

(1909) 06 CAL CK 0062
In the Calcutta High Court

Nobendra Kishore Roy and Others

APPELLANT

Vs

Kazi Lutful Huq

RESPONDENT

Date of Decision : 10-06-1909

Acts Referred:

Citation : (1909) 06 CAL CK 0062

Judgement

1. The plaintiffs in this case are the purchasers of an entire estate at a revenue sale, and sue for recovery of certain land as being included within that estate. The learned District Judge of Noakhali in first appeal has dismissed the suit. The plaintiffs appeal.

2. The first point taken in appeal is that the learned District Judge has erred in holding that the plaintiffs cannot merely by proving the thak map shift the burden of proof to the other side. Reading the judgment as a whole it seems clear that the District Judge took the thak into consideration. The plaintiffs relied on that and nothing else, and he considered that it was not sufficient to shift the burden of proof to the defendant.

3. A number of cases have been cited to show what is the value of thak maps. There are certainly cases in which the thak map is quite sufficient to raise a prima facie case on behalf of the person pleading it and to put the other side to the task of rebutting that evidence; but we cannot in second appeal say that the District Judge is wrong in holding that in this case the plaintiff cannot succeed in shifting the burden of proof merely by filing the thak map. That is a point which is conclusively settled by the decision in Jagadindra Nath Roy v. Secretary of State for India 30 C. 291 : 30 I.A. 44 : 7 C.W.N. 193. Their Lordships remark that they are not prepared to say as a matter of law that the appellant's counsel were right in contending that the burden of proof was shifted on to the respondent by the thak and survey maps." Later on they say it would not be right in point of law to direct the Judge of first instance that he ought in all cases to act on the last thak or survey map and to treat it as decisive in the absence of evidence to the contrary."

4. The plaintiffs as we have said are purchasers at a revenue sale and the property that they purchased was the property as it stood in 1793. If the learned Judge does not think that the thak map by itself is sufficient to prove that the land in suit formed part of the plaintiffs' estate as it stood in 1793, we cannot say that he has erred in law.

5. Another objection taken is that the learned District Judge is wrong in saying that there is no evidence in this case that the defendant or his predecessors were parties to the thak proceedings. It is quite clear from the judgments both of the Munsif and the District Judge that it was never suggested before them that the defendants' predecessors were parties to the thak proceedings, but a document has been filed before us, which purports to be a paper of remarks attached to the thak map, in which appears the signature of one Gokul Chandra Mazumdar, who seems though the matter is not free from doubt to have signed as the karpardars of three talukdars concerned with the land. But on referring to the list of documents filed we have no doubt that this paper was never filed before the Subordinate Courts, we cannot safely rely on it in this Court.

6. The third objection taken is that the lower Court was wrong in relying on certain chittas prepared by Government in 1251. It appears that the plaintiffs' estate formed portion of the pergunah in which the Government and other landlords were interested. The Government appear to have prepared a chitta of the whole property and set down against each plot to which of the various estates it belonged. It is argued on the strength of the decision of the case of *Ram Chunder Sao v. Bunseedhur Naik* 9 C. 741 that these chittas are not evidence. But that case appears to have been decided with special reference to Section 83 of the Evidence Act. We have no doubt that these documents do not come u/s 83 and cannot be regarded in any way as public documents. But we certainly think that such chittas, whether prepared by Government or by zemindars may be used, in evidence u/s 13 of the Evidence Act, as being evidence of instances in which the rights now in controversy were recognised or asserted. The chittah is a list of plots and against each is entered to whom the plot belonged. The entries against plots belonging to Government are evidence of instances in which the Government rights were asserted, and those against the plots of the neighbouring zemindars are evidence of instances in which the rights of those zemindars were recognised. It has been argued that these chittas cannot be presumed to be accurate. Even assuming that this may be so their accuracy is not of vital importance. It is the fact that they are evidence of the recognition or assertions of a right that makes the entry admissible and not the fact that they have been accurately prepared.

7. We are not able to hold, therefore, that the District Judge has erred in law in holding that the plaintiffs were not relieved from the burden of proof which lay on them by filing the thak map, and we think that he was right in regarding the chittahs as admissible in evidence.

8. Whether or not he was right in preferring the chittahs to the thak map is a

question of weighing evidence into which we cannot go in second appeal.

9. The result is that the appeal will be dismissed with costs.