

Privy Council Appeal No. 160 of 1917.
Bengal Appeal No. 37 of 1915.

Gopal Chandra Chaudhuri, since deceased (now represented by
Shamapada Chaudhuri and others) - - - - *Appellants*

v.

Rajanikanta Ghosh, since deceased, and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1919.

Present at the Hearing :

VISCOUNT CAVE.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD PHILLIMORE.]

This is an appeal against a decree of the High Court of Bengal which reversed the decree of the Subordinate Judge and passed a decree for the plaintiffs as hereafter stated.

The suit was brought to recover possession of 5,760 bighas of land. The plaintiffs failed in the Court of first instance, but succeeded except as to certain smaller portions in the Court of Appeal.

The story is a long and complicated one involving the consideration of some oral evidence of not much importance, and a great number of documents ranging over nearly a century. The matter is not made easier by the fact that there are charges and counter-charges of falsification, interpolation and suppression in respect of several of the documents.

At the time of the permanent settlement, towards the close of the eighteenth century, there was within the ambit of the Zemindari of Naldi, a large tract of land of about 12,000 bighas

partly swamp, partly jungle and partly covered by water, known as Beel Ichhamati, Beel meaning a lagoon or marsh. From time to time, as the courses of rivers changed or alluvial deposits were formed, portions of this land became culturable, and about 1817 application was made to the Government by some adventurous person that he might have a grant of the Beel with a view to developing it. This application was resisted by the Rajah Zemindar of Naldi, who asserted that it already formed part of his Zemindari and that he had no additional jumma to pay to the Government in respect of it. After investigation, the claim of his successor was allowed in the year 1828.

Meanwhile, the Zemindar was granting leases of portions of the property. He made a lease for land for grazing buffaloes to one Ram Mohan Ghose and others in 1815, and a lease of a small portion of land in favour of Ram Ghopal Ghose in 1816. Both these are recited in a judgment of the year 1840. The plaintiffs have produced a document which they say is the first of these leases and which, if so, is of some importance. It will be referred to hereafter.

Then there was a lease in 1818 to Joy Chandra Bose and Kishun Gobind Bakshi of certain lands in villages on the western edge of the Beel. What followed on this lease is important. It would appear that the lessees made use of the land to the eastward of the property demised to them, and further into the interior of the Beel for grazing their cattle. This interfered with the rights of the Zemindar and other persons to whom he had given leave to graze on this land, and thereupon the then Zemindar brought a suit against them, and had it determined in the year 1833 that this grazing ground was not within the terms of their lease, and that they must pay additional rent for it. This land was described as grazing ground for buffaloes, in the vernacular Mahish Charani. The extent of it was treated in that case as being about 1,023 bighas, and as will be seen hereafter, it is important from the point of view of the plaintiffs that the area should not be larger.

The first lease after the Rajah's title had been recognised by Government was a putni lease granted to the predecessor in title of the plaintiffs, and it is that upon which their title to the land in dispute is rested. It was made in the year 1834. At a late date in the course of the proceedings the defendants challenged the translation of the kabuliyat or counterpart of this document, which is the only record of this lease, as not giving a correct rendering of the parcels, but their Lordships are not disposed to entertain this objection at this stage, and they propose to proceed upon the translation as it appears in the record at page 112. This being so, the material passage in the kabuliyat is as follows :—

“ To

“ The High in Dignity.

“ Raja Srinarayan Sinha,

“ Zamindar of pergunnah Naldi, &c.

“ I, Banshi Badan Shaha, inhabitant of Baikunthapur, pergunnah Naldi, do execute this kabuliyat to the effect following :—A notification

having been issued from your zamindari catchery for putni settlement of the mahals appertaining to your zamindari, pergunnah Naldi, in district Jessore, I came forward and applied for settlement of Lot Kashba Naldi, exclusive of the debutter land of (torn) Thakur and the pattai land of Munshi Haybatullah on account of Sanyal and Lahiri in respect of which suits are pending, and Kalachandpur, Pingaldaha and [Ramchandra]pur, these four dehas, as also Gangnala in Beel Ichhamati, exclusive of jalkar mahal Bhasha and Kheyān, these five mahals in all, within the said pergunnah excluding confirmed bajey lands and including all raiyatis, khamars, homesteads, cultivated and uncultivated lands, jalkars, bankars, nalkars, roads, gardens, beels, jhils, khals, khandaks, tanks, &c., all lands attached, which is the entire zamindari right agreeing to pay a rental of Rs. 1,025 for the said four dehas and Rs. 10 for the said jalkar."

Their Lordships construe this as meaning that five mahals or units of property were demised. Four of these were dehas or villages: Kashba Naldi, Kalachandpur, Pingaldaha and Ramchandrapur, and the fifth was the Gangnala, which means a creek or stream or bed of a stream which would be valuable only for the jalkar or right of fishing and such subsidiary uses as cutting reeds. Three of the dehas can be traced, and they are all on the southern portion or edge of the Beel, which was probably receding so that the central portion roughly delineated remained still under water or swampy, while tongues of dry land ran into it.

