

(1935) 07 CAL CK 0042
In the Calcutta High Court

Humayun Raja Chaudhury and Another	APPELLANT
Vs	
Jyotirmoyee Debi and Others	RESPONDENT

Date of Decision : 25-07-1935

Acts Referred:

Bengal Survey Act, 1875 — Section 40
Letters Patent Act, 1865 — Section 15

Citation : AIR 1936 Cal 452

Hon'ble Judges : M.C. Ghose, J

Bench : Division Bench

Judgement

M.C. Ghose, J.—This is an appeal by the defendants in a suit for declaration of title and recovery of possession of certain lands. The plaintiff, who may be called the Rani of Pakur, is the widow of Kalidas Pandey, who died in 1928. The plaintiff is the tenure holder of Mouza Chak Purapara and the defendants are the tenure holders of Mouza Purapara. In the old days between the two Mouzahs ran the river Bhagirathi, Purapara being on the west and Chak Purapara being on the east. In course of time the river shifted over to the east or to the west and thereby threw up lands either side till the boundaries of the two villages have become difficult to ascertain. In the present case the suit lands were divided into three schedules. The Ka schedule lands which were fit for cultivation from before 1914, and the Kha schedule lands which were sandy and not fit for cultivation in 1916 and, lastly, the schedule lands which were under water in 1916 and rose above water thereafter. A Commissioner was appointed and he made a map of the locality. On consideration of all the evidence, the trial Court decreed the plaintiff's suit against the appellant (defendant) holding that the plaintiffs had proved their title to the lands as appertaining to their Mouza Chak Purapara, and that the lands being in possession of cultivating tenants, the plaintiffs would be entitled to receive rent from them. Against that judgment the defendant made an appeal unsuccessfully in the Court of the District Judge.

2. The tenants defendants did not appeal. Their position is more or less secure as they will hold as tenants, and it is a matter of not much importance whether they

are tenants under the plaintiffs or the defendant landlords. The contest is between the plaintiffs putnidars on the one side and the defendants putnidars on the other. On the question of title, both the Courts below have found that the lands appertained to Mouza Chak Purapara and the plaintiffs are entitled to the same. That finding is not challenged in this Court. As to the Ga schedule lands which rose above the water, within less than 12 years, the learned advocate for the appellants does not press the appeal. But he has strongly urged that both as to the Ka and Kha schedule lands, the plaintiff's title has been extinguished by the law of limitation. Taking first the Ka schedule lands: These were sub-divided in the Court into Ka, Ka-1 and Ka-2, according to the possession of tenants, but it is not necessary at this stage to consider the sub-division. The Ka schedule lands consist of 22 plots in the petty settlement of village Purapara. It has been proved that the defendants Chaudhurys applied for a petty Record of Rights of their Mouza Purapara and work began in 1914 and was finished in 1916. In this petty settlement there was a dispute about the boundary between the two mouzahs, namely Purapara and Chak Purapara. The dispute was raised by the defendants Chaudhurys. It was defended by Miah Shahebs, who were the four annas co-sharers of the tenure of Chak Purapara. It was not defended by the 12 annas co-sharer tenure holder Kalidas Pandey, predecessor of the plaintiff.

3. Upon hearing the learned advocates it is clear that Kalidas ought to have defended the matter, but he did not choose to defend it. It appears that shortly before this he had been defeated in a suit by the Chaudhurys against him, and he did not choose to contest the matter further. The dispute was decided on 7th April 1915 by the Assistant Superintendent of Survey. He declared that these 22 plots, constituted in the Ka schedule lands, were part of Mouza Purapara and the defendants were entitled to possession of the same. This decision was made u/s 40, Survey Act.

4. It is urged that u/s 40, Survey Act, the decision operates as a civil Court decree and it stands good until it is set aside by a proper suit. The question is whether the plaintiff, the successor of Kalidas, is bound by the decision of 7th April 1915. It was urged on the authority of the case in *Narendra Nath Roy v. Srinath Sandel* (1891) 19 Cal 641 that a Settlement Officer has no authority under the provision of the Bengal Tenancy Act to entertain any dispute between persons interested in neighbouring estates as to the title of any land. This proposition is incorrect as the law has been amended since 1891. At present the Settlement Officer has authority to decide a dispute between two neighbouring proprietors under the provisions of Section 102 (dd). The preparation of survey and record of rights consists of four stages. The first stage is of the survey and preparation of the map. The second stage is as to the writing of the draft record. The third is the publication of the draft record and disposal of objections. The fourth stage is the publication of the final decree. It was in the first stage that the question of boundary between the village Purapara of which the record was prepared, and the adjacent village Chak Purapara, came into question and the Assistant Superintendent of Survey had legal authority, and it was, in fact, his

duty to decide the dispute. The fact that Kalidas did not appear and defend his interest in that dispute is of no avail to the plaintiff. She is clearly bound by the decision of the Superintendent of Survey and limitation will run against her from 7th April 1915 as regards this schedule lands. I am fortified in this view by the decision in *Probhu Charan Bharti v. Secretary of State* 1921 Pat 31. The suit not having been instituted within 12 years from that date, her title has been extinguished and the suit is dismissed in respect of the lands of the Ka schedule.

5. In respect of Kha schedule lands it has been found that they just rose above water in 1916, and were sandy and not fit for cultivation. In the Record of Rights, which was finally published on 22nd December 1916, they were recorded to be within the tenure of the defendant tenure holders. If it be held that the adverse possession commenced on 22nd December 1916, the date of publication of the final record, the suit is within time having been instituted on 22nd December 1928. It has however been urged by the learned Advocate of the defendants-appellants that the final publication did indeed finally state that these lands were within the tenure of the defendants, but this was not the first date when such a statement was publicly made. The statement had been made by the defendants and accepted by the settlement authorities long before that date and the draft Record of Rights contained the same, and must have been published at least a month before the final record. It should therefore be held that the plaintiff must have received notice of the defendants' adverse possession long before 22nd December 1916. The argument is not without force, but having regard to the circumstances of the case the Courts below were not wrong in not accepting the same. These lands were sandy lands and they were actually possessed by tenants who were indifferent as to which of the rival tenure holders claimed the rent from them. Actually these lands were not under cultivation on the date of the final record. They came under cultivation afterwards and there was a dispute between the rival tenure-holders which was decided in favour of the defendants on 15th November 1918. In the circumstances it cannot be held that the Courts below were wrong to hold that this claim is not barred by limitation. In the result the appeal is allowed in part with costs in proportion to success throughout. Leave to appeal u/s 15 of the Letters Patent is refused.