
(1919) 06 PAT CK 0006
In the Patna High Court

Lala Lachmi Narayan Lal and Others

APPELLANT

Vs

Maharaja Bahadur Kesho Prasad Singh

RESPONDENT

Date of Decision : 26-06-1919

Acts Referred:

Citation : 52 Ind. Cas. 147

Hon'ble Judges : Das, J; Coutts, J

Bench : Division Bench

Judgement

Coutts, J.—These appeals arise out of three suits brought in respect of 1650, bighas of land situated in the District of Shahabad. The plaintiff, who is the Maharaja of Dumraon, is the proprietor of a large tract of land lying on the south bank of the Ganges, and his case, as made in the plaint, is that the land in suit has gradually accreted to three of his Mouzahs Sonbarsa, Issurpura and Ojhawallia and that by virtue of a custom obtaining in that locality the deep stream of the river Ganges is the boundary between the districts of Balliah and Shahabad and between the lands of the proprietors on both sides of the river. The defendants in the suits are the proprietors of two Mouzahs, Pandepur and Bans Gopal Chapra, which were originally situated in the District of Balliah on the north side of the river, and their contentions shortly are that the land in suit is not a gradual accretion to the Mouzahs Sanbarsa, Issurpura and Ojhawallia, but that it is a re formation in situ of their Mouzahs Pandepur and Bans Gopal Chapra, which were suddenly diluviated and as suddenly re-formed on the south of the river.

2. The suit was in the first instance decreed ex parte in favour of the plaintiff, but on appeal this decree was set aside and the suit was remanded for decision of the issues which were involved in the suit. The findings on these issues have now been returned and are in favour of the defendants. The result is that the plaintiff is now in the position of an appellant. I may note that the proprietors of Bans Gopal Chapra have not appealed as this Mouzah, we are informed, has been purchased by Government. We are concerned in these appeals, therefore, with

the land which is alleged by the defendants to be a re-formation in situ of the Mouzah Pandepur only.

3. In the suit there were three main questions for decision and these are also the main questions for decision in these appeals:

1. Whether the land in suit is a gradual accretion to the plaintiff's Mouzahs caused by the Ganges gradually receding north-ward?

2. Whether the land in suit is a re-formation in situ of the defendants' Mouzahs Pandepur and Bans Gopal Chapra; and

3. Whether there is a custom that the deep stream of the river Ganges is the boundary between the estates on each bank of the Ganges?

4. With regard to the first point a mass of evidence, both oral and documentary, has been adduced to show that the Ganges has been receding northward in this locality for the last 20 years and that the lands on the north bank have been diluviated while there has been a considerable accession of land to the estate of the Maharaja of Dumraon on the south bank of the river. The formation of the land in suit is said to have begun in the year 1891 and to have been completed in the year 1901. It is impossible to say exactly how much land diluviated on the north bank of the river and how much new land was formed on the south bank of the river during the period, but it appears that Pandepur was completely diluviated between the years 1892 and 1900 and during this period the plaintiff's Khasras show accretions of about 1730 bighas to Issurpura, between 600 and 700 bighas to Sonbarsa and between 700 and 900 bighas to Ojhawalia. The river frontages of Issurpura, Sonbarsa and Ojhawalia were apparently about 1 1/2 miles, 1/2 mile and 1/2 mile respectively and the first question is whether new formations of this magnitude can be treated as gradual accretions within the meaning of Regulation XI of 1825 or not. It is settled law in England that in order to be an accretion, land must be formed by gradual, slow and imperceptible degrees. The leading case on the point is *Rex v. Yarborough* (1824) 3 B. & C. 91 : 4 D. & R. 790 : 107 E.R. 668 : 27 R.R. 292, and "imperceptible" in that case was explained as meaning imperceptible in progress, i.e., step by step as the accretion is formed and not imperceptible in the result after a long lapse of time. It would appear, therefore, that it is not the extent of the land formed which would decide whether newly formed land is an accretion or not, but the manner in which the formation takes place. The question of accretion in India has been the subject of many decisions by the Privy Council, but in none of them has the question of what extent of newly formed land can be called an accretion been considered. In *Lopez v. Muddun Mohun Thakoor* 13 M.I.A. 467 : 14 W.R. (P.C.) : 115 B.L.R. 521 : 2 P.C.J. 336 : 2 P.C.J. 594 : 20 E.R. 625 the language of the English Law, that accretion should be gradual, slow and imperceptible, was apparently adopted but that was a case in which the land, which formed part of a Mouzah on the bank of the Ganges was wholly diluviated, after diluvion there was a subsequent diluvion and finally a recession of the river which left the land

