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**(1869) 08 CAL CK 0016**

**In the Calcutta High Court**

**Case No :** Application for Review No. 176 of 1869

Rai Mohan Bose and Another

APPELLANT

Vs

Sudukhina Chowdhraïn and Others

RESPONDENT

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**Date of Decision :** 26-08-1869

**Acts Referred:**

**Citation :** (1869) 08 CAL CK 0016

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## **Judgement**

Bayley, J.—I think this special appeal must be dismissed with costs. The plaintiffs sued for the rectification of certain survey papers, for the reversal of two Act X decisions, and for the recovery of possession of some lands. The case, in fact, is one of simple boundary dispute, although a question as to the possession of land is involved in it. The plaintiffs claimed the lands in suit as part of the shikmi talook purchased by them, at the same time that they said that they were in talook No. 18 of the Collector-ate rent-roll, of which they were the zamindars. The defendants' case was that the lands belonged to the kharija talook, which had its separate number on the Collectorate rent-roll, No. 1036. Both the shikmi and kharija talooks formerly belonged to one Iswar Chandra Mazoomdar, and the plaintiffs purchased the rights and interests of the said Iswar Chandra in both the shikmi and the kharija talooks, at a sale in execution of decree. But, subsequently, the Das defendants obtained a decree for the kharija talook, in a suit upon a mortgage, and sold that talook to the defendant, Sudukhina Chowdhraïn, special appellant before us, who the plaintiffs alleged dispossessed them from the lands in suit. Both the lower Courts decreed the plaintiffs' suit.

2. The first ground of special appeal is that the plaintiffs alleging themselves to be in possession of certain lands, have no cause of action as regards those lands. But it seems to me that no such ground was taken before either of the lower Courts, and I think that it is too late to allow the defendants to raise the contention now. It is urged that this is a question of law which we should allow to be raised, though not taken in the lower Courts, but the discretion is entirely left to us; and when I find that in both the lower Courts the contest was hotly maintained by the parties on the supposition that the plaintiffs had a cause of

action, I do not think we ought now to permit the special appellant the technical plea that the plaintiffs have no cause of action.

3. It is then alleged, that the question is one of jurisdiction, but it is no question of jurisdiction in the proper sense of the term, because it cannot be said that the lower Courts either assumed a jurisdiction which they had not, or refused to exercise the jurisdiction which they had.

4. The second objection is that the plaintiffs representing Iswar Chandra Mazoomdar cannot question the survey demarcation which was made at their instance; and beyond this written ground of appeal, it is urged that there was evidence on this point which the lower appellate Court has not duly considered.

5. Now the pleader for the special appellant, Baboo Srinath Das, read out to us from a private copy of what purported to be a survey map, certain passages to the effect that on the showing of both the parties the map was correctly drawn up. This passage, or anything beyond the bare signature of the parties to it, does not appear on the map in the original official record before us.

6. It is alleged by Baboo Srinath Das that the portion containing that passage has been torn off, but it seems to me that there is no visible sign of such a fact, and I am confirmed in this opinion by finding that the initials B.S.M.D.C. occur at the bottom of the map. Now had there been more of the original map containing the passages contended for by the special appellant, to the effect that the agents of both the parties having indicated the land belonging to each, the map was drawn accordingly, the signature of the Deputy Collector I think would have appeared at the very bottom, as it does now over where these assenting signatures are said to have been.

7. Baboo Srinath Das then asks us to send for the records of another case in this Court where another copy of this very map is, and where he contends are to be found the passages which he read from his private copy; but in the first place I hold it as a rule that no pleader should read such a contested comment from a private copy when the public record is so easily available; and secondly, that the lower appellate Court certainly had not before it the records of the case which we are now asked to send for from the record room of this Court. If we did as we are asked, we could not then say that the lower appellate Court was, wrong, because it had not based its judgment upon papers which never, were before it.

8. The third ground of appeal is that the documents referred to by the lower Court are not evidence of title, and the plaintiffs were not therefore entitled to a decree for declaration of title.

9. Now the judgment of the lower appellate Court on this point is expressed in these terms: "The evidence afforded by the plaintiffs' documents, measurement papers of 1270, B.S., and kabuliats of 1267, B.S., and jamma-wasil-baki of 1267 to 1272, B.S., attested by witnesses Bhairab Chandra, Durga Charan Dey, and Rajaram, is the best evidence which the plaintiffs can give of previous right and

possession. Of course it is open to the defendant to say the batwara measurement is not binding on bar, and the other papers are merely private documents, but taken altogether and considered in connection with the circumstance that the chittas do largely agree with the land in dispute, which circumstance is admitted by the appellant's unsupported plea that they have been recently prepared to correspond with the lands, the whole forms a body of evidence which seems to establish the plaintiffs' case."

