
(1879) 05 CAL CK 0023

Calcutta High Court

Case No: None

Dwarkanath Mytee

APPELLANT

Vs

Junmajoy Mullick

RESPONDENT

Date of Decision: May 30, 1879

Acts Referred:

- Evidence Act, 1872 - Section 13, 83

Citation: (1880) ILR (Cal) 287

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

Bench: Division Bench

Judgement

Mitter, J.

This is a suit to recover possession of 31 bigas and 5 cottas of land as appertaining to Mouza Hijultola. A dispute arose between the plaintiff and defendant as to the boundary of their respective villages during the survey of 1873. The defendant, who is the owner of Mouza Kasiabheri, claimed the disputed land as appertaining to his mouza. The survey authorities decided that question in favor of the defendant, and the lands in suit were included in the survey map of Kasiabheri. The plaintiff has, therefore, brought this suit for the rectification of the survey map, and also for recovery of possession of the lands in dispute. The Courts below have decreed the claim of the plaintiff.

2. One of the documents produced by the plaintiff in support of his claim, is a map of Hijultola, prepared by a Government officer when it was in the possession of Government as a khas mehal. The lower Courts have admitted this document as evidence in the case u/s 83 of the Evidence Act, and it seems to us, from the judgment of the lower Appellate Court, that it was to a very great extent influenced in its judgment by this document.

3. The contention raised before us in special appeal is, that the lower Courts were in error in treating this document as evidence u/s 83 of the Evidence Act; in fact, the

special appellant contends that this document is not admissible in evidence at all.

4. We are of opinion that the lower Courts were in error in holding that this document was admissible as evidence u/s 83 of the Evidence Act. That section says--"The Court shall presume that maps or plans, purporting to be made by the authority of Government, were so made and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate." Now this map does not purport to be made by the authority of Government within the meaning of this section. It was a map prepared by an officer of Government while he was in charge of a khas mehal, the Government being in possession of that mehal merely as a private proprietor. It seems to us clear, therefore, that the document in question does not come within the purview of that section. But we are not prepared to hold, as contended for by the pleader for the appellant, that this map is not admissible in evidence at all. It may be admissible as evidence u/s 13 of the Evidence Act. But it is one thing to treat it as mere evidence of possession or of assertion of right u/s 13, and it is another thing to presume it to be accurate u/s 83 of the Act.

5. We think, therefore, that the error complained of has materially affected the merits of the decision of the Subordinate Judge in this case. We accordingly set aside his judgment, and remand the case to him for re-trial. Costs will abide the result.