
(1916) 07 CAL CK 0008
In the Calcutta High Court

Maharajkumar Shoshikanta Acharjya Chowdhury	APPELLANT
Vs	
Raja Sarat Chundra Roy Chowdhury	RESPONDENT

Date of Decision : 18-07-1916

Acts Referred:

Citation : 36 Ind. Cas. 500

Hon'ble Judges : Richardson, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal is from a determination of the Court below, contained in a judgment, dated the 5th April 1916, upon a question raised u/s 47 of the Code in regard to the construction of a decree.

2. The decree (dated the 27th March 1905) was obtained, by the respondent Raja Sarat Chandra Roy against Raja Surja Kanta Acharjya, the predecessor of the appellant, Raja Soshi Kanta Acharjya. There was an appeal to this Court which was dismissed on the 22nd May 1900. A further appeal to the Privy Council was also dismissed on the 20th July 1914 Maharaja Surja Kanta Acharjya Bahadur v. Sarat Chandra Roy Chowdhury 25 Ind. Cas. 309 : 18 C.W.N. 1281 : 27 M.L.J. 365 : 16 M.L.T. 290 : (1914) M.W.N. 757 : 6 Bom.L.R. 925 : 1 L.W. 807 : 20 L.J. 563 (P.C.). The result was that the decree of the first Court stood confirmed without modification.

2. The suit related to a considerable area of land in the possession of the appellant, which the respondent claimed as part of an estate which he had purchased at a sale held for arrears of revenue. The respondent's success was not complete but partial It was held that he was entitled to so much of the land as fell within the boundaries of his estate as shown in a revenue survey map of 1848. This is plain from the judgments delivered and is not disputed. There is also no dispute as to the trijunction point or the starting point from which a surveyor demarcating the boundaries in the locality would commence his measurements. It is agreed that this point was conclusively fixed by the Trial Judge, The present dispute arises in this way. A map prepared by an amin, who

had made a local enquiry under the direction of the Trials Court, purports to show the boundaries according to the revenue survey map. The decree at first sight, at any rate, adopts the amin's map. Towards the close of his judgment, however, the learned Subordinate Judge referred to the variation between the magnetic north and the true north. The amin apparently had made no allowance for such variation, and the point at issue is whether the respondent is entitled to have the variation taken into account for the purpose of delivery of possession or whether under the terms of the decree he is bound by the amin's map. The point is not touched upon in the judgments of this Court and the Privy Council.

3. The words of the decree are as follows: "it is ordered that this suit be partially decreed, that the plaintiff's right be declared to so much of the disputed land as falls within the boundary lines of the revenue survey map of 1848 of Mouza Niz Shampur Bharpur comprised in map No. 218 of the touzi of the Mohalla Collectorate, laid down in the amin's map.

4. The original decree is in Bengali but with every respect for the learned Subordinate Judge, there is at any rate no patent ambiguity either in the original or in the translation. The Bengali expression (a miner Naksha ankita) which represents the words laid down in the amin's map, refers, as clearly as those words do, to the boundary lines of the survey map. According to the grammatical sense the boundary lines of the survey map are taken to be those laid down or shown in the amin's map. The meaning is not the boundary lines of the survey map of the village of which the amin has made a map. Apart from the language such a reference to the amin's map would be entirely useless. What is called the ordering portion of the judgment, which is in English, puts the meaning beyond doubt. The words there are: "It is ordered that these five suits are partially decreed in this way: that the plaintiff's right to the portions of the disputed lands shown in the amin's maps as falling within the boundary lines given in the revenue survey maps of 1848 of the mouzahs in question be declared as appertaining to his zemindari." The decree, therefore, as already stated, on the face of it adopts the amin's map; if it were not for the passage in the judgment which creates the difficulty, there would be no room at all for discussion.

5. As the decree was in his view ambiguous, the learned Subordinate Judge goes on to refer to that passage as a clue to the meaning and as a justification for the order which he made, namely, that the Civil Court amin should determine the boundary line of the revenue survey map with reference to the certified copy of the map supplied by the parties." In other words, he throws the amin's map overboard and directs that the survey map should be re-laid.

