

*Privy Council Appeal No. 130 of 1927.*  
*Bengal Appeal No. 68 of 1925.*

Gnanendra Kumar Roy Chowdhury and others - - - *Appellants*

*v.*

Prafulla Nath Thakur - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 4TH JUNE, 1929.

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*Present at the Hearing :*

LORD TOMLIN.

LORD SALVESEN.

SIR BINOD MITTER.

[*Delivered by* LORD TOMLIN.]

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This is an appeal by the defendants in the suit against a decree dated the 9th July, 1925, of the High Court of Judicature at Fort William in Bengal.

The decree of the High Court affirmed the decree dated the 8th March, 1923, of the District Judge of Barisal, reversing (except in one minor respect) a decree dated the 22nd September, 1921, of the Subordinate Judge of Barisal.

As a result of the decisions of the District Judge and the High Court the plaintiff holds a decree for the recovery of possession from the defendants of certain alluvial lands in Mauza Chur Daiya, which is part of the plaintiff's *zemindari*.

By this appeal the defendants seek to have this decree reversed and to have the plaintiff's suit dismissed.

The plaintiff raised a preliminary objection to the appeal based upon the allegation that the value of the subject matter of the suit or of the appeal was less than Rs. 10,000, but their Lordships are of opinion that this objection was not well founded, and that the appeal must be dealt with on its merits.

The plaintiff and his predecessors in title have been at all material times and the plaintiff now is entitled to a *zemindary* which includes Mauza Chur Daiya and the adjoining Mauza Daiya.

In Mauza Chur Daiya there are four *howlas*, of which three, namely, Komar Ali, Asraf Ali, and Ensan Bibi, belong to the defendants, who acquired them by auction purchase.

The fourth *howlah*, namely, Ram Manikya Pal, was in the past acquired by auction purchase by the plaintiff or one of his predecessors in title and is now the property of the plaintiff.

The plaintiff or one of his predecessors in title also acquired by auction purchase the *taluk* of Adinath Roy, and the same is now owned by the plaintiff. This *taluk*, according to the plaintiff's case, comprised lands both in Mauza Daiya and in Mauza Chur Daiya, but the Subordinate Judge and the District Judge came to the conclusion that it had not been proved that any part of the lands of the *taluk* were situated within Mauza Chur Daiya.

For many years the northern part of Mauza Chur Daiya (including the defendant's *howlas*) has been submerged by the Maskata River, which bounded the *mauza* towards the north.

Recently the lands in dispute, which are admittedly within the Mauza Chur Daiya, were reformed. They are not yet fit for cultivation. Upon their reformation these lands were taken possession of by the defendants. The plaintiff on his part laid claim to them, and on the 27th May, 1919, with certain other formal parties, filed a suit for recovery of possession in the Court of the Subordinate Judge of Barisal.

In his plaint the plaintiff stated his title as *zemindar* and alleged that his *zemindary* included the Mauza Chur Daiya.

The plaintiff further alleged that no right could accrue to the defendants in respect of the disputed lands, that during the settlement measurement of 1903 the entire lands of the defendants' *howlas* were found intact, and that the disputed land was the *khas* land appertaining to the plaintiff's Taluk Adinath Roy included in their *zemindary*.

The plaintiff then claimed by way of relief that a decree for possession might be passed in favour of the plaintiff upon establishment of his right to hold *khas* possession of the land in suit and that the defendants might be evicted therefrom.

The defendants in their written statement denied that there was any *taluk* called Adinath Roy in Chur Daiya, and alleged that the disputed lands were reformations on the original sites of their *howlas*.

A commissioner was appointed to hold a local enquiry, and his report was made on the 24th June, 1921. He came to the conclusion that there was no proof that the disputed land formed part of the Taluk Adinath Roy. He prepared a map upon which he showed the boundaries of the defendants' *howlas* as indicated

in the Settlement Record of 1903, and he drew the conclusion that a small portion of the disputed lands marked A on his map, being the extreme south-west corner of such lands, was part of the defendant's *howlas*, and that except to this extent it could not be said that the disputed lands were included in the defendants' *howlas*.

The matter came to trial before the Subordinate Judge, and on the 22nd September, 1921, he dismissed the suit. The learned Subordinate Judge called attention to the contention of the plaintiff that he as *zemindar* was the owner of the entire *mouzah* and as such entitled to get possession of every bit of land save and except the small quantity which might be found to appertain to the defendants' *howlas*. He did not, however, deal with this contention, but held that the plaintiff had not proved that the lands in dispute formed part of Taluk Adinath Roy and dismissed the suit.

The plaintiff appealed, and in his grounds of appeal made it clear that he was claiming the lands in dispute in *zemindary* right as well as in *taluki* right in respect of Taluk Adinath Roy.

On the 8th March, 1923, the District Judge reversed the Subordinate Judge and decreed in the plaintiff's favour recovery of possession of the lands in dispute, except the small portion marked A on the Commissioner's map. This portion the plaintiff no longer claimed.

The District Judge held that it was not shown that the *howlas* of the defendants' were nearly co-extensive with the total area of the *mouza*, *i.e.*, so as to include the lands in dispute other than the portion marked A on the Commissioner's map, and that it was not conclusively shown, though it was probable, that lands of Taluk Adinath Roy were included in the *mouza*. He then pointed out that the plaintiff was *zemindar* of the *mouza*, and, as far as the suit was concerned, was suing as such, and held that the burden of proof lay on the defendants to show that the disputed lands were within their *howlas*.

The defendants appealed to the High Court, and on the 9th July, 1925, the High Court delivered judgment dismissing the appeal.

The defendants obtained leave to appeal to His Majesty in Council, and appealed accordingly.

It was but faintly contended before their Lordships' Board that if the plaintiff was entitled to rely upon his title as *zemindar*, the result of the suit, having regard to the findings of the District Judge, could be other than it was before the High Court. The plaintiff's title as *zemindar* is not questioned. The lands in dispute are admittedly within the ambit of the *zemindary* and the defendants have failed to prove (except in respect of the portion marked A) that the lands are within their own *howlas*. In their Lordships' judgment, upon such a state of facts the plaintiff must succeed.

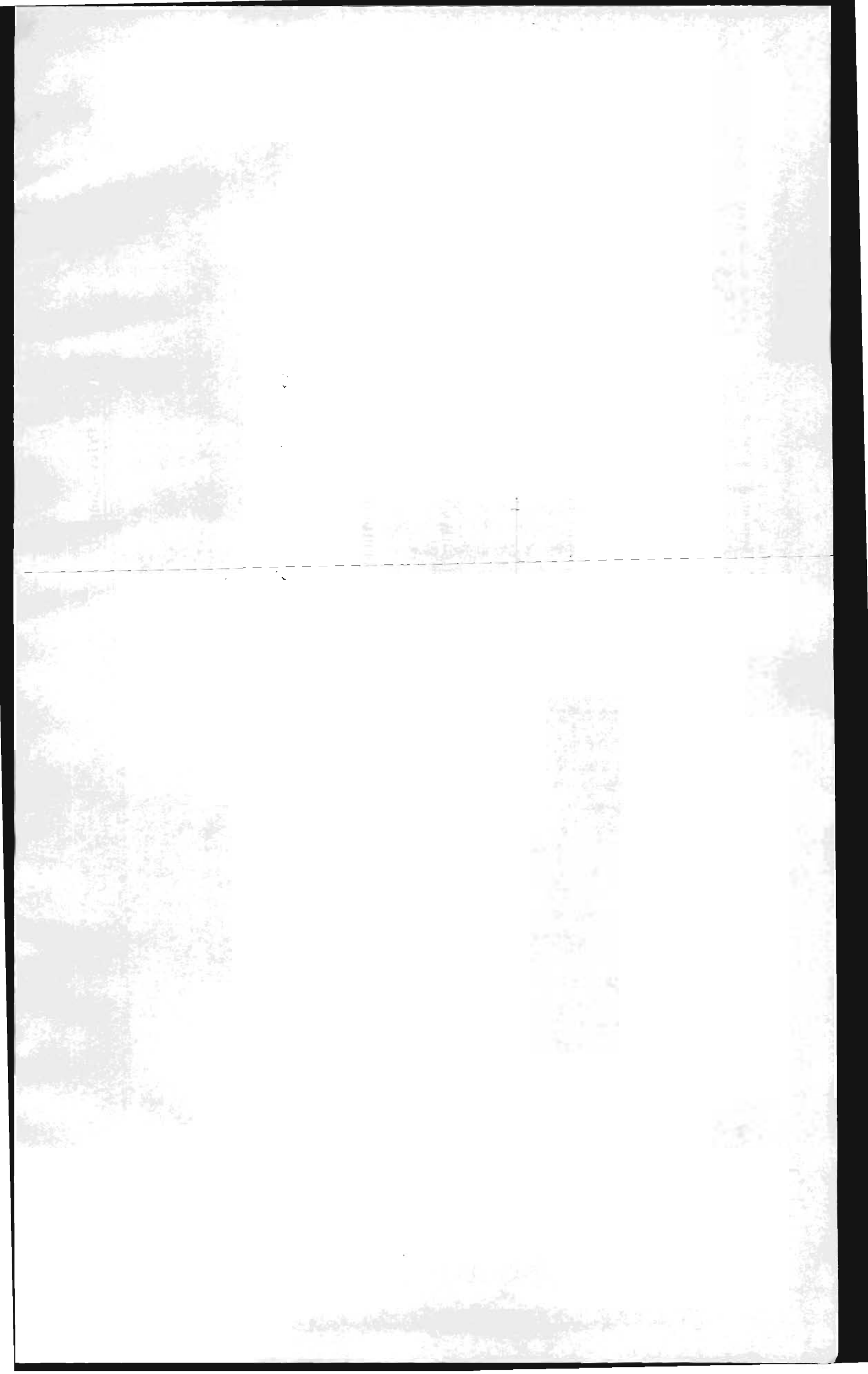
It has, however, been urged by the defendants that the only case raised by the plaintiff in his plaint was one based upon his

ownership of the *taluk*, and that therefore he is not entitled to succeed in his *zemindary* title if he has failed (as admittedly he has) to establish his *taluki* title.

In their Lordships' judgment, the plaint was intended to raise the case of *zemindary* title, as well as that of *taluki* title, and the point which was before each of the Courts below is open to the plaintiff before their Lordships' Board. Even if, however, the plaint be regarded as ambiguous, all doubt as to its meaning was set at rest when the matter came before the Subordinate Judge. Before him the case of *zemindary* title was raised, and from that time onward that aspect of the case was kept well to the front. If the defendants were originally misled by the language of the plaint and desired an opportunity of calling further evidence directed to the case of *zemindary* title, it was their duty to make their application at the earliest possible moment. No such application was in fact made, and it may well be because there was not available any material beyond that already before the Court. It is now too late, in their Lordships' opinion, for the defendants to rely upon any alleged ambiguity in the plaint.

In the result, therefore, their Lordships are of opinion that the judgment of the High Court was right and that the appeal should be dismissed, and they will humbly advise His Majesty accordingly.

The appellants must pay the costs of the appeal.



In the Privy Council.

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GNANENDRA KUMAR ROY CHOWDHURY  
AND OTHERS

v.

PRAFULLA NATH THAKUR.

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DELIVERED BY LORD TOMLIN.

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