

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Khagen-dra Narain Chowdhry and others v. Matangini Debi and another, (Consolidated Appeals,) from the High Court of Judicature at Fort William in Bengal ; delivered February 5th, 1890.*

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Present :

LORD WATSON.

LORD MORRIS.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

THESE two Appeals, which have been consolidated, come before their Lordships on Appeal from the High Court at Calcutta. The High Court came to the conclusion that neither party had proved their case, and that both the suits instituted in the Subordinate Court should be dismissed with costs.

It appears that the Subordinate Judge had decided in favour of the Zemindars of Mechpara, and had given them a Decree, setting aside an Order of Attachment which had been issued by the Magistrate under the 530th and 531st sections of the Criminal Procedure Code, and declaring in favour of their title to the sota in dispute, and to the consequent relief.

Their Lordships are of opinion that the Decrees of the High Court cannot be sustained, although their Lordships concur in the decision on the matters of fact which the High Court arrived at, namely, that neither of the parties, the Zemindars of Mechpara or their representatives on the one side, or the Zemindars of Chapar or their representatives on the other,

have proved a title to the exclusive possession of the sota in question. The Mechpara Zemindars claim the piece of water as the northern boundary of that part of their estate, and included in their estate, and known as "the Kodalkati Bill, Bahir-gacha danga," while the Chapar Zemindars allege that the piece of water is a portion of their estate and is called the "Tiluckmara sota." The identity of the place appears to be very clear upon the map made by the Amin who was sent to survey it, and that is the map which their Lordships now deal with, and which was dealt with by the High Court, and by the Subordinate Judge. Their Lordships arrive at the same conclusion as the High Court with regard to the insufficiency of proof given either by the Zemindars of Mechpara or by the Zemindars of Chapar as to the right and title to the exclusive possession of the sota in question. But their Lordships are of opinion that the Decrees of the High Court cannot be supported as pronounced by the High Court. They are of opinion that, although neither party has proved a title to an exclusive possession, there can be no doubt that possession belongs to the Zemindars of Mechpara and to the Zemindars of Chapar.

The Government who have attached the valuable point of the fishery pending this litigation make no claim and they are really in the position of stakeholders.

The evidence in the opinion of their Lordships is insufficient as already stated to establish an exclusive possession by either of the parties. On the other hand it is equally cogent in their Lordships' opinion to show that there is possession between the two.

The result that their Lordships arrive at is that the decrees of the Subordinate Court and of the High Court should be respectively reversed and each of the parties be declared

entitled to an equal moiety of the sota opposite to and adjoining their respective zemindaris, and be decreed to be put into possession thereof accordingly, and that both of the parties having failed in their contention as to an exclusive possession each should bear their own costs of the litigation in the Subordinate Court, in the High Court, and of these Appeals; and their Lordships will humbly advise Her Majesty accordingly.