10. I think that although the pleader for the special appellant has quoted the Privy Council case, *Accourie Singh* 11 W.R. 4, in support of his argument, that case is really against him, because there the Lords of Her Majesty's Privy Council speak of chittas as no evidence of title in boundary disputes between rival proprietors, when they are without further account, introduction or verification. But here are chittas and other documents which are shown by their character and attestation not to be at least fabricated documents as pleaded by the special appellants and to be supported by evidence. Besides, there is the Ameen's report, and on the deputation of the Ameen both the parties filed chittas and other papers of the same character before him in support of their respective allegations. To such an extent then is the Ameen's report in evidence in the case, and looking to the evidence that; was adduced in the case, I cannot say that the lower appellate Court was wrong in deducing from it the fact of the plaintiffs' possession. Taking then that there was evidence of the plaintiffs' possession, and there being a finding of fact that there was no possession of the defendant, the question arises as to how far the evidence of possession is evidence of title. Now to use a few words out of many on the subject, possession is a good title against every one who cannot prove a better title; *Clarke v. Bindabun Chunder Sircar* Mars. Rep. 77. In the present case, then, there being evidence of the plaintiffs' possession, and no better title being proved by the defendant, I think that the plaintiffs' title was proved; consequently the third ground is also untenable.

11. The fourth ground of appeal is that the lower appellate Court was wrong in refusing to take certain documents in evidence produced by the witnesses, as they were produced on the day mentioned in the summons.

12. Now the lower appellate Court speaks on this point as follows:

The witnesses who were to file them did not come till the day of the decision of the case, and the papers were measurement chittas, which, before they could be of any use, would require to be compared with the lands; and after all they are only private copies of private papers said to have been kept (for what purpose is not clear) by servants of the late proprietor. The other papers which appellants say the Principal Sudder Ameen improperly returned after keeping them with the case more than a month, do not appear to have been ever filed in the usual sense of the word. They were put into Court in some irregular manner on the 23rd February, the Ameen's return having been made on the 11th February; but there was nothing to show that they were ever properly received and admitted

before their rejection at the time of the decision, nor is there any cause shown why they could not have been filed in proper time.

13. It is pressed on us by the pleader for the special appellant that the word "dakhill" is put as on the 23rd February, therefore having once received as admissible those documents, they could not have been returned under the provisions of section 129, Act VIII of 1859. Now section 129 says: "All exhibits produced by the parties shall be received and inspected by the Court, but it shall be competent to the Court, after inspection, to reject any exhibits which it may consider irrelevant or otherwise inadmissible, recording the grounds of such rejection." The object of the Legislature seems to me to be that the papers must be produced in the regular manner, and inspected by the Court at its convenience. If, for instance, at the breaking up of the Court such papers are produced, and the Court, without having time to inspect and consider them then, orders them to be filed, this it seems to me is not the case as contemplated by the provisions of the section above referred to; and in such a case, I do not think that the Court can be said to have received the documents as admissible; or would be wrong in law in rejecting or returning the documents after proper inspection. I think therefore that the lower appellate Court was not wrong in law in returning the documents, when it found that they were not produced and received in a regular manner.

14. The last plea is that the documents that were already on the record should not have been returned. But this objection is of the same character as the preceding, and it remains only to be remarked that they were not legally received on the record, and were not ordered to remain there under the provisions of section 129 of the Code of Civil Procedure.

15. Under all these circumstances, I think that there is no such error in law in the judgment of the lower appellate Court, as would justify our interference in special appeal, and I would therefore dismiss this special appeal with costs.

Hobhouse, J.

16. I come to the same conclusions as Mr. Justice Bayley in this case, but I think it better shortly to record my reasons for so doing.

17. On the first point taken, viz., that the plaint disclosed no cause of action, I think we cannot in this particular case allow that point to be now taken for the first time in special appeal. If the finding of the Court below is correct, the defendants actually ousted the plaintiffs of about one-half of the lands in dispute, and never denied for a moment that the plaintiffs had not a cause of action against them in regard to the other half of the lands; but, on the contrary, at once joined issue with the plaintiffs on both the plots of land on one common ground, viz., that these lands were not in the plaintiffs' talook, but in the talook of the defendants.