The deha which is no longer in existence is the third, Pingaldaha, and it is the plaintiffs' case that the land in dispute represents that former village, including in the term village not merely the actual collection of huts, but the land cultivated in connection with it.

It is to be observed that "daha" as distinguished from "deha" means low-lying ground or swamp, and the theory of the plaintiffs is that in the course of time water rolled again over the site of this village, and that it has now re-emerged in whole, or in part, as land of some value.

In the year 1838 the Rani, widow of the previous Zemindar, granted the lease under which the defendants claimed title. The putni pottah is in this case in existence. It grants to one Kali Kanta Roy the lot Sarusuna, and the parcels in the schedule are as follows:—

"Mouzah Sarusuna, exclusive of the Debottur land of Rajballabh Thakur (idol), including Beel Sonatara together with jalkars.

" Chittra river	...	...	...	...	...	...	...	1
" Nandanpur	...	...	...	...	...	...	...	1
" Pollabaria	...	...	...	...	...	...	...	1
" Kismat Sarusuna	...	...	...	...	...	...	...	1
" Mouzah Sadapara	...	...	...	...	...	...	...	1
" Mouzah Bamankhali	...	...	...	...	...	...	...	1
" Tarasi, exclusive of mudafat Kali Prashad Mitra, Shib Chandra Mitra.—Putni of Mr. Dibs	...	...	...	...	...	...	...	1
" Mouzah Salua, including jalkar khas Salua	...	...	...	...	...	...	...	1
" Bangram, Atish, Bhabanipur, Hosseinpur	...	...	...	...	...	...	...	4
" Dighar Sahai, mokurari mudafat Ram Chand Raha, Pitambar Raha, held in khas as kharija	...	...	...	...	...	...	...	1
" Beel Ichhamatti Charai Mahal	---	---	---	---	---	---	---	1

14

"Basudebpur Najdin Nowhatta	1
"Dari Maul, exclusive of putni of Ram Mohan Mukerji and malguzari Radha Mahan Sarkar	1
"Mithapur, mudafat Krishna Gobinda, by purchase held in khas and Mokurari by Joy Chandra Bose	1
"Dari Mithapur, Mudafat Krishna Gobinda Bakshi by purchase held in khas and Mokurari by Chandra Basu	1
"Mobarakpur, Mudafat Krishna Gobinda Bakshi, by purchase held in khas and Mokurari by Joy Chandra Bose	1
"Bejra, mokurari Joy Chandra Basu, exclusive of putni of Mr. Dibs Mudafat Krishna Gobinda Bose	1
"Narayandia, Mokurari Joy Chandra Bose, exclusive of mudafat Krishna Gobinda Bakshi, putni of Mr. Dibs	1
	21
"Kismati Ramshibe, mokurari Gour Mohan Ghosh	1
"Mouzah Gopalgram	1
	23

Total twenty-three only."

[Mouzah (illegible).]

The mouzahs are all on the northern and western parts of the Beel. Those from Mithapur to Narayandia which are on the western side are those which had been previously demised to Bose and Bakshi in 1818. Beel Ichhamati Charai Mahal in the demise clearly cannot mean the whole Beel in the original sense, because the villages demised by name are in the Beel, and because of the previous demise to Banshibadan. So, to give a sensible construction to the lease, either it must be supposed that as the water receded the name of Beel became confined to that which still remained Beel, waste and unculturable; or that these four words mean the Charai Mahal or grazing estate in the Beel. The practical result is the same.

The deduction drawn by the plaintiffs from this lease is that the grazing estate is the same as the grazing ground for buffaloes, and that the defendants took under it only the 1,023 bighas which had been stated to be the extent of the grazing ground for buffaloes in the previous suit against Bose and Bakshi. This might be so, but as the estate demised to Kali Kanta Roy is considerably larger than that demised to Bose and Bakshi, as it includes many villages which were not in their take, so grazing rights over a larger area may have passed by this lease. If the land was gradually drying up it may well be that by this time a larger area suitable for grazing had emerged, or the lease may have been intended to give to the lessee grazing rights over the whole of the residuary Beel as it from time to time became available. The lease could not grant to Kali Kanta anything which had already been granted to Banshibadan; but unless Pingaldaha comprised all the residuary Beel other than that which had been occupied by Bose and Bakshi, there is nothing to prevent the construction which would make the residuary Beel pass under this lease to Kali Kanta. The Gangnala may at one time have been larger and the jalkar rights may in consequence have been available over a

larger area, and yet it may well have been understood that as the Gangnala shrunk so the jalkar rights shrank too.

