

(1925) 06 CAL CK 0035
In the Calcutta High Court

Radha Nath Dutta and Others

APPELLANT

Vs

Chandra Kumar Dutt and Others

RESPONDENT

Date of Decision : 04-06-1925

Acts Referred:

Bengal Alluvial Land Settlement Act, 1858 — Section 2
Bengal Alluvion (Amendment) Act, 1868 — Section 3
Bengal Alluvion and Diluvion Act, 1847 — Section 6

Citation : AIR 1926 Cal 523 : 91 Ind. Cas. 718

Hon'ble Judges : Mukerji, J;Ewart Greaves, J

Bench : Division Bench

Judgement

Ewart Greaves, J.—This is an appeal by the plaintiffs against a decision of the Subordinate Judge of the First Court, Backergunge, confirming a decision of the Munsif of Barisal. The plaintiffs sued for establishment of their title to and for khas possession of Dags Nos. 329, 358 and 359 of the Settlement Survey and claimed them as part of their howla and as accretions to Dag No. 300. Their case, was that in diara proceedings in 1913, the dags in suit were resumed by Government, assessed for revenue, and settled as a separate estate with the zemindar under whom the plaintiffs hold their tenure. In the Record of Rights which was published in 1907, the dags in suit were found in possession of the defendants but the appellants contend that the defendants are bound by the diara proceedings and the dispute in this appeal is whether this is so or not.

2. The Munsif has found that the defendants were not parties to the diara proceedings and that no notice was served on them and that the suit is time-barred. The Subordinate Judge presumably accepts these findings but he has not arrived at any express findings on these points. He finds, however, that Dag No. 329, to which Dags Nos. 358 and 359 are accretions, is according to the thak mal asli land situate, at the bend of the river Gazalia and that any presumption raised by the diara map in favour of the plaintiffs is rebutted by the thak map and that apart from the diara there is no evidence in favour of the plaintiffs' contention.

3. He holds that the diara did not and could not create any right but could only assess revenue on land in excess of the Revenue Survey.

4. We were referred by the Vakil for the appellants to the material provisions of Regulation II of 1819, Regulation VII of 1822, Regulation IX of 1825, Regulation XI of 1825 and Regulation IV of 1828. These were superseded by the Bengal Alluvion and Diluvion Act of 1847 (Act IX of 1847) and it is not necessary to refer to them.

5. By Section 6 of Act IX of 1847 provision is made for the assessment of, revenue, on land added to an estate paying Revenue to Government. By Section 2 of the Bengal Alluvion Land Settlement Act of 1858 (Act XXXI of 1858), it is provided that nothing contained in the preceding section shall affect the rights of any under-tenant in any alluvial land and officers making settlements of such land are enjoined to ascertain and record all such rights and to determine whether any and what additional rent is payable by any under tenure-holder. The previous section (Section 1) provides for adding the new assessment on the proprietor to the jama of the original estate or if the proprietor objects to this for settlement of the alluvial land as a separate estate with a separate jama with the proprietor if he is willing to accept settlement or "in farm" if he objects to accept settlement. The last Act to which reference is necessary is the Bengal Alluvion Amendment Act of 1868 (Act IV of 1868).

6. Section 3 of this Act provides for the local Revenue Authorities taking immediate possession of any island thrown up in a large and navigable river liable to be taken possession of by Government and for assessment and settlement of the land and the section further provides that any party aggrieved by the Revenue Authorities taking possession shall be at liberty to contest the same by a regular suit in the Civil Court. A consideration of the provisions of these Acts shows that what is dealt with thereby is the assessment of revenue and that the parties concerned are the proprietor and the Government. The case of Profulla Nath Tagore v. Secretary of State in Council 58 Ind. Cas. 902 : 24 C.W.N. 813 upon which the Vakil for the appellant relied referring to Fahamudunnessa's case does not lay down that an order u/s 6 of Act IX is final for all purposes and as against all persons but only that it is final for the purpose of the assessment imposed on the land which is another matter altogether. And Secretary of State in Council v. Rai Jatindra Nath Chaudhury 80 Ind. Cas. 1023 : 29 C.W.N. 1 : AIR (1924) (P.C.) 175 : 47 M.L.J. 48 : (1924) M.W.N. 588 : 35 M.L.T. 146 : 51 I.A. 241 (P.C.), only deals with the finality of such orders as regards the assessment imposed.

7. As is pointed out in Dhirendra Chunder Rai v. Nawab Khaja Habibulla 87 Ind. Cas. 442 : 29 C.W.N. 505 : AIR (1925) (C.) 758 the power of the Revenue Authorities operating under these Acts only extend so far as tenants are concerned to ascertaining or recording existing rights (that is as to the nature and extent of any existing tenancies) and not to settling rent so as to bind the tenant.

8. I think, therefore, that the decisions of the Courts below were right and the diara proceedings are not binding on the defendants. Such proceedings are doubtless binding on the proprietor with regard to the assessment of revenue but are not binding as between under-tenure-holders in questions such as arise in this appeal where the parties are not proprietors but under-tenure-holders claiming the land adversely to each other under different proprietors.

9. Moreover it does not appear that the proprietor under whom the defendants claim was a party to the diara proceedings and although he may be bound by the revenue assessment made on the lands it is difficult to see how he is otherwise bound upon the materials before us.

10. In the result the appeal fails and is dismissed with costs.

Mukerji, J.

11. I agree.