a register kept under Keg. XX of 1817 was not part of the official duty of the Daroga who presumably made the entry,

inasmuch as under that Regulation only a personal roll of the chowkidars had to be kept and it has been hold, that Section 35 does not extend to

entries which a public officer is not expected to and is not permitted to make [see Ali Nasir v. Manik Chand 25 A. 90.].

3. There is some force in this objection because the Regulation does not impose any duty on the Daroga of keeping a register of chowkidari

chakran lands, but there is nothing to show that the local authorities did not expect the Daroga to make such, entries and the fact that they were

uniformly made in every instance goes far to show that he was permitted to make them.

4. This, therefore, in our opinion, is a case where Section 35 not being sufficient to cover the entries owing to the absence of evidence at this

distance of time of the authority under which they were made, Section 32(2) may be brought in to supplement the defect and it must be considered

whether the finding of the lower Court that these entries were uniformly made throughout the register does not establish that they were entries made

in the ordinary course of business.

5. To this it is objected that the entries are all in the same ink and the same handwriting and, therefore, presumably made at one and the same time

and that the entries in such a record made for a special purpose cannot be said to be in course of business which it is urged must be continuing.

The true rule on this point seems to us to have been laid down by Fulton, J., in Ningawa v. Bharmappa 23 B. 63. The phrase was apparently used

to indicate the current routine of business which was usually followed by the person whose declaration it is sought to introduce.

6. The phrase does not apply to any particular transaction of an exceptional kind such as the execution of a deed of mortgage but to business or

professional employment in which the declarant was ordinarily or habitually engaged.

7. Now we know that the Daroga was engaged and must have been engaged for a considerable time in his ordinary duty enjoined by law of

making a roll of all chowkidars in his division. That was a business and professional employment on which he was ordinarily engaged during the

time he was employed in making the register.

8. The business was, it is true, a temporary one, but so is the making of a settlement or the building of a house and while the business lasts any

entries which are uniformly made in the ordinary course of the business are relevant. From the precise and uniform character of those entries all

through the register we can have no doubt that they were made under proper direction in the ordinary course of business though outside the

statutory duty of the person who made them.

9. We think the entries were properly admitted and that the findings on them coupled with the other findings of fact conclude us in second appeal.

10. It is admitted that there is chowkidari chakran land in the village and the only plea taken in the plaint was that it was not the land in suit and that

the zemindar had resumed the real chakran land as it had fallen into disuse. It is conceded that this resumption was wholly illegal and void and on

the authority of *Joy Kishen Mooherji v. The Collector of East Burdwan* 10 M.L.A. 16 (1864), this cannot now be impugned. Were it, therefore,

necessary to remand the case for a fresh finding whether this was the original chakran land or not, it would be necessary to give the Secretary of

State whose interest would be affected by an adverse decision, an opportunity to come in and give evidence which is not available to the parties in

this case as to the existence and identity of this chakran land when the chowkidari arrangements were taken over by Government under Act V of

1887. In this connection see *Brojo Nath Bose v. Durga Persad Singh* 12 C.W.N. 193. But as the identity of the land has been found as a fact in

the lower Appellate Court, there is no occasion for a remand and the appeal must be dismissed with costs.