Privy Council Appeal No. 64 *of* 1931.
Bengal Appeals Nos. 26 *and* 27 *of* 1929.

Tarakdas Acharjee Choudhury, since deceased (now represented by Asitabarani Debi), and others - - *Appellants*

v.

The Secretary of State for India in Council and others - *Respondents*

Same - - - - - - - *Appellants*

v.

The Secretary of State for India in Council and others - *Respondents*

(*Consolidated Appeals*)

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 13TH MAY, 1935.

Present at the Hearing:

LORD BLANESBURGH.
LORD THANKERTON.
SIR SHADI LAL.

[*Delivered by* SIR SHADI LAL.]

The dispute in this consolidated appeal relates to the ownership of large tracts of land formed by the recession of the river Padma, which is the name given to the branch of the Ganges flowing between the Dacca and the Faridpur districts of Bengal. The plaintiff-appellants are admittedly co-sharers in estate No. 4002 of the Faridpur Collectorate, otherwise known as Taluk Kunwar Bishvanath, which comprises, *inter alia*, three villages, namely, Mauza Harirampur, Mai Parchar and Bhati Bishvanathpur (the villages to be described hereinafter shortly as Mauza Harirampur). It is common ground that in 1793 the estate was permanently settled with the predecessors in title of the appellants, and the question, which their Lordships have to determine, is whether the lands in dispute formed part of Mauza Harirampur at the time of the permanent settlement.

The river Ganges, in its course through the district of Dacca and the neighbouring districts, frequently changes its channel, and throws up large plots of land which give rise to conflicting claims. In order to provide for the assessment of such lands to land revenue, the Government of Bengal is empowered by Act IX of 1847 to direct the local revenue authorities to make a revenue survey of the alluvial lands, and to determine the revenue which they are liable to pay to Government. If any land is thrown up by a large and navigable river and appears to be the property of Government, the revenue officers are required to take immediate possession of the same on behalf of Government, and to assess and settle it according to the rules in force in that behalf. It is, however, open to the person, who claims to be the proprietor thereof, to establish his right by bringing a suit in a competent court of law.

It appears that large areas of land emerged from the river between 1870 and 1878, and the Collector of the district found that they did not form part of any permanently settled estate and settled them temporarily with certain persons. The plaintiffs, who admittedly got no land at that time, did not challenge the propriety of the action taken by the Collector until 1918, when they commenced the present suits to recover possession of the property as owners. They founded their title on the allegation that the lands were included in Mauza Harirampur in 1793, and that, though they were subsequently submerged by the river, they appeared again and became part of the dry land of their estate. This allegation was denied by the Secretary of State for India, who claimed that, at the date of the settlement in 1793, the lands formed part of the bed of the river and were the property of the State. The main issue arising upon the pleadings was whether the lands were included in Mauza Harirampur in 1793, and the Subordinate Judge answered the question in the affirmative. On appeal by the Secretary of State, the High Court dissented from that conclusion, and dismissed the suits. From the judgment and decrees of the High Court the plaintiffs have brought appeals, which, depending, as they do, on the determination of a common issue, have been consolidated.

It is not suggested that this is a case of the acquisition of land from the river by means of gradual accession, where the accretion is held to belong to the owner of the adjoining land. The case for the appellants is that the lands in dispute were their property before they were submerged, and that the title, which was dormant when they remained under water, revived on their appearance. There can be no doubt that if they were the owners before submersion, they would, on the re-appearance of the lands, be entitled to resume possession thereof. The onus is, however, on them to prove their original title, and the question is whether they have

discharged that onus. The appellants sought to maintain that the only defence open to the respondent, on the pleadings, was that the lands in suit formed part of the bed of the river at the time of the settlement, but their Lordships, in view particularly of paragraphs 5 and 6 of the respondent's written statement and issues Nos. 5 and 6, agree with the High Court that the appellants, as plaintiffs in a suit for ejectment, have been put to the proof of their title.

It may be stated at the outset that neither party has produced any documents containing particulars of the estate as it existed at the time of the permanent settlement. On behalf of the appellants it is contended that the documents in question should be in the custody of Government, and have been deliberately withheld in order to prevent them from showing that the property was part of their permanently settled estate in 1793. There is, however, no justification for this charge. As observed by the High Court, all the documents required by them from the record office of the collectorate were mentioned in their application of the 30th November, 1925, and were duly produced by the person in charge of that office. They did not subsequently ask for the production of any other document, nor is there any warrant for the assumption that the documents relating to the permanent settlement of the estate were still in existence after the lapse of more than a century and a quarter and were suppressed in order to injure the appellants.

The evidence, which is the mainstay of their case, is that furnished by certain returns submitted in 1799 by the then proprietor of the estate to the revenue authorities. These returns are called *Chauhaddibandi* (literally meaning " fixing of four boundaries ") papers, and may conveniently be referred to as boundary papers. They give, not only the boundaries of the different villages constituting the estate, but also the areas of those villages. Now, Mauza Harirampur, which according to the appellants included the disputed lands, was bounded on the north and north-west by certain villages which were owned by other proprietors. The argument advanced for the appellants is that the lands, when they emerged from the river, should be deemed to belong to the villages adjoining the river; and that, if they were not the property of the proprietors of the villages situated towards the north of Mauza Harirampur, as is clear from the rejection of their claims by the revenue officers in the course of the deara proceedings, they must, by the process of elimination, be held to be part of that mauza. To this argument their Lordships are unable to accede. There might be various reasons for the failure of the proprietors of the other villages to bring suits to contest the orders of the revenue authorities, and their omission to sue does not necessarily lead to the conclusion that they had no interest in the property and the appellants alone were entitled to it. If this contention were sound, it could be urged with equal

force that the proprietors of those villages would have succeeded, if they, instead of the appellants, had brought similar actions to recover the lands. The title of a person must depend upon the strength of his own case, and not upon the fortuitous circumstance of whether another person in a similar position had, or had not, pressed his claim. Nor can it be assumed that the lands must be treated as private property and do not belong to the State.

The total area of the various classes of land included in Mauza Harirampur in 1799, as given in the boundary papers, was only 455 bighas; and there can be no doubt that, if that area were the determining factor, the appellants, who have already got more than 19,000 bighas, would not be entitled to claim the disputed lands which measure about 16,500 bighas. It is, however, explained that in 1799 the mauza comprised, not only 455 bighas, but also a large tract of dry land, which, by reason of its non-productive character, was not considered to be so important as to require special mention. The boundary papers, however, give, not only the total area, but also its sub-division into lakheraj, cultivated and waste lands; and there is no *prima facie* reason why this large tract of dry land should not have been even alluded to, if in fact it formed part of the village. Nor can the appellants rely on the argument accepted by this Board in the unreported case of *Haradas Acharjya Chaudhri* v. *The Secretary of State for India in Council*, (P.C. Appeal No. 49 of 1914). In that case there were two zamindaris belonging to the then plaintiffs, and the river ran through them. The villages constituting the zamindaries formed a compact block, which covered the whole of the disputed land. It was considered unnecessary to determine the boundaries of the villages *inter se*, or their areas; as the villages, which were contiguous, were properties of the same owners, and there was no other person who claimed any interest in them. The plaintiffs were, therefore, entitled to the land whether it was included in one village or another. But in the present case the disputed property is not situate within a block of villages belonging to the same proprietor, and the village, within which it is sought to be included, is bounded by the river on one side. It can not, therefore, be said that its physical features exclude the possibility of the ownership of any other person. A case of this character was expressly excluded by their Lordships from the operation of the principle adopted by them.

It, however, appears that in 1840 a large plot of land thrown up by the river was awarded to the proprietors of Mauza Harirampur, and the area mentioned in the boundary papers was not held to be decisive against their claim. But the acquisition at that time related to land which was situated on the south of the river, and cannot be invoked by the appellants in connection with their present claim which relates to property on the opposite bank of the river.

The evidence summarised above, even if it stood unrebutted, would hardly sustain the proposition that the appellants have affirmatively established that the disputed lands were reformations on the sites which were included in their mauza in 1793. While their Lordships do not think that Rennell's maps, which do not make any mention of the mauza, can be of any assistance to the respondent, they consider that there are two important circumstances which militate against the case set up by the appellants. In the first place, while it is true that the revenue survey maps prepared in 1858 show the physical situation of the river at the date of the survey, there is the admitted fact that the lands in question were not shown on those maps to be their property, but formed part of the bed of the river. The appellants have not satisfied their Lordships that any portion of the village of Harirampur is shown as situated on the north bank of the river; and, so far as the maps show, the south bank of the river forms the northern boundary of that village. It is beyond question that the bed of a public navigable river, and the river Ganges undoubtedly belongs to that category, is presumed to be the property of the Government, and not that of a private person. The revenue survey was conducted by a public officer in the exercise of his statutory authority, and he must have given an opportunity to all the persons interested in the proceedings to make their claims and to produce their evidence in support thereof. The maps thus prepared after due enquiry are presumed to be correct, unless they are shown to be wrong. There is no evidence to rebut that presumption.

The second circumstance is no less important. As stated above, the lands in dispute were held by the deara survey authorities in 1878 to be outside the permanently settled area, and were settled with certain persons other than the appellants. It is possible that the lands never remained above water for a continuous period of twelve years, and the suits brought in 1918 cannot, therefore, be held to be barred by time. The fact, however, remains that the appellants were not found to be the owners of the lands, and it is significant that they did not advance their claim for a period of nearly forty years. It cannot be seriously suggested that during this long period they were unaware of the action of the revenue authorities which was presumably taken with due publicity. The only reasonable explanation of their long silence is that they did not think that they had any title to the property.

Upon an examination of the evidence to which their attention has been invited, their Lordships are of the opinion that the appellants have not succeeded in proving that the disputed lands were dry land in 1793 and formed part of Mauza Harirampur. They will, therefore, humbly advise His Majesty that this appeal should be dismissed with costs.

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In the Privy Council.

TARAKDAS ACHARJEE CHOUDHURY, SINCE DECEASED (NOW REPRESENTED BY ASITABARANI DEBI), AND OTHERS

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS

SAME

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS.

(*Consolidated Appeals*)

DELIVERED BY SIR SHADI LAL.

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