originally diluviated re formed on its original site. The decision of their Lordships of the Privy Council was that the land diluviated and subsequently re formed in situ was not an accretion. The question, therefore, of whether accretion should be "slow and imperceptible" did not arise in that case, nor did it arise in *Nogender Chunder Ghose v. Mahomed Esoff, the Collector of Chittagong* 18 W.R. 113 : 12 B.L.R. 406 : 3 P.C.J. 151 in which the language used is the same. This language has also been used in other oases in India, but in none of them do we find that the question has really arisen. It is by no means clear, therefore, that it has ever been the law in India that accretion must be slow and imperceptible." In the Regulation the expression used is "gradual" and if indeed it was the law in this country that it must also be slow and imperceptible," this view has been materially modified by the latest decision of the Privy Council, *Srinath Roy v. Dinabandhu Sen* 25 Ind. Cas. 467 : 42 C. 489 : 18 C.W.N. 1217 : (1914) M.W.N. 654 : 1 L.W. 733 : 16 M.L.T. 319 : 12 A.L.J. 1193 : 20 C.L.J. 385 : 16 Bom. L.R. 901 : 41 I.A. 221 (P.C.). This was a case regarding a fishery and although the question of accretion did not directly arise, *Lopez v. Muddun Mohun Thakoor* 13 M.I.A. 467 : 14 W.R. (P.C.) : 11 5 B.L.R. 521 : 2. P.C.J. 336 : 2 P.C.J. 594 : 20 E.R. 625 and the other leading cases on the subject of accretion were discussed before their Lordships and Lord Sumner in his judgment, after pointing out that under the different conditions prevailing in the case of the English and Indian rivers what would be almost miraculous in the case of the former is normal and commonplace in the case of the latter, remarked: "It is to be observed that here too Indian law, doubtless guided by local physical conditions, has adopted a rule varying somewhat from the rule established in this country. Where under English conditions the rule applies to "Imperceptible" alterations, Regulation XI of 1825, Articles 1 and 4, speak of Gradual accession." The analogy of the English rule can hardly be prayed in aid when Indian Legislation has thus an established and different rule on the same subject." It would thus appear that a distinct difference between the law in England and the law in India has been recognized by their Lordships of the Privy Council. The reason for the difference is ascribed to local physical conditions, and in interpreting the law of alluvion in India we should be guided by these local physical conditions. The question of the extent of newly formed land which can be held to be an accretion was discussed in the case of *Secretary of State v. Rajah of Vizayanagaram* 40 Ind. Cas. 896 : 40 M. 1083 : 22 M.L.T. 57. In that case, Ayling, J., remarked: "I do not think we should be justified in refusing to recognize plaintiff's title to the land thus formed on the ground of the comparative rapidity with which the formation took place. No doubt the reported decisions of the English Courts would seem to indicate that they would refuse to treat snob a formation as an accretion, if it occurred in an English river. An addition of over 600 acres in the course of a single flood season could not be described as slow and gradual according to the standard of additions by alluvion in English rivers. But there is nothing abnormal in such a phenomenon in Indian rivers: and although several oases have been quoted in which the Privy Council has dealt with claims to accretions by alluvion in Indian rivers, I find none in which this claim has been rejected merely on the ground of

the extent of land thus newly formed and the shortness of the period occupied in formation." The mere fact then that land is formed in a period which would be impossible in England, would appear to be no reason why it should not be treated as a gradual accretion. In the present case the land which has been newly formed has varied from a very narrow strip to a strip which would extend to about three-quarters of a mile from the original bank of the river in one year. The evidence, however, is that this has been caused by the natural silting up of the river bed and not by any sudden change in the course of the river. I am, therefore, of opinion that if this had been the only point in the case, it would have been a case of gradual accretion and the plaintiff would have been entitled to succeed. The case, however, does not rest on the decision of this point.

