

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sukhraj Roy v. Morrison and others, from the High Court of Judicature at Fort William in Bengal; delivered the 11th July 1911.*

---

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD SHAW.

LORD MERSEY.

MR. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

---

This is an Appeal from a decree of the High Court at Calcutta which reversed the decree pronounced by the Second Subordinate Judge of Bhagalpur so far as it related to the barari land claimed by the Appellant--the Plaintiff in the suit. It is the last phase in a boundary dispute which began half a century ago between two mouzahs--Dyalpur and Kishundaspur.

The case was argued at some length and with much detail. Their Lordships were invited to study and compare a series of maps. Having done so, with the assistance of counsel, they have come to the conclusion that there is no ground for disturbing the judgment of the High Court. It is impossible in a controversy of this sort to do full justice to the arguments presented at the Bar without illustrating or obscuring the position by referring to maps, and maps are of little use

unless they are on view. In order to make the case intelligible it is therefore necessary to deal with it in outline rather than with the fullness which perhaps it deserves.

Dyalpur and Kishundaspur are adjacent mouzahs. Dyalpur lies to the west, Kishundaspur to the east. In 1847-48 when the mouzahs were first surveyed the northern part of each was covered by the waters of the Ganges. Between 1848 and 1858 the barari land now in dispute was left dry in consequence of a change in the course of the Ganges. A new channel was formed more to the north, and the old bed of the river dried up.

At that time Dyalpur belonged to Rani Lujjabati. In December 1858 Lekhiraj Roy, the father of the Plaintiff, bought Dyalpur at an auction sale in execution of a decree obtained by him against the Rani. Litigation followed, but at last the sale was confirmed.

Before the confirmation of this sale Felix Lopez, who was then the proprietor of Kishundaspur or that part of it which marches with Dyalpur, instituted criminal proceedings under Act IV. of 1840 against a servant or agent of the Rani, on the allegation that the Rani's people had wrongfully entered on his land, and destroyed his crops. He claimed to have delivery of the land in question which comprised about 200 bighas, and corresponds roughly with the property now in dispute. On the 26th of March 1860, the Officiating Magistrate gave judgment. The case, he observed, had been under trial since December 1858, and it was impossible to say which of the claimants was at that time dispossessed; the only thing the Court could do was to delimit the mouzahs, leaving each party to pay his own costs. Then, having stated that he had looked at the survey maps

and found that Kishundaspur runs up into Dyalpur in a north-westerly direction, he gave orders for defining the boundary between the two mouzahs. A survey station marked by the letter Y on the survey maps was by consent of both parties to be taken as the starting point. From Y a line was to be drawn of a stated length in a northerly direction. From the extremity of that line and at right angles with it a transverse line was to be drawn of a stated length to the east and to the west, and from the western extremity of that line a line was to be drawn to Y. As the Defendant did not wish that an Amin should be employed, the magistrate directed the Daroga to measure the land and to make over to Lopez all the land within the angle formed by the transverse line and the line drawn from its western extremity to Y as lying within Kishundaspur. It seems that the Daroga, accompanied no doubt by the parties or their agents, went to lay down the boundary line, but instead of taking Y as the starting point, owing to some mistake or possibly by consent of the parties, he took as the starting point a survey station more to the west, and so included in the land apportioned to Kishundaspur the land now in dispute which according to the survey maps of 1847-48 was probably included in Dyalpur.

On the 26th of March 1863, Rani Birajpati, the representative of Rani Lujjabati then deceased, and others as co-Plaintiffs brought a suit against Lopez claiming the land in dispute. In that suit the Court rightly or wrongly held that it could not interfere with the order of the magistrate, as it had been pronounced more than three years before the institution of the suit. The Court, however, directed that an enquiry should be made, and that the Plaintiffs in the suit of 1863 should be put in possession of any land of

which Lopez might be found in possession in excess of what he was entitled to hold under the order of the Criminal Court. Lekhraj Roy was not a party to that suit, but in 1867 he applied for execution of the decree. After an enquiry by the Amin his application was dismissed on the Amin's reporting that Lopez was not in possession of any land in excess of that which he was entitled to hold under the order of the Criminal Court.

In 1867-68 the Diara Survey under Act IX. of 1847 was made of the lands formed by the change in the course of the Ganges. At that survey, 270 acres, 3 roods, and 33 poles, of land were found to be in the possession of Lopez in excess of the land measured and assessed at the survey of 1847-48. Of this land, 63 acres, 1 rood, and 35 poles, were apparently not assessable under the Act. The rest of the land, which is the land now in dispute, was assessed and settled with Lopez, the Deputy Collector stating in his report that Lopez had been "in possession thereof" "without opposition from anybody," and that no one objected to the settlement being made with him.

Lopez died in December 1869. After his death disputes arose about his will, and there were legal proceedings in which judgment was given in March 1884. It seems plain from that judgment that the disputed land then formed part of the testator's estate. The Respondents derive title under Lopez's will. It is admitted that they were in possession when this suit was instituted in 1900.

Whether the land in dispute did or did not form part of Kishundaspur according to the survey of 1847-48, their Lordships agree with the High Court in thinking that the owners of Kishundaspur have acquired a good title to it

by the law of limitation, and that there is no trustworthy evidence tending to prove that either Lekhraj Roy or the Appellant ever was in possession of any part of it.

Their Lordships will therefore humbly advise His Majesty that this Appeal ought to be dismissed with costs.

---

In the Privy Council.

---

SUKHRAJ ROY

v.

MORRISON AND OTHERS.

---

DELIVERED BY LORD MACNAGHTEN.

LONDON :

PRINTED BY EYRE AND SPOTTISWOODE, LTD.,  
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1911.