18. The second objection, as I understand the contention of the pleader for the

special appellants, is divided into two parts: First of all he contends that when the plaintiffs and Iswar Chandra had both signed the Thakbust map, and had actually, as by the record on the map, pointed out the lands in dispute as lands of the kharija talook No. 1036, then the plaintiffs were not in a position to question the Thak map. Now it is quite clear that, in the copy of the Thak map, which is on this record, there is no indication either that the plaintiffs or Iswar Chandra pointed out the lands in dispute as lands in the kharija talook; and this fact, therefore, disposes of the first objection; and as to the other objection, viz., that the plaintiffs and Iswar Chandra both signed the map, if that is any evidence against the plaintiffs at all, we must presume that the Court did consider the fact of this signature, because it was this Thak map which was as a whole in evidence before the Court, and when it has considered this fact of the signature as a part of the evidence, and yet has not thought it of sufficient weight to tell in the plaintiffs' favour, we cannot interfere with the Court's decision on this point.

19. The second objection taken on the second point is this: that when the plaintiffs admitted in their written statement that Iswar Chandra had fraudulently caused the lands in question to be mapped as in No. 1036, then the plaintiffs were, as it were, estopped from questioning this Thak map. I doubt very much whether this objection can be included in the second ground of appeal, but admitting it to be so, I think it to be of no weight, because the plaintiffs do not sue simply in their right of shikmi talookdar, but in a double capacity, viz., as proprietors of the talook and as proprietors of the shikmi also. The question between the parties was whether the lands were in the one talook or in the other, and in such a question, I do not think that an act of fraud on the part of the former holder of the shikmi in the matter of the Thak map can be held to stop the plaintiffs from questioning the correctness of the Thak map, for the fraud of Iswar, if fraud at all it was, was not against himself, but against the superior holder of the shikmi.

20. The third ground is that the documents referred to by the lower appellate Court are not evidence of title. Mr. Justice Bayley has given word for word the finding of the lower appellate Court on this point, and I need not refer therefore to what that finding is, but in fact that finding is of this purport:--It says, first of all, that the plaintiffs have produced in evidence certain chittas, which purport to come from their zamindari, then, that these chittas are found, on comparison with the lands, to comprehend those lands, and then that the plaintiffs have proved by their witnesses and by jamma-wasil-baki papers, kept in the course of business, that they, at least for the last seven years, have been in possession, i.e., enjoyment of those lands. That seems to me to be a finding to the effect that the plaintiffs have got a title to the lands by reason that they have been the persona in whose estates the lands appear to have originally been, and who have enjoyed the profits of those lands for at least the last seven years. But it is contended that the chittas are no evidence of title, and we are referred to the judgment of the Privy Council, which Mr. Justice Bayley has mentioned.

21. What their Lordships say in that judgment is this: "Whatever might be the value of the chittas in general in a question between the zamindar and his tenants or ryots; to receive them as evidence of boundary against a rival proprietor, without further account, introduction, or verification, would, if it obtained as a practice--and each relaxation is apt to become a precedent for another--tend further to encourage the manufacture of evidence in a place already too prone to the fabrication of it." By these words it seems to me their Lordships held that if chittas are relied upon without any account given or verification made of them, then they are not to be considered as evidence; but here an account was given of the chittas, and they were properly introduced and verified, and therefore that remark of their Lordships does not seem to me to apply to the chittas now before us. They were therefore I think properly used as evidence in this case, and when we see that both the parties rested their title upon possession, that is enjoyment of land, and when we see that in the matter of this possession the Court below held upon evidence that the plaintiffs had made out their case, that case I think must be held to prevail, until, as Mr. Justice Bayley has observed, a better case is made out on the other side. I think, therefore, that this third objection is also of no avail.

22. On the fourth objection, I think that the Court below has given reasons for refusing to take the documentary evidence in question, which the pleader for the special appellant has not shown to be bad in law; and on the fifth objection, I think it is not shown to us that the first Court has ever done anything more than receive the evidence in question, and that it was therefore quite entitled under the provisions of section 129 of the Procedure Code, to return that evidence to the defendant for the reasons which it has recorded. I agree in dismissing this special appeal with costs.