5. The next question is the question of re formation in situ. Unfortunately we have not been supplied in this case with a map shewing the position of the land in suit on the revenue survey map. The result is that we have had to hear a lengthy discussion as to the position of the land in suit relative to Mouzah Pandepur and have ourselves had to compare a large number of maps; and although I am satisfied as to the result, I consider it was the duty of the parties to have had such a map prepared and of the Court to see that this was done. Although, as I have said, we have had to compare a large number of maps, I shall refer only to those on which I rely, These are Exhibits B, 267, 371 and 117. Exhibit B is a map prepared in the year 1903 by two Deputy Collectors--one from the district of Balliah and the other from the district of Shahabad. In this map is shown the course of the river, the position of the Mouzahs on the north side of the river, which had not then been diluviated, and the position of the Mouzahs which had been diluviated, and which had re-formed on the south side of the river, and from it we find Pandepur had in 1903 been completely diluviated and re-formed on the south of the river. There is no reason to doubt the correctness of this map and that the position of Pandepur has been correctly laid down, can be verified from a comparative examination of Exhibit 267, a dhur dhura map, which has been filed by the plaintiff himself. In this map Pandepur has not been relaid but the adjoining village of Nauranga has been relaid. Nauranga is shown on Exhibit B and if we superimpose one on the other, we find that Pandepur has been correctly relaid in Exhibit B. There is thus no doubt that Pandepur has been diluviated and re-formed south of the river in the position indicated in Exhibit B. The question, however, remains whether the land in suit is identifiable with the re-formed site of Pandepur. In order to discover whether this is so, it is necessary to examine the other two maps, I have referred to Exhibit 117 and Exhibit 371. Exhibit 117 is a map of the land in dispute prepared by the plaintiff and Exhibit 371 is also a map prepared for the purposes of this case, showing the position of the river Ganges in the years 1844, 1863, 1882 and " at present, and also the positions of the Mouzahs of both sides of the river. This map shows the position of Pandepur on the south side of the river, and if we superimpose the map Exhibit B on this, we find that the position of Pandepur in Exhibit B is the same as the position of Pandepur in Exhibit 371. If we then take the permanent line of

stations as shown in Exhibit 371 and superimpose on this the permanent line of stations as shown in Exhibit 117, we find that the land in dispute, as shown in this map (Exhibit 117), exactly corresponds with Pandepur as re-formed. There can thus be absolutely no doubt that the land in dispute in this suit is a re-formation in situ of Mouzah Pandepur on the south side of the river.

6. I have already referred to *Lopez v. Muddun Mohun Thakoor* 13 M.I.A. 467 : 14 W.R. (P.C.) : 11 5 B.L.R. 521 : 2 P.C.J. 336 : 2 P.C.J. 594 : 20 E.R. 625 and this decision has been invariably followed in cases of reformation in situ. In this case, therefore, the land in suit being a re-formation in situ of Mouzah Pandepur, the plaintiff cannot succeed unless he can establish that by custom the deep stream of the Ganges is the boundary between estates on each side of the river.

7. In order to establish this plea of custom the onus is strongly on the plaintiff, and first it is necessary to consider what the custom alleged really is. In the plaint the custom pleaded seems to have been simply that the deep stream was the boundary between the districts of Balliah and Shahabad and of the Zemindaries and villages on either side of the river, and throughout the oral evidence it is this custom which has been deposed to. It is not now contended, however, that that is the invariable custom. It is said that it does not apply in the case of a sudden change in the course of the river and two other exceptions are admitted, viz., in cases between Parganas Bihia on the south and Doaba on the north and in the case of Mouza Shibpur which lies on both banks of the river. The custom then, which was originally set up, has now been considerably modified. The plaintiff himself does not seem to have been very clear as to what custom he wished to allege and even now there appears to be considerable doubt because, as will presently appear, the exception in cases between Doaba and Bihia appears to be itself subject to exceptions. It is difficult, therefore, to understand what the custom alleged really is. The oral evidence is of the kind usual in cases of this sort. A number of witnesses have been examined, who state that the boundary between estates on either side of the river is the deep stream and they are contradicted by an almost equal number of witnesses who state that when lands are re-formed in situ, they are taken possession of by the original owners. This evidence is of little value and it is impossible to rely on it, particularly as the custom deposed to is not the custom now alleged. What is most relied on by the plaintiff is Mr. Roberts' Settlement Report. Mr. Roberts was a Settlement Officer in the North-West Provinces and in the year 1882 he made a settlement of Ballia district in the course of which he made enquiries into the question of alluvion and diluvion throughout that portion of the Ganges flowing between Ballia and Shahabad, and in his Settlement Report he has embodied an interesting chapter on the subject. He made certain suggestions for an amendment of the law, which Government did not think it was possible to take action upon, but the report in so far as it relates to custom is evidence. The report states generally that with the exception of Pargana Doaba the deep stream custom applies throughout the whole course of the river between Balliah and Shahabad, This seems a clear enough statement, but when we come to look into details the matter is not as

