(1923) 04 BOM CK 0028

Bombay High Court

Case No: None

Chudasama Kholuba Sartansang and Others		APPELLANT
	Vs	
Chudasama Takhatsang Narsingji and Others		RESPONDENT

Date of Decision: April 1, 1923

Citation: 76 Ind. Cas. 155

Hon'ble Judges: Norman Macleod, C.J; Shah, J

Bench: Division Bench

Judgement

Norman Macleod, C.J.

The plaintiffs filed this suit for a declaration to the effect that Survey Nos. 177 and 40 of the Tagdi village, bounded as described in the plaint, belonged in common to all the 100 Dokda sharers of the village for use as common pasture and grainyard, and for a perpetual injunction restraining the defendants from using the land of the said numbers, either by themselves, or through others, for other purposes, and from interfering with the plaintiffs either by themselves or through others in the use of the same for the said purposes. The plaintiffs'' case is that the village of Tagdi was first partitioned into two main shares of 50 Dokdas each in 1809, when lands of the Padar and grainyard were kept joint. They rely upon the certified copy of the document passed between the parties'' ancestors in that year. The original was not forthcoming, but the copy which was produced showed that the original was produced in Court in 1823. It has been ascertained from the original record that the certified copy which had been retained on the file of that suit corresponded with the copy produced, Exhibit 337. There can be no doubt that in that deed of compromise between the two branches the whole of the village Padar, including the khalas or threshing floor, was kept joint.

2. It has been contended that the Court could not rely on a certified copy as evidence of the compromise. But considering the time that has expired, there is no

reason whatever to doubt that the certified copy retained on the file of that suit is a correct copy of the original. The Courts were perfectly correct in relying on it as showing the terms of the compromise.

3. The question is then raised whether the present Survey Nos. 177 and 40 were the village Padar in 1809, A very large number of documents has been referred to, from which it appears that the old Survey Numbers were 33 and 110. The Courts have referred to the village map and to the village Khardas, and came to the conclusion that the present Survey Nos. 177 and 40 are waste open lends.

4. The position of those Survey Numbers on the map at page 11 of the print shows conclusively that those Survey Numbers. from their very position must have been open sites used for the purposes of pasture and grainyards. Survey No. 177 is next to the village site, Survey No. 40 is adjoining the village tank. They have also been entered in the Government Registers as waste land. It is not suggested that they had ever been turned into arable land and had paid assessment. The fact that some of the defendants got their names entered in the Government Survey Records in regard to these two numbers does not, in any way, change the nature of these lands and make them the separate property of the defendants instead of being joint between the plaintiffs and the defendants.

5. The defendants sought to prove that they had ousted the plaintiffs from the common user of these Survey Numbers and that they had acquired a title to them by adverse possession. That is a plain question of fact and has been found against the defendants. The learned Appellate Judge at page 4 says: "I entirely agree with the lower Court that the plaintiffs'' witnesses, who are more reliable than those of the appellants, prove that there has been continuous joint user of both the Survey Numbers in dispute by all the 100 Dokda sharers."

6. It has been urged before us that the Court in its judgment put on the record as Exhibits documents which had not been referred to in the course of the argument so that the defendants had not the opportunity of showing that they do not support the plaintiffs'' case, or of exhibiting further documents in order to get rid of the effect of those Exhibits. The numbers of those Exhibits are 345, 346 and 347. The Court exhibited portions of certain Sim Khardas and of a Field Book, all of which are Government records. The point was raised in first appeal, but I cannot think that it was then seriously contended by the appellants that the Trial Court had made a serious error in regard to these documents in the course of its judgment, Amongst the mass of documents which must have been produced for the purpose of the case, no doubt these Government records were produced, and the Judge, as he was entitled to do, referred to portions of them and marked the specific portions which he referred to as Exhibits. If the appellants had considered that the Trial Judge had committed a serious error, and had urged this point as strongly before the lower Appellate Judge, as has been urged before us, I think it is certain that he would have referred to Such a contention in his judgment. The argument must really depend on

certain facts as to what happened in the Trial Court, and without those facts it is extremely difficult to consider in second appeal whether the appellants had any grievance at all--it is one of those points which are argued the more strenuously the further the appellant gets away from the Trial Court, and I am not disposed to consider that the appellants have a real grievance when they have not even taken the trouble to set out the facts upon which their grievance must depend. Apart from these Exhibits, it is obvious that the Courts have relied upon other documents in order to come to the conclusion that the old numbers corresponded with the present numbers; and even striking out all these documents, as I have already pointed out, the very situation of these Survey Numbers points almost inevitably to the conclusion that they always have been waste lands. When we find that they were registered as Waste land and never paid assessment, the conclusion becomes more certain. In my opinion, therefore, the judgments of both the lower Courts were perfectly correct. The appeal must be dismissed with costs.

Shah, J.

7. I agree.