23. The appellant filed the following grounds of review:

1. The decision on the second ground of appeal is erroneous, because, first, the lower appellate Court had the record of the other case before it (since decided in special appeal in this Court); second, because the copy map filed in the principal case has, on the face of it, the signatures of the two kurpurdazes, viz., at plaintiffs and of Iswar Chandra Mazoomdar, proving assent of the parties; third, because the signature of the Ameen as appearing in plaintiffs' copy does not show that it was placed at the foot of the original map; fourth, that the incorrectness of the copy filed, as well as the thak demarcation having been assented to, is proved by other copies now tendered.

2. As to the third ground of appeal: first, the Ameen's report does not prove possession; second, the chitta of 1270 bigas refers to plot No. 4 alone, as found by the first Court; third, the jamma-wasil-baki and other papers are no proof of possession; fourth, kabuliats of 1267 are filed; fifth, long possession, so as to afford presumption of title is not found, and this is a suit for declaration of title.

3. No cause of action appears as to the land of which plaintiffs retain possession.

24. Mr. Paul (Baboo Ramesh Chandra Mitter with him), for petitioners.--This being a suit so far as it dealt with lands in plaintiffs' possession merely to rectify the thak map, the proof that the map was incorrect lay upon the plaintiffs. No such proof has been offered. The plaintiffs are not entitled to come into Court and seek for the rectification of a thak bust map, which was assented to by them, and which was made under the supervision of, and according to the pointing out of, their servants. A Court of Equity will not undo an act of a party done with full knowledge and intention that the act should be what it is. The jurisdiction of Courts of Equity in the way of altering, rectifying, and annulling documents does not embrace a case like the present. The plaint on its face discloses no cause of action, and even if it does, the Thakbust map displaces any cause of action suggested by the plaint. Act X can only, in exceptional cases, be set aside by the Civil Courts. The Act X decision objected to by the plaintiffs cannot be set aside.

25. Mr. Montriou (Baboos Chandra Madhab Ghose, Mahes Chandra Chowdry, and Ambika Charan Banerjee with him), for opposite parties.

26. For the petitioners, a copy map taken from another record, viz., Ishur Chunder Mozoomdur v. Sudukhina Chowdrain (concerning another disputed parcel, claimed as dewutter land wrongly demarcated with defendant's talook) was offered, in order to show that the copy used in the principal case was incorrect and tampered with. The admission of this new copy was objected to; but it was suggested that, if the Court considered the question of the copy used being a faithful one to be material at this stage, the original map should be sent for. This course was ultimately adopted, by consent, on the bearing of the review, and the petition accordingly adjourned.

27. 26th August.--This day the adjourned hearing was proceeded with. A mohurir from the Dacca Survey Office produced the original thak survey map. The map, upon the face of it, exactly corresponded with the office copy that had been filed by the plaintiffs; but there were endorsements upon the back of the original, which did not appear anywhere in the copy. One of those endorsements was--

Being present on the kismut, I surveyed the lands in the kismut as pointed out by Bhagwan Chandra Sen, Tilak Chandra Roy, and Chandi Charan Mitter, gomastas, from No. 1 to No. 276 station Mohalwary, from- No. 126 to No. 276 station, including No. 9 Chuck; and carefully preparing all papers, documents, and maps relating to the case, I do hereby sign my name. Dated 28th February 1859, or 17th Falgun 1265, B.S.

Iswar Chandra Chuckerbutty.

Ameen

28. The new copy taken from the record of the other suit, contained that particular endorsement, but upon the face of the copy (not noting it to be an endorsement), and in the part of the paper which was torn or cut off in the

plaintiff's copy.

29. Mr. Paul put in the original map in support of this allegation of the incorrectness of (and the deception therefore occasioned by) the copy filed.

30. Mr. Montriou and Baboo Chandra Madhab Ghose objected that the bare document was no proof whatever of the incorrectness, much less of the fraud that had been recklessly charged. The space torn off or missing from the copy is now proved to have been a blank. The signatures and every particle of writing on the face of the map are found in our copy; which, however, does not contain any of the endorsements now seen in the original; how or why this omission occurred does not appear. What part the Karpardaz played, is not attempted to be proved; nor is there any proof relating to him. In the copy attempted to be introduced, the endorsement supposed to be significant is brought, without any distinguishing word or mark, into the face of the document, just suiting the charge of fraud made, viz., that plaintiffs have mutilated their office copy, and forged the signature at the foot. The alleged fraud is clearly disproved, with