Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Radhamoni Debi v. *The Collector of Khulna, on behalf of the Syedpore Trust Estate and Others, from the High Court of Judicature at Fort William in Bengal*; *delivered* 24*th March* 1900.

Present at the Hearing :

LORD HOBHOUSE.
LORD DAVEY.
LORD ROBERTSON.
SIR RICHARD COUCH.

[*Delivered by Lord Robertson.*]

The Respondents are in possession of the land in dispute by virtue of a Magistrate's order granted in August 1885. The onus is therefore on the Appellant who claims the land to make out that she has the better right.

In considering the question thus raised it is well to have in mind the nature of the disputed land. Its area is about 1,400 bighas, but it is a significant fact that the most various estimates on this subject have been made during the period in dispute, the reason being that very few people had occasion to be there or were interested in its size. The degree to which this is the case may be gathered from two facts. It is clearly ascertained that in 1865 there were no human beings living on any part of the ground and only one-twentieth of the whole area was susceptible of cultivation. At the time of

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this action there was only one small group of dwellings. The ground, generally speaking, is jungle; but there has been in some parts more or less of intermittent cultivation.

The two competitors for this territory are, on the one hand, the Collector of Khulna (who will hereafter be referred to as the Respondent,) whose lessee is in possession and whose theory is that this is the southern part of his talook of Bil Pabla, and on the other hand the Appellant who is the undoubted proprietor of the mouzah of Kulati which lies to the south of the disputed land. An important feature of the case however is that the Appellant's theory is not that the land forms part of the mouzah Kulati but that it forms a separate mouzah bearing the name of Uttar Kulati and lying between Kulati and Bil Pabla. Although the vicissitudes of this prolonged dispute might naturally have suggested the simpler view, the Appellant has never pretended that the disputed ground is part of the mouzah Kulati and this is not suggested on Record. The sequel will show that this is not a merely nominal distinction.

With the doubtful exception of a lease of the disputed land, said to have been executed in 1846, the history now to be considered opens in 1856. What then happened was that a survey of the ground was made by the Government collector and a thak map was prepared, depicting the ground as forming a separate mouzah of Uttar Kulati. So far as it goes, this directly supports and substantiates the Appellant's case. The map, it is true, shows on its face the facts already mentioned as to the entire absence of population and the extremely exiguous amount of cultivable land. Accordingly, it cannot be treated as a contemporaneous record of possession so much as of publicly asserted claim.

That claim moreover was not allowed for long to stand unchallenged. In 1865 a Government survey was made of Bil Pabla and the map then prepared records on its face that it was made to rectify the thak map, which had included in other mouzahs parts of Bil Pabla. The ground in dispute is depicted on the plan as having been so treated. As compared with the map of 1856 the map of 1865 has this in its favour that it bears on its face that the survey was made in the presence of the officers and tenants of the owners of the adjoining mouzahs, whereas no such circumstance is recorded on the map of 1856. There has been some controversy as to the occasion of this map being made and as to its authorship; but the evidence and the conduct of parties make it clear that it is entitled to no less than the degree of authority which attaches to Government surveys generally. If the map of 1856 records the claim of the Appellant, so and with equal authority does the map of 1865 record the repudiation of that claim. The one wipes out the other and leaves the parties to appeal to possession, as the ultimate criterion of their rights.

The Appellant however cannot escape from this branch of the case without it being noted that the theory of her map is the theory of her record, that this ground was not part of her mouzah Kulati but was a mouzah of itself, bounded by Kulati and bearing the separate name of Uttar Kulati.

In considering the question of possession it is necessary to remember its twofold bearing on the dispute. The Appellant's claim is rested first on her title to the mouzah of Uttar Kulati, and second on the statutory limitation, she having had (so she asserts) 12 years adverse possession of the land in dispute. Now what has been to some extent overlooked by the Subordinate

Judge is that the evidence of possession affects both questions and not merely the second question. In the view taken by their Lordships of the maps of 1856 and 1865, the Appellant has no case on title, unless she has adequately supported by possession her claim embodied in and affirmed by the map of 1856.

When the evidence of possession is examined, it is found to be divisible into two kinds, having very different values. On the one hand there is abundant supply of evidence on paper, leases and documents of various kinds and on the other hand there is meagre and conflicting evidence of actual physical possession. Neither feature need excite surprise. The ground has in fact been little used, hence little evidence of physical possession; the ground has for fifty years been the subject of claims, hence paper grants to support those claims.

Now, in the inquiry conducted in the Court of the Subordinate Judge the relative values of those two kinds of evidence have scarcely received due appraisement. Even assuming the authenticity of the lease of 1846 (which singularly enough describes the lands as "Uttar "Kulati *alias* Doorgapor,") it is confronted by the Appellant's own plan of 1856 which attests the absence of effective occupation. Similar criticism applies to much of the evidence from pottahs and kabulyats; and, even where some testimony of physical possession emerges from the mass of documentary evidence, it is found to be exiguous in amount, in some instances uncertain in time and place, and in many instances irreconcilable with equally plausible contrary assertions.

Their Lordships find it impossible to hold that from these materials the Appellant has made out her claim of title to the land. Her claim under the statute of limitations remains to be con-

sidered but this question gives rise to very much the same observations, within a more restricted region of inquiry.

It is necessary to remember that the *onus* is on the Appellant and that what she has to make out is possession adverse to the competitor. That persons deriving from her any right they had have done acts of possession during the twelve years in controversy may be conceded and is indeed evidenced by the dispute which ended in the Magistrate's order of 1885. But the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. The Appellant does not present a case of possession for the twelve years in dispute, which has all or any of these qualities. The best attested cases of possession do not cover the whole period and apply to small portions of the ground. While exhibiting those positive deficiencies, the Appellant's case is moreover confronted by tangible evidence of possession by the Respondent which is far superior in quality. The only persons living on the ground hold and have held their dwellings and cultivated the ground round it by rights derived through Jogendra from the Respondent. As has been justly observed in the High Court, the true significance of this evidence was missed in the Court of the Subordinate Judge. It is not merely negative of the Appellant's case so far as that portion of ground is concerned which has been so possessed by the Respondents but it is directly contradictory of the whole theory of the Appellant's case of possession.

Their Lordships will humbly advise Her Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the Appeal.