It will be necessary to go back in the history of this case to several documents; but for the moment their Lordships will pass to the date when the Thakbust survey took place, and the Thak map was made, in the year 1856. Three copies of that map were put in evidence. The one from the Board of Revenue is not quite so complete in the matter of names though valuable as showing that a particular entry in the letterpress must be of ancient date because no one can suspect that this copy has been tampered with. The other two copies, one put in by the plaintiffs and the other by the defendants, differ only in this, that in the plaintiffs the Beel is described as Beel Ichhamati, and in the defendants as Beel Mahish Charani, and that the Chuck No. 1 which is unnamed in the plaintiffs' copy has written on it in the defendants' copy, Chuck Basdanga.

This Thak map professes to be the map of Mouzah Beel Ichhamati, the area of which appears to be 7,407 bighas. In accordance with the usual practice with Thak maps, it gives an outline boundary with the names of the various contiguous mouzahs as the outline proceeds. It also marks off any defined chucks which there may be within. It shows for Beel Ichhamati a large area, vacant except that in two places a group of huts surrounded by a line, one called Kanti Naggar and the other Rati Kantapur, and a third village touching the south-western boundary, but in no way marked off from the adjacent land called Baladanga, appear. Ten chucks are marked off, No. 1 out in the middle towards the south-west, and the other numbers mostly contiguous to the boundary and in the south-east corner. It is suggested by the plaintiffs, and is probably the case, that three sub-divisions of Mouzah Beel Ichhamati or three sub-mouzahs, Mahish Charani, Baladanga and Pingaldaha are included in this large ill-defined area which had to be left in a state of imperfect demarcation, because it was mostly covered by water or in the condition of a swamp.

Of the three sub-mouzahs Baladanga, the area of which has by this time apparently been ascertained, belongs neither to the plaintiffs nor to the defendants; and the dispute in the case may be stated as being whether any, and if so, how much of the residuary area can be proved by the plaintiffs to be Pingaldaha.

The adjacent lands of the plaintiffs are to the southward and south-eastward. The adjacent lands of the defendants are to the northward and north-westward. They meet somewhere, the question is where? The defendants make no claim to the south-eastern corner; and the south-western corner belongs to Baladanga. The plaintiffs' claim is as has been stated in respect of Mouzah Pingaldaha. Pingaldaha as a deha or village was one of the four granted to the plaintiffs' predecessor in title by the putni lease of 1834, and Beel Pingaldaha, not the village, appears in the letterpress of the Thak map in circumstances which will be mentioned afterwards.

In a kabulyiat or counterpart given to the plaintiffs' predecessors in 1880, various small plots of land each separately marked off are said to be in Kismats Kalachandpur and Pingaldaha. The name also occurs in the same year, 1880, in connection with certain legal proceedings which will be hereafter mentioned. Otherwise in all the numerous documents which have been brought into this case there is no mention of the word; nor is there any village or cultivated land upon which the plaintiffs can lay their hand and say this is Pingaldaha. Probably it was known in 1838, but before 1856, in some shift of the courses of the rivers the waters had rolled over it.

Portions of it may have re-emerged from time to time, and portions of it may, or may not, so far as their Lordships have proceeded, form the land in dispute or part of it. But there are portions of Beel Ichhamati unclaimed by the defendants which also might represent it.

Beel Pingaldaha appears in the letterpress of the Thak map in the following manner. There is at the side in the proper column for remarks an enumeration of certain orders affecting the map or the letterpress, and one of them is as follows:—"Be it stated that according to the order in Miscellaneous case No. 863, Beel Pingaldaha is included in Mahal No. 203." Follows the signature of the Peshkar. Mahal No. 203 is the appropriate numbering of the Mahal Beel Ichhamati. The other orders in the column of remarks are dated. This order is undated, but it falls between two orders, one of 1861 and the other of 1863. It was contended for the defendants that this order was an interpolation put in to make evidence for their adversaries; but, though it appears unfortunately possible that such things may occur in local offices, it is not to be presumed that they would occur in the official copy in the office of the Board of Revenue, and they do occur in that copy. The latest order in date on the map is of the 17th February, 1865, and their Lordships think that the copy in the office of the Board of Revenue is probably of about that date and that, therefore, the challenged statement must, however originally inserted, have been on the map from that period, and may be even taken to be of the date which its order in the column of remarks would assign to it, that is about the year 1862. What its effect is, is another question.

In the column which gives the names of each mouzah the first words are: Beel Ichhamati; underneath that Mahish Charani, then Baladanga, and last Pingaldaha, probably added at the date of the order. The Maliks and present possessors who are recorded in the next column are first the Zemindars, and then as possessors in putni right two groups of persons, one the predecessors in title of the defendants, and the other one Roy and others of Narail, people with whom defendants had various boundary contests. There is no entry of any predecessor in title of the plaintiffs.

In the column for chucks the land is described as the residue, that means that it is all the land not comprised in the various ten chucks whose maliks and possessors, and whose areas are set out

in the appropriate columns. It might be said that if any inference is to be drawn from the entry as to Pingaldaha it would be that Pingaldaha was in existence at the date either as a mouzah or as a Beel, but that its possessors were either the predecessors of the defendants or the Narail people. It should, perhaps, be noted that Banshibadan appears in the letterpress as a part owner of one of the chucks.

