

*Privy Council Appeal No. 91 of 1923.*

*Patna Appeal No. 23 of 1920.*

Tilakdhari Singh and others - - - - - *Appellants*

*v.*

Maharaja Kesho Prasad Singh - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 30TH JANUARY, 1925.

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*Present at the Hearing :*

LORD SHAW.

LORD BLANESBURGH.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

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This is an appeal from a decree of the High Court at Patna which affirmed a decree of the Subordinate Judge of Arrah. The question involved in the appeal relates to the extent or area of a mahal called Naubarar.

The judgments below, in so far as they are judgments of fact, were concurrent judgments, and Mr. De Gruyther very properly, on behalf of the respondent, intimated that he would object to the competency of the appeal on that ground.

Their Lordships allowed the case to be opened, and it has been opened with great clearness and fullness by Sir George Lowndes. He has explained the point bearing upon what is the true nature of the deliverance pronounced by the High Court and the Court below, and he has maintained that, notwithstanding an apparent concurrence in findings of fact, there still remains as after explained a case which can legitimately be brought, as matter of law, under the well-known Indian practice, before their Lordships.

Their Lordships, before entering upon the merits of the question, desire to express their satisfaction with the judgment of the High Court as expressed by Mr. Justice Das in the High Court, which, for fullness of statement, for clear articulation of the points in issue, could not be excelled.

Their Lordships note from that judgment exactly what was the nature of the duty which the learned Judges considered to be cast upon themselves in the construction of the title which is in issue in this case.

It is to be further noted that not only are there two concurrent judgments, but there was also an application for review, and a third judgment was pronounced thereon confirmatory of the preceding judgments.

If it appears that underlying findings in fact there are questions of law on which the findings proceeded or that there is a case that the Judges misdirected themselves, then the rule as to concurrent findings not being the subject of appeal does not apply—to the exclusion of such grounds of law as are alluded to.

It is important to see whether any case has emerged of this character. It is accordingly necessary to quote the following passage, which covers the question as to the ambit of their duty as they considered it in the construction of the title to this landed estate :—

“ I took the view,” says the learned Judge, “ that in order to understand what was actually settled ” (that is to say the extent of the land actually contained within the title as such) “ it was necessary to deal with certain documents on which the settlement was based, not to contradict any of the terms of the settlement, but to identify the thing demised. I considered all these documents ” (and then he names them) “ and came to the conclusion that what was actually demised was the tract of land bounded on the north by the plot No. 920 as shown in the Kistwar map of 1840, which formed the southern boundary of Gangbarar. As regards the southern boundary, there is no dispute that it consists of certain villages mentioned in the plaint.”

It was not disputed in the argument before their Lordships that what had been scrupulously in view of the Judges, according to their statement, was a correct appreciation of the limits and functions of a Court in construing a document of title submitted for its consideration. The learned Judges properly said that it was not the duty of the Court, and would have been contrary to their duty, to admit any antecedent documents for the purpose of contradicting the terms of the settlement made. What they had to do was what the learned Judge says they did, use any antecedent documents and maps solely for the purpose of identifying the thing demised.

In their Lordships' opinion there is no ground for the suggestion that the Judges of the Courts below failed in this duty or introduced illegitimate considerations into their view upon the titles and the facts. They having done that which was strictly their duty, their Lordships are of opinion that what remained was

a question of fact, and upon that question of fact the following is the finding as expressed by Mr. Justice Das :—

“ I find no good reason for holding that the lands comprised in the settlement of 1862 were not, and much in the antecedent documents starting from Exhibit U and ending with Exhibits 91, 32 and 33 to indicate that they were, well defined and well ascertained, bounded on the north by the black line of 1851 which corresponds with the southern boundary of plot No. 920 in the Kistwar map of 1840, and on the south by the plaintiff's villages mentioned in the plaint ” ;

and in a further passage of his judgment the same learned Judge declared :—

“ On a consideration of all the evidence in the case, I am clearly of opinion that the plaintiff has proved that the entire block of land bounded on the north by the southern boundary of plot No. 920 in the Kistwar map of 1840 or the black line in the map of 1851 and on the south by the plaintiff's villages mentioned in the plaint was settled as Sheopur Diar Naubarar with the predecessors in title of the defendants.”

It is admitted—it must of course be admitted—that that entire block so taken is not limited by any measure as descriptive of the block. It must be further admitted that, upon the antecedent documents thus legitimately taken into view, that entire block, subject to the matter of the boundaries mentioned, was settled as the new mahal of Naubarar.

In those circumstances their Lordships are of opinion that the point as to competency is well taken and that this appeal is incompetent.

A point was mentioned with regard to the revenue assessable from the neighbouring mahal of Gangbarar by the revenue authority. Their Lordships enter in no way whatsoever upon that matter and make no pronouncement which would be either limitative or regulative of the rights of parties with regard to revenue proceedings. Such a point is not before their Lordships.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed on the ground of incompetency and to allow against the appellants to the respondent the costs of these proceedings.

In the Privy Council.

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TILAKDHARI SINGH AND OTHERS

vs.

MAHARAJA KESHO PRASAD SINGH.

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DELIVERED BY LORD SIMON.

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