clear as it would at first sight appear. In the first place, there is an exception in the Mouzah Shibpur which is on both sides of the river. This Mr. Roberts explains by saying that Shibpur which was originally north of the river was diluviated, there was re-formation of the land on the south of the river and the Maharaja of Dumraon took as much of it as he could. He was unable, however, to take all and the Zemindar of Shibpur remained in possession of some two-thirds. With regard to Doaba he says that originally Doaba was a portion of the Pargana Bihia which was out off by the river and the land on both sides of the river was in possession of the Maharaja of Dumraon. Consequently it did not matter whether the lands were treated as accretions or as re-formations and the rule of re formation was made to apply. The Pargana next to Bihia and east of it on the south side of the river is Pargana Arrah; here he says the deep stream custom prevails, but he further says that at the junction of Parganas Doaba, Bihia and Arrah, there is debatable land where it is impossible to say whether the law of re-formation in situ or the deep stream custom applies, the reason apparently being that in this debatable area the Maharaja of Dumraon insisted on the rule or the alleged custom as suited him best. On a reference to Appendix XII of the report, however, we find oases where Mouzahs of Parganna Doaba have been diluviated and have re-formed on the other side in Parganna Bihia, where they have been treated as accretions. These are exceptions to the exception to the alleged deep stream custom, and in this locality at all events it is clear that there is no certainty as to what the custom is or whether there is a custom at all. It is with this portion of the river that we are concerned in this case. The Mouzahs on the south side of the river to which Pandepur is said to have accreted are the three Mouzaha Issarpura, Sonbarsa and Ojhawallia. Pandepur was in Darjanpur but the Mouzah adjoining it on the south and east was Nauranga which was in Perganna Diaba and before Pandepur was diluviated, Nauranga had been diluviated. Now Issarpura, Sonbarsa and Ojhawallia are in Pargana Bihia and according to Mr. Roberts' report, therefore, Nauranga should have been treated as a re-formation in situ when it re-formed south of the river. It was, however, treated as an accretion. It was possibly not a matter of much consequence because Nauranga also belonged to the Maharaja of Dumraon, but it shows that there was very little certainty as to whether law or custom should prevail. The next Mouzah after Nauranga to be diluviated was Pandepur and it has been re-formed, as I have already said, on the south side of the river. If it is an accretion, therefore, it is not to the Mouzahs Sonbarsa, Issarpura and Ojhawallia, but to Nauranga, a Mouzah appertaining to Doaba. The case then becomes one between Doaba and Durjanpur, and in such a case it seems impossible to say that there is any custom. The fact is that at this point of the river, owing to the action of the plaintiff himself, the position is such that it is impossible to say whether there is a custom or not; certainly no custom has been established and under the circumstances the law as laid down in *Lopez v. Muddun Mohun Thakoor* 13 M.I.A. 467 : 14 W.R. (P.C.) : 11 5 B.L.R. 521 : 2 Suth. P.C.J. 336 : 2 Sar. P.C.J. 594 : 20 E.R. 625 must apply.

8. Two other minor points have been argued by Mr. Fakhruddin on behalf of the plaintiff. The first is that he is entitled to succeed by right of adverse possession. This plea is obviously untenable, however, because the land is not alleged to have completely re-formed until the year 1901, and this suit was instituted in December 1911. The other point is in regard to abandonment. It is contended that when Pandepur was diluviated, the proprietors were granted a remission of revenue on account of diluvion and this being so, it should be held that the Mouzah reverted to the public domain and consequently the defendants are not entitled to con-test the suit. Now in the first place, if this contention were a good one, it is obvious that the plaintiff should have made the Secretary of State for India a party to the suit, as has been from the first contended by the defendants, and the suit would be bad for non-joinder of parties. There is, however, no force in the contention. Under the Board of Revenue Rules of the North-West Provinces, a proprietor, whose land is diluviated, may either have the name of the diluviated Mouzah struck off" from the Collectorate Register of Mouzahs held by him, or he may have the name kept on the Register and retain his title by the payment of one Rupee a year. It appears from the evidence of one of the defendants, the only evidence on the point, that he adopted the latter alternative. No reason has been shown to us why this evidence should not be accepted and this being so, this contention of the plaintiff fails.

9. In the result then I would set aside the ex parte decrees and would decree these appeals with costs including costs of the remand, in so far as the disputed land is a re-formation in situ of Mouzah Pandepur.

Das, J.

10. I agree.