The Thak maps of various adjacent mouzahs were put in evidence because in each case they give the names of the coterminous mouzahs. From some nothing is to be gained, as they only use the colourless phrase "Beel Ichhamati." But there are two mouzahs which are of importance. Kasba Naldi is unquestionably to the south of the land in dispute, and its north-western boundary is described as Mouzah Beel Ichhamati Mahish Charani, it being common ground that Mahish Charani means the defendants' property.

The next mouzah going from east to west is Brahmaninagar, and the next to that is Nakkhali. The case of this latter will be dealt with later. As to Brahmaninagar, certain Motneeza proceedings said to have taken place between the owners of that mouzah and the predecessors in title of the defendants for the purpose of delimiting their respective boundaries were put in by the defendants. They are supposed to have taken place between January and May, 1856. If they are genuine they show that the north-eastern corner of Brahmaninagar touched the land of the defendants and, therefore, that the defendants' land came to the extreme southern point for which they are contending.

It was submitted by Counsel for the plaintiffs that these documents were forgeries, the argument being that there is no trace of any procedure by way of rectification on either of the Thak maps, and that, as is the case, the Thak map of Beel Ichhamati was apparently completed in January. The answer may well be that as these proceedings ended in a compromise which acknowledged that these lands were not in Beel Ichhamati, no rectification of the Thak map of that mouzah was required, while the Thak map of Brahmaninagar is not known to have been completed before the date of the compromise. The Subordinate Judge accepted the proceedings as genuine and so did the High Court.

The High Court, however, gave little value to them because it said that they were collusive, apparently for the reason that they resulted in things remaining as they were before the Motneeza proceedings began. But if the proceedings actually took place the fact that they are collusive does not deprive them of value as evidence. They show either that the lands of the two parties marched or that it was the interest of one or the other, or both that they should be supposed to march, and, therefore, that at least the defendants' predecessors in title were claiming the land in dispute down to its southernmost point as long ago as 1856.

These proceedings are also relied upon by the defendants as giving the position of a certain Arua Dair. Now this word means a cross path, and if it be used in its general sense it is not

of such importance, though there are comparatively few paths in the district. But there are several cases where words of general description such as Nautana Nali, which means a stream, may be used as proper names, and the expression "the lands of Arua Dair," which will point to this being a proper name does occur. If so, the position of Arua Dair as marked on the compromise map is of importance.

Returning now to the Thak map of Beel Ichhamati their Lordships find the two villages, which recall the names of the two brothers who are the original holders under whom the plaintiffs claim, the lessee, Kali Kanta Roy and his brother Rati Kanta Roy, plotted upon it, the latter well down to the south. As plotted upon that map the names are spelt "Kantinagar" and "Rati Kantapur," but they are more usually found described as "Kali Nagar" and "Rati Nagar." There is no doubt that these villages were founded by the two brothers when they first settled some of the land in their holding, and as early as the year 1838 or 1839.

Upon this state of things, if there was nothing more, there would be a *prima facie* case for the defendants having possessed the great mass of the land in dispute from north to south, while the plaintiffs' land of Pingaldaha, if it could be found at all, might be taken to be that in the south-east corner to which the defendants make no claim. Accordingly, when two trial actions were brought by the plaintiffs in 1898 against the defendants in respect of certain parcels of the land in dispute, these cases which were fought up to the High Court were decided against the plaintiffs. A third instituted in 1900 was dropped.

The plaint in the present suit was filed on the 13th May, 1903. After it had proceeded some way the Subordinate Judge directed an enquiry by a Commissioner who was to measure the disputed lands, prepare a map, compare the boundaries and descriptions as given in the plaint with any existing land marks, and with those given in any of the documents filed; ascertain if any mouzah of the name of Beel Pingaldaha ever existed, and whether the disputed lands appertained to it or to the Mahish Charani lands of the defendants. He made a report and produced a map, and though he came to no definite conclusion as he regarded the matter as one to be determined by the Court according to the weight that it attached to the several documents, his map and various interlocutory conclusions at which he arrived were in favour of the defendants, and the plaintiffs filed objections to his report.

The action of the Commissioner seems to have been unfortunate. He appears to have charged some fees to which he was not entitled. He laid himself open to the suspicion of partiality to the defendants, and he produced a map which is not comprehensible. However, the Subordinate Judge attached some weight to his report, and upon that and other grounds decided in favour of the defendants. When the matter came before the High Court the Judges took a very strong line of adverse criticism upon

the action of the Commissioner. They set aside the order of the Subordinate Judge who had given him the costs of certain applications against him; they spoke of him as perjured and dishonest, and the only use that they made of his report was to follow his map as giving the boundaries when they made their decree in favour of the plaintiffs. This decree, while giving the main area to the plaintiffs, excepted from it the village of Kalinagar and the lands which had formed the subject matter of the two suits 751 and 951 of 1898.

