

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Udit Narain Singh and Others v. Golab Chand Sahu and Others, from the High Court of Judicature at Fort William in Bengal; delivered 21st July 1899.*

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Present at the Hearing :

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

SIR EDWARD FRY.

[*Delivered by Sir Edward Fry.*]

The Plaintiffs and present Appellants are maliks of the village of Chhitnawan, and the Defendants and present Respondents are maliks of the village of Ganghara.

In 1843 the two villages were separated by the river Ganges, Ganghara lying on the northern, and Chhitnawan on the southern shore of the river.

The lands in question were formerly made over to the maliks of Ganghara and the Plaintiffs do not claim them as part of their old lands: but the propositions on which they rely are these:—first that for a period of 12 years they were in possession of the land and thereby acquired title, and secondly that they brought this action within 12 years of their dispossession by the Defendants. The burthen of proving both these propositions rests on the Plaintiffs.

In 1859 the Ganges receded northwards and all that remained of it in its ancient site was a dead stream or stagnant pool known as the Dhab; and between that and the new bed of the Ganges to the north there was formed a *diara* or mass of alluvial deposit which seems to have emerged from the face of the waters about the year 1860. This *diara* included the lands now in controversy. When the land emerged it was taken possession of by the maliks of Magarpal a village to the north-west of Chhitnawan. The maliks of Chhitnawan thereupon sued those of Magarpal for possession of the land in controversy, apparently founding their claim on the custom of *dhar-dhura i.e.* a supposed right of a riparian owner to follow the receding bank of the river and to claim all land between the old and the new shore. In this claim the maliks of Chhitnawan were successful and on the 15th June 1869 the High Court affirmed a decree of the inferior Court whereby they were held entitled to recover 597 bighas of land; and on the 26th September 1869 possession was duly delivered to the Plaintiffs' predecessors in title not only of the decreed lands but of other land which had during the pendency of the litigation been added to them by the further retreat northward of the river's course. The lands then delivered to the maliks of Chhitnawan include the lands now in controversy; and the Plaintiffs start with their possession on this 26th September 1869 as the terminus from which they seek to make out their title by possession.

In or about 1874 the course of the river again moved and this time southwards and again submerged the lands in question; but they appeared above the waters in or about 1879, and at this point arises the most material issue of fact.

The Plaintiffs allege that their possession before the submergence of the lands continued

during that submergence, that when the land re-appeared they continued to possess it down to 1889 when they were forcibly dispossessed by the Defendants, and that they the Plaintiffs brought the present action in June 1892; from whence they conclude that they had in the year 1881 *i.e.* 12 years from 1869 acquired a title by possession and that they brought their action within less than 12 years from their dispossession in 1889.

The Defendants on the other hand allege that on the emergence of the land in 1879 Government took possession of it; that on 23rd September 1879 a suit was brought by the maliks of Ganghara against the Government claiming these lands as part of their village; that a compromise was come to and embodied in a Decree of the 25th March 1881; and that in pursuance of that Decree the Defendants were on the 15th of January 1881 put into possession of the larger and northern part of the lands now in question; and that as to the southern portion of the lands it remained the subject of actual and sometimes of physical controversy between the two villages and that the Plaintiffs have not shown any possession of it upon which they can rely.

These views are substantially accepted by the High Court who in reversal of the decree of the Subordinate Judge dismissed the suit.

Their Lordships on a consideration of the evidence before them are of opinion that the Plaintiffs have not sustained their case; their Lordships think that the well-known practice of the Government to take possession of land re-appearing in river beds makes the evidence of the Defendants as to what took place in 1879 far more probable than the suggestion of the Plaintiffs that they entered into actual possession

of the land when it reappeared and they believe that in fact the Government did enter into possession in 1879; furthermore their Lordships conclude that in 1881 and probably before the 26th September of that year the whole of the controverted land to the north of the green line on the Amim's map made in this action and marked D was delivered into the possession of the maliks of Ganghara; and they are further of opinion that as to the land in question to the south of the green line the evidence shows not so much that the Plaintiffs were in possession as that they claimed so to be. The report of the Special Deputy Collector of the 25th July 1888 shows in what an ambiguous position this southern portion of the land continued to be down to the year 1888.

In coming to the conclusions above stated, their Lordships have treated the maps G and H as evidence in the case. Both these maps were used in the Courts below; and though objected to in the Court of First Instance it does not appear that they were objected to in the High Court and in the Appellants' case their acceptance in evidence is not mentioned as a reason for the Appeal. If the objection to the admission of these maps had been successfully urged in India, other evidence might have been forthcoming to give the required information; and their Lordships cannot now give effect to these objections.

Their Lordships for the reasons above stated are of opinion that the Appellants have failed to prove a continuous possession for 12 years to give them title, and they will therefore humbly advise Her Majesty to confirm the judgment of the High Court and to dismiss this Appeal. The Appellants will pay the costs.

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