

(1869) 07 CAL CK 0039

Calcutta High Court

Case No: Special Appeal No. 616 of 1869

Hari Kishor Dutt and Others

APPELLANT

Vs

The Collector of Dacca and
Another

RESPONDENT

Date of Decision: July 3, 1869

Judgement

@JUDGMENTTAG-ORDER

Bayley, J.

The plaintiff in this case sued for possession of two plots of land as belonging to his patni Mehal, which he says he acquired from one Aka Golam Ali. The plaintiff's allegation was that his cause of action arose from the fact of the lands being demarcated in Magh 1264 (1857) as Jagir and Khas Mahal lands in the Dacca Collectorate, and that then his lessor Golam Ali and he himself were dispossessed. The defendants pleaded limitation and their right to the lands as Jagir and Khas Mehals. The first Court held that the suit was barred by limitation.

2. In appeal the Judge records (and this is not disputed) that the whole matter of appeal was confined to an area of 3 kanis 14 cowries of land in plot No. 2 only. The Judge upheld the decision of the first Court on this point. He found that the lands in suit belonged to the defendant's Jagir and Khas Mehals. The plaintiff appeals specially, and in special appeal there is no contention as regards the lands in plot No. 1. The special appeal is only limited to the 3 kanis 14 cowries of the lands in plot No. 2.

3. It is urged that the lower appellate Court has not tried the question raised in the plaint and in the case throughout, viz., that plot No. 2 was "Nadi Bharati" (land raised out of the river) of the plaintiff's property released by the resumption officers; that is to say, the plaintiff's contention is that by the resumption proceedings, the river, measured then to contain 2 1/2 drones, was made over to him as part of the estate which would not be resumed, but was released with other property to him. The plaintiff alleges that the portion of the lands marked A. in the

Ameen's map represents the land which in fact had taken the place of the water comprised in the property released to him in the 2 1/2 drones above-mentioned.

4. On the other side, Baboo Jagadanand Mookerjee for special respondent contends that the point of limitation has not been adjudicated by the lower appellate Court, although that point formed the basis of the decree of the first Court.

5. It appears that the lower appellate Court has found as a fact that the land in suit was an accretion to the defendant's property : but the Court has not tried the point contended for by the plaintiff, viz., that the 3 kanis 14 cowries of the land which formed the "Nadi Bharati," or land raised out of the water and taking the place of the water of the river, were not accretions, but merely substitution of land for water of the river in 2 1/2 drones, which were released to the plaintiff by the resumption officers. Nor has the lower appellate Court decided the point of limitation, which was raised by the defendants. In both these respects there seem to us to be defects in the investigation of the case by the lower appellate Court affecting its decision on the merits.

6. We therefore remand the case to the lower appellate Court, to be re-tried on the evidence on the record on the following issues:

1stly.--Whether limitation has barred the plaintiff's suit; and if not

2ndly.--Are the 3 kanis 14 cowries of land in plot No. 2, claimed by the plaintiff as "Nadi Bharati," actually lands which have taken the place of the water of the river released to him in the 2 1/2 drones specified in the order of release by the resumption authorities.

The costs of this remand will follow the result.