Whether the High Court, in coming to the conclusion to which it came, may not have been too much influenced by indignation against the conduct of the Commissioner, conduct which seems to have been stigmatised in possibly harsher terms than it deserved, is a matter not wholly to be laid out of consideration in deciding the present appeal. But inasmuch as Counsel for the defendants have not asked their Lordships to rely upon the Commissioner's report or map, their Lordships have laid them aside in coming to their conclusions.

When the High Court came to its decision in favour of the plaintiffs it had to ascertain how much of the Mouzah Beel Ichhamati shown in the Thak map, after providing for the sub-mouzah of Baladanga which belongs to third parties, could be determined to form the sub-mouzah of Pingaldaha, and they were met in in limine by the difficulty that Pingaldaha had no area and no boundaries. They provided for this difficulty in the following manner.

There followed in due course upon the Thak map a survey map of the season 1856/7. On this map a pathway is shown on the western side of the Beel coming from a place called Nuleeah and proceeding in a nearly northerly direction for a considerable distance during which length it forms the boundary between the Mouzah of the Beel and the Mouzah Musakhalee, and then just as it reaches the beginning of Mouzah Mubarakpur, which is one of the mouzahs in the defendants' lease, turning away in an easterly direction across the Beel to Jhamarghop, a mouzah on the north-eastern side of the Beel. The High Court has made this Easterly part of the footpath the northern boundary of Pingaldaha, and the southern boundary of the defendants' land.

The only grounds for taking this otherwise arbitrary boundary are that it is an ancient and well-marked pathway, and that the area to the north is approximately of the size (1,023 bighas) of the area which was measured off as grazing lands, in the suit against Bose and Bakshi.

The first difficulty in the way of taking this boundary is that the village of Ratinagar is a long way south of it; that three parts of the village Kalinagar are also south of it, and that any suggestion of contiguity between the land of the defendants and the lands of Kasba Naldi, Brahmaninagar and Nakhkhali is put out of the question. The High Court meets the point as to the villages by supposing that the situation of Ratinagar may have been different to that which appears on the Thak map, and by

treating the extension of Kalinagar as a usurpation fortified however by so long a possession that the defendants are entitled to keep it. The way in which they have dealt with the possible contiguity of Brahmaninagar has been already mentioned. The contiguity of Nakhkhali comes into question in some important litigation in 1880. The High Court does not appear to have dealt with the point arising on the Thak map of Kasba Naldi.

The strength of the plaintiffs' case lies in two things; the presumption that the defendants' predecessors in title never got more of the Beel than that which had been measured to Bose and Bakshi, a presumption which, as their Lordships have already pointed out, is not based on any secure foundation, and on certain proceedings in a litigation which took place, not between them and the defendants, but between claimants in respect of other lands and the defendants, in 1880.

The defendants, as it happens, have had boundary disputes with various neighbours. In 1840 they had a claim against the talukdar of Kalagachee. In 1843 they were sued by certain landowners of Narail claiming in respect of the taluk of Musakhalee. The litigation lasted till 1849, and the defendants won, largely on the ground that the area then claimed as belonging to Musakhalee could not belong to it as the defendants' villages of Kalinagar and Ratinagar were established in it. No doubt the claim of the Narail people was in any event an extravagant one as they pressed forward to a boundary right away to the north if not north and east. Still the fact remains that the guiding point of the decision was the position of the two villages, and that the place where Musakhalee marches with the Beel is to the southward of the footpath.

In 1880, and these are the proceedings on which the plaintiffs rely, parties called the Narail minors under the management of the Court of Wards, made complaint against the defendants for ousting their tenants who had been growing paddy in Beel Kumargaria which they said belonged to their Mouzah Nakhkhali, and proceedings were taken under section 530, of the then code of criminal procedure to prevent a breach of the peace. The defendants were stated to be claiming the land as Zemindars of Mithapur which was one of the mouzahs contained in the original lease to the predecessors of the present defendants. The conclusion of the Magistrate, was of course not decisive, but it gave temporary sanction to the claim of the defendants. In the course of his judgment he made the following statement :—

“The map filed by the 1st party shows that the disputed land is entirely situated west of the Gangnala. Now referring to the Survey maps of Ichhamati and Nakhkhali, it appears that those lands were then entirely within the lands of Beel Ichhamati pertaining to Mithapur and not within the Beel Kumargaria pertaining to Nakhkhali. Thus, at the time of the survey, the disputed lands were in fact a part of Mithapur. The lands were then fallow and possession at that time could not be traced. Both the villages of Nakhkhali and Mithapur were then in the possession of one man named Kalikanta Roy. In the kaifat submitted to the Collector

by Rani Katyani, the zamindar of all these villages, mention is made of Kumargaria and Mahis Charani as parts of Mithapur.

“Up to 1282 (that is 1875), therefore, no possession is apparent except that the lands were recognized as pertaining to Mithapur.