6. Appealing from that order the appellant naturally takes his stand upon the decree, between the four corners of which a Court of execution is no doubt confined *Badha Pershad Sing v. Torab Ali* 18 C. 108 (P.C.) : 5 Sar. P.C.J. 582 : 9 Ind. Dec. (N.S.) 72; *Udwant Singh v. Tokhan Singh* 28 C. 353 : (P.C.) : 28 J.A. 57 : 3 Bom. L.R. 318 : 8 Sar. P.C.J. 14 . On the other hand, it is perfectly true that a decree like any other document is open to construction. The Code says

that the decree shall agree with the "judgment" (Order XX, Rule 6) and a decree, therefore, ought, if possible, to be construed so as to conform with the judgment in *Maharajah of Bharatpur v. Hani Kanno Dei* 28 I.A. 35 at P. 42 (P.C.) : 23 A. 181 : 3 Bom.L.R. 51 : 5 C.W.N. 137 Sar.P.C.J. 792. But there is a limit to what construction can do. The remedy by construction is only appropriate if the language is ambiguous. If the language is plain and there is no ambiguity, the proper remedy for a variance between the decree and the judgment is to apply for the amendment of the decree. The fact that such an application must be made to the Privy Council in England is no reason why we should strain the law in order to assist one party to the prejudice of the other. On the contrary, we should not be justified in taking liberties with a decree which has become, by adoption His Majesty's order in Council *Raja Bhup Indar Bahadur Singh v. Bijai Bahadur Singh* 27 I.A. 209 : 5 C.W.N. 52 : 23 A. 152 (P.C.) : 2 Bom. L.R. 978.

7. The question, then, is whether this decree is capable of the construction which the respondent seeks to have put upon it. We have pointed out that there is no such ambiguity as that suggested by the learned Subordinate Judge and that the decree, as it stands, agrees with the ordering portion of the judgment. That being so, is there any reason for departing from the natural meaning of the words? In the paragraph of the judgment on which the argument for the respondent was rested the Subordinate Judge says: The Civil Court amin has failed to ascertain what at the time variation between the two meridians was. I, however, do not consider this omission to be of importance now, as I think there would be necessity again for ascertaining this variation at a subsequent stage in the execution department, when delivery of possession would have to be made for the plaintiff." Then he adopts the amin's trijunction points (five suits were tried together, with one of which we are concerned) and says that he considers them to be the proper starting points for laying down the boundary lines of the revenue survey of 1848." Then he says in conclusion: The suits, therefore, should be decreed in parts as noted above and it is accordingly ordered." Then follows the ordering portion the relevant part of which has already been quoted.

8. Some importance was attributed to the words "as noted above" in the last sentence of the passage cited. But those words were probably intended to qualify the preceding words "in parts." The reference was probably to the beginning of the preceding paragraph where the Subordinate Judge had found that the plaintiff was entitled to recover possession of lands in suit in portions." The passage as a whole, however, does support the respondent to this extent, that the Subordinate Judge evidently contemplated that in execution allowance would be made for the variation between the two meridians, the magnetic meridian and the polar meridian. It is contended for the respondent that effect should be given to an intention which is not expressed in the decree. The contention in its most plausible form is that by the amin's map the Subordinate judge means the amin's map adjusted with reference to the true north. But however the contention be put, the result of according to it would be to introduce into the decree a direction which is not there, namely, that the amin's error in not taking

into account the deviation of the magnetic meridian should be corrected and his boundaries re-aligned accordingly. That the further result would be an entirely new map is shown by the Subordinate Judge's order, which discards the amin's map and directs the survey map to be re-laid.

9. Now the Courts which dealt with the case had nothing before them except the amin's map to indicate the practical effect of the decree which they were making or confirming. The case of *Lukhi Narain Jag deb v. Jodu Nath Deo* 21 I.A. 39 : 21 C. 504 (P.C.) : 6 Sar. P.C.J. 408 : 10 Ind. Dec. (N.S.) 966 aptly illustrates what important and even startling consequences might follow from the correction of the amin's map in the manner suggested. If the decree said that the amin's map was to be corrected, the correction would have to be made whatever the effect might be, though conceivably the suit having been decreed in part, a difficulty might arise if the effect were to show a title in the respondent to all or more than all he claimed. The decree, however, gives no such direction and cannot be made to give any such direction without imparting into it words which are not there.