“In 1282 some twenty men gave a kabuliyat to the manager of the Court of Wards. On the authority of that kabuliyat, the Court of Wards has got a decree for rent in August current. It is only on these two documents that the strength of the first party entirely rests. . . . The second party also got kabuliyats in 1283 (1876). . . .”

The actual Mithapur is well down to the southward and eastward. The plaintiffs meet this point by inviting their Lordships to treat the name of Mithapur as having been used on this occasion merely because it was the principal village in the property comprised in their lease, and not because it was actually adjacent.

So far, anyhow, there is no value to the plaintiffs in these proceedings. In fact, they are rather against them. But they say that in the course of the proceedings a police officer was directed to enquire and report, and that his report and map show that the lands in dispute were right away from Mithapur and Nakhkhali up in the north and east, and that Pingaldaha intervened between them; and further, that the defendant in that suit, who was the father of the present defendants, put in a written statement and relied upon a lease to which he made reference in that statement, and which he filed at the same time, and that these two documents show that he admitted that he had no claim to any land south of the pathway, and that Pingaldaha intervened between him and the lands of Nakhkhali.

The defendants in the present suit retort by saying that all these documents are forgeries. Now the police report in itself is colourless, except that it refers to a map said to be filed with it. It and the map are described by the magistrate as giving a doubtful and uncertain statement. The map is before their Lordships. It has the points of the compass upon it, and shows a tract of land bounded on the south by what is called Nakhkhali village Brahmaninagar, on the east, by Gangnala, on the west, by a conventional line up to a point, and thenceforward up to the north and along the north by the footpath. This plot of ground is roughly marked as covered by vegetation, except in the middle which is unmarked and described as “Patit lands of Beel Pingaldaha as stated by both the parties.” If this is intended to be the land in dispute, it shows that two-thirds of it south of the footpath should go to the defendants, while the middle bit would be Pingaldaha. Such a view is rejected by the plaintiffs. Their Counsel suggest that it is the land depicted to the north of the footpath which is blank, except that there is some letterpress upon it as to the nature of the two claims, and that in the blank space on the west is written Beel Mahish Khola, on the east the village Kalinagar, and on the north Salta. The plaintiffs' Counsel have invited their Lordships to treat this unmarked and undelineated part of the map as the true map of the land in dispute. Comment is

superfluous. The map may be genuine ; it may be a forgery. If it is genuine it is difficult to make anything of it, but the more probable construction would be adverse to the plaintiffs.

Remains the written statement. This is in the following terms :—

“ 1. Babu Radha Kanta Banerji being the manager of the other party, namely, the minor Babus, the enquiry by him is not improper.

“ 2. The lands which are said to be the disputed lands, all appertain to Mahish Charani or Charai mahal called Bhatiar Dohal of Beel Ichhamati within Taraf Mithapur, Lot Sarusuna and are included in my putni and dar-putni property. The Beel in which Ram Mohan Ghosh built buffalo-sheds (bathan) is known by the name of Mahishkhola or Mahish Bathan, and he on the 27th Kartick 1222 took a pottah from the former zamindar of pergunnah Naldi, in respect of the low land called Bhatiar Dohal lying to the south of Salda, to the west of Kalagachi, to the east of Beel Mahishkhola, and to the north of the halat extending from Jhamarghope to Nalia, for the purpose of grazing buffaloes and cows of that bathan and was in possession thereof, and accordingly he used to graze cows and buffaloes on that land. Since then the said Bhatiar Dohal has been known by the name of Mahish Charani or Charai mahal. Ram Mohan then relinquished his jamai right to the former putnidars and returned the pottah to them, and, after that, the said putnidars of the said Mahish Charani or Charai mahal, Babu Kalikanta Roy and others, were in possession of it in their putni and dar-putni right. Afterwards I obtained it by foreclosure of mortgage and have now been in possession of it, partly as khamar and partly through tenants. Neither the minors of Narail, nor their predecessors, nor their tenants ever had or have any right in, or possession of, it ; nor does it appertain to Nakhkhali. There are jungle, patit lands of Beels Fuldubi, Ailia, Kumargari, Pingaldaha or Kalamasha, &c., appertaining to mouzah Pingaldaha, lying between the said Bhatiar Dohal called Charai mahal or Mahish Charani and Nakhkhali, all these being owned and held in possession by a different putnidar. This being so, it is not probable that there should be the lands of mouzah Nakhkhali to the north beyond Pingaldaha and the aforesaid beels appertaining thereto. The said pottah of Ram Mohan is herewith filed by a separate list.

“ 3. As the lands which the first party says to be in dispute, can not be accurately ascertained, I am unable to say definitely which plot of them is in my possession through which tenant. But all the lands appertaining to Bhatiar Dohal named Charai mahal or Mahish Charani are in my possession. I therefore pray that oral and documentary evidence may be taken and that the land in my possession may be ordered to remain in my possession. The 14th May 1880.

“ *Writer* :—Prasanna Kumar Chakravarti.”

It purports to be signed and sealed by Jagat Chandra, who was the father of the defendants.

The points in it on which the plaintiffs rely are :—

- (1) That the grazing land claimed is that previously demised to Bose and Bakshi ;
- (2) That it is described as north of the halat or pathway ;
- (3) That the jungle patit lands of Beel Fuldubi Ailia Kumargari Pingaldaha or Kalamasha are said to appertain to the mouzah of Pingaldaha belonging to a third party, and to intervene between the lands of Nakhkhali and Mahish Charani.

These are serious statements in the way of the defendants, not admissions and not conclusive, but forming an important piece of evidence, if genuine.

The defendants attack the genuineness of the document upon extrinsic and intrinsic grounds.

It was much discussed in the preliminary suits, and the majority of the Judges held it to be genuine, though some did not.

The Subordinate Judge in the present case has rejected it. The Judges of the High Court have accepted it. It is produced from the Court records, and the man who signs his name as writer Prasanna Kumar Chakravarti has been called as a witness by the plaintiffs to say that he was then doing business for Jagat Chandra and actually wrote it for him and saw him sign it, and that Jagat Chandra personally filed it. The Subordinate Judge has disbelieved this witness, but the High Court only thinks his evidence "open to some criticism." There is some contrary oral evidence given on behalf of the defendants.

It seemed to the Subordinate Judge curious that in a case of such importance Jagat Chandra should not have employed a regular pleader, and if he had employed one should not have got him to sign the statement. But the Judges in the High Court attached little importance to this observation.

The important criticism is the absence of all mention of this document in the order and judgment of the Magistrate and in the Order Sheet. It appears from the latter that originally both parties filed written statements. The date given for the filing is the 17th April. On the 23rd April, the Magistrate enters that both parties "file evasive applications. None state distinctly which particular land is the subject of dispute."

On the 14th May, the sub-manager of the Court of Wards put in a report or statement or specification in which he gave details. The Magistrate recorded the fact and further noted that "Jagat Chandra still withholds doing his duty." Now the written statement which is under examination purports to be dated that same day, the 14th May. There is an entry in the Order Sheet of a statement and of a plan both filed on the 14th May. These should be the sub-manager's. There is no entry of the filing of any other statement, either on that day or later, and the judgment ultimately delivered by the Magistrate, which has been already quoted, does not refer to and does not show any signs of his having read the supposed statement.

The Judges of the High Court thought the record in the Order Sheet imperfect because the document previously numbered was 28, and the statement which may be supposed to be the sub-manager's is apparently numbered 31, and they asked where were the papers which should be numbered 29 and 30. A little attention would have shown them that each sheet has a separate number, and that if a document has for example three sheets it would be numbered "29 to 31," that this document has three sheets, and that the paper just outside the number 31 is torn so that it no doubt originally stood as "29 to 31."

It is difficult to suppose that the statement would not have been entered if filed, and more difficult to understand the absence of all reference to it by the Magistrate.

The intrinsic objection to the genuineness of the document is that it is inconsistent with many assertions of title to the land south of the pathway, both before and after the date. Counsel for the plaintiffs met this by the suggestion that Jagat Chandra had only recently come into possession by foreclosure. But if this means that he had not had time to learn the true state of his property, the genuineness of the document is saved at the expense of its value.

It is very difficult to pronounce with certainty as to the genuineness of this document. If there was at the time land covered by water interposing between the grazing lands of Mahish Charani and the lands of Nakhkhali, it is possible that Jagat Chandra defending himself against a charge under the Criminal Code might rely upon their interposition and be not unwilling to suggest that they belonged to a third party. But to suppose that he intended to give up solid lands in Fuldubi Ailia or Kumurgari or adjacent to the Beels bearing these names is to make a most improbable supposition, particularly having regard to the leases he was making about this time.

There is another matter to be considered in deciding upon the genuineness of this written statement. Reference in it is made to a pottah granted to Ram Mohan Ghose in 1815, which is said to be filed in the proceedings by a separate list. There is again no note of the filing of any such document, but the Judges in the High Court have taken the view that it is the document recited in the judgment of 1840, and which the plaintiffs put in as part of their case, and which, if it be genuine, does to some extent support it, as the pathway is mentioned as the southern boundary of the lands included in it.

The High Court conceives that it must be genuine because it was referred to in the judgment of 1840. That there was such a lease there is no doubt, but the question is whether this is the document and how, if so, it could come into the possession of the plaintiffs. In the written statement it is said that Ram Mohan Ghose, the lessee under it, relinquished his right in it and returned the pottah to the predecessors in title of the defendants, which is what one would expect, and it would account for the same people relying upon it in the year 1840. Why again in the supposed written statement should reliance be placed upon this document which conveys grazing rights in 800 bighas only, and why should it, and it alone be filed when the defendants had the later and more important putni lease of a larger area?

The document which one would expect to be filed would be this putni lease. The earlier one might also be filed as giving some adminicular support, but not to the exclusion of the really important document. When the matter is closely investigated the supposed reliance on the filing of this one document instead of supporting the genuineness of the written statement makes against it. It may be observed in passing that if it were genuine it would not bear the weight the Judges in the High Court put upon it because as only 800 bighas were included in it, it may well be that

the balance of the larger area stretched across to the south of the pathway.

Upon the whole, their Lordships are not wholly satisfied that the written statement is a genuine document, nor do they think that if it were genuine it would have the effect or at any rate the weight, which the plaintiffs seek to attribute to it.

There is one other document upon which the plaintiffs relied which is a supposed counter-part of a lease in 1850, by which Banshi Badan granted to Kali Kanta the mouzah of Pingaldaha for ten years, and in which the boundaries of Pingaldaha are so stated, as to make them range up to the pathway. The Subordinate Judge rejected this document and the High Court, though with hesitation, came to the conclusion that no reliance could be placed upon it. Among other objections, only an attested copy, not the original, was produced.

On the other hand, the documentary evidence of all the kabulyats or counter-parts of leases, the mouzawaree register made under the Act of 1876 when carefully looked into, and the numerous items in the measurement chitta of 1853 of lands in Kalinagar and Ratinagar in Beel Ichhamati Mahis Charani Mahal, the frequent description of lands as south of the halat or east of the bhagar (another term for a pathway) where it runs north and south, which it only does in the southerly part, in or adjacent to the Beels of Fuldubi Ailia and Kumarguri, all of which Beels are south of the halat, or to Oobra Beel which is quite to the south, or to "the lands of Arua Dair," from 1838 onwards in demises by the predecessors of the defendants, is all one way.

It was attempted to meet these instances by a series of ingenious and bold suggestions, culminating in the hypotheses that there might be other halats and bhagars, and two Oobras and two Nakkhhalis; but though it is possible that some or even several cases might by the adoption of various hypotheses be explained away, it is impossible to get over all.

Finally, their Lordships have to remember that this is an action for possession, that the defendants are in possession and it is for the plaintiffs to prove a better title, that they claim these lands as belonging to the mouzah of Pingaldaha while the locality of Pingaldaha, except as a Beel, was already unknown at the date of the Thakbust survey in 1856, that the very name disappears after 1880, and that the area which the High Court has given for it is not arrived at by any positive finding of its boundaries, but by conjecturing the boundaries of the defendants' land and giving the rest to the plaintiffs.

Bearing these facts in mind their Lordships have no doubt that the decision of the Subordinate Judge was right, and should not have been reversed by the High Court. It is not necessary for this purpose to rely upon the statute of limitations, though if it were, their Lordships would agree with the Subordinate Judge upon this point also. The supposed recent acts of ownership by the plaintiffs are with one possible exception merely grants of jalkar leases in the Gangnala which, by the terms of

their putni lease, had passed to them independently of Pingaidaha, and which they could in turn sub-demise. There is nothing to compel a Court to hold that these rights extended over the lands in dispute.

Their Lordships cannot leave this case without making an observation of a nature which unfortunately this Board has had to make before, but seldom with such insistence as in the present case. The printed record contains 2,187 pages, besides about 100 pages of supplementary appendix; 368 of these pages are taken up in setting out the items of a measurement "chitta" of the property in the possession of the defendants in 1852. Their Lordships appreciate the importance of this document as supporting the possession by the defendants at that date of the property in dispute; but a few pages would have given all the materials necessary.

If the first nine pages giving a day's work with the details of the persons present, and showing various parcels of land in Kalinagar, and one or two pages showing parcels in the other disputed village of Ratinagar had been printed, and a few lines added stating that these were printed as specimen pages, every object would have been obtained. It is unfortunate that practitioners in India will not undertake the very slight responsibility which such action would lay upon them. But if they will not it ought to be the duty of some official in the High Court to see that such wholly unnecessary expense as has been incurred in the present case should not be allowed.

It was the appellants' duty to print the records. It is due to their default in the exercise of a discriminating judgment that so much unnecessary matter was wastefully printed, and as a lesson to their advisers and all other practitioners, their Lordships propose that the Registrar of the High Court of Bengal should disallow the actual costs of printing the record from page 1442—1664, both inclusive, and from page 1690—1797, both inclusive, and such consequential costs as he may think right in proportion, and that the costs to be taxed in England should also be reduced by such amount as the Registrar of the Privy Council may consider is attributable to the insertion of this superfluous matter.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court should be reversed, and the decree of the Subordinate Judge dismissing the suit with costs to be paid to the second defendant should be restored, and that the defendants should have their costs in the High Court, and their costs less those disallowed as aforesaid of their appeal to His Majesty in Council.

In the Privy Council.

GOPAL CHANDRA CHAUDHURI, SINCE
DECEASED (NOW REPRESENTED BY
SHAMAPADA CHAUDHURI AND OTHERS)

v.

RAJANIKANTA GHOSH, SINCE DECEASED, AND
OTHERS.

DELIVERED BY LORD PHILLIMORE.