10. It was said that it was hard that the respondent should suffer because the Court made a mistake in drawing up the decree. The first answer to that is that if there is a mistake, it is open to the respondent to take steps to have it corrected. But so far as the Subordinate Judge was concerned, the mistake seems rather to have been in the judgment than in the decree. The Subordinate Judge appears to have underestimated the possible importance of the question and to have wrongly assumed that the amin's map would be corrected in execution as a matter of course. That accounts for the omission in the decree and in the ordering portion of the judgment. The decree said what the Subordinate Judge intended to say, though the effect is not what he thought it would be. The mistake in the judgment produced a corresponding mistake in the decree. As to the parties, it is true that the Code (Order XX, Rule 7) directs the Judge to sign the decree when he has satisfied himself that the decree has been drawn up in accordance with the judgment," but there is a general and convenient practice which was apparently followed in the present case, under which the signatures of the Pleaders are placed upon a decree before it is signed by the Judge, and it is undesirable to minimize the responsibility of the parties for the correctness of a decree as drawn up. We were told by the learned Pleader for the appellant (and the statement was not disputed) that neither party took objection to the amin's report and map on the specific ground that his north did not correspond with the true north. The question, it was said, was suggested in the course of cross-examination conducted on the appellant's behalf. That may illustrate the danger of random cross-examination, but it does not prevent the appellant from insisting on the decree as it stands. It is probable that the question was not pushed to a plain conclusion at the time, because neither side knew what the effect of allowing for the deviation would be. That may account also for the decree being accepted by both parties in the form in which it was drawn up. In that state of things the appellant can hardly complain of hardship. It is just possible that if the

decree had been drawn up in the way in which he says it ought to be understood, the result on appeal might have been different. So far as there is any question whether one or the other party is to blame for the form which the decree has taken, there is little to choose between them and the decree binds one as much as the other.

11. We do not know, and it does not signify for the present purpose, what the result of correcting the map would be. The appellant says that he would be adversely affected and that a considerable addition would be made to the area to be awarded to the respondent. If the result would have been the other way we should doubtless have heard the same arguments from the opposite quarters. The respondent would have been for the decree and nothing but the decree and the appellant would have relied on the judgment. The decision at which

12. We should have arrived, it may be hoped, would have been the same as the decision at which we are now about to arrive. The consideration which suggests itself is that the party who would be prejudiced by an alteration of the map had, as the decree stands, no inducement, and possibly no right, to raise the question in appeal. The Courts, it is true, accepted the survey map. The revenue survey of 1848 was presumably carried out on scientific lines and the north shown in the survey map is the true north. But mistakes have been known to creep even into survey maps. The amin's version of the survey map may be wrong in theory, but it was adopted in the decree and his map may in fact more closely represent the true boundaries. At any rate it was certainly not necessary for the party who would suffer from its rectification in the way proposed to take in appeal such a point as this, that if the rectification were made, the practical result would be to throw grave suspicion on the correctness of the survey map.

13. Then it was said that the parties are as much bound by the judgment as the decree. That is, no doubt, so and it may be that the respondent has a title or right to have the decree amended. We need not consider that, question, which may turn to some extent on the terms of Section 152 of the Code. All we need say is that the decree cannot be construed in the way in which it has been construed by the Court below and that the question raised is a question not of construction but of amendment.

14. The point is a short one, but we have dealt with it at some length as it was energetically argued and is of considerable importance. In this country a decree is often executed, not by the Judge who made it and best knows what was intended, but by a successor, or by some other Judge to whom it is sent for execution. It would add to the many difficulties which arise in the execution department if any encouragement were given to the alteration of decrees under the guise of interpretation. The principle has not been recognised that a decree must be executed as it stand. As Phear, J., said in *Bhugobat Singh v. Ram Adiin Singh* 22 W.B. 330, the decree must speak for itself.

15. The result is that this appeal must be allowed with costs and the order of the

Subordinate Judge set aside. The order was passed in a proceeding in the nature of a review of two previous orders, dated the 24th March 1916 and the 30th March 1916, the first passed on an application made by the decree-holder, and the second on a reference made by the amin. We prefer the view of the decree taken in those orders and the decree will be executed accordingly. We assess the hearing-fee at eight gold mohurs.

16. In view of our judgment, it is unnecessary for us to pass orders on the rule.

17. Let the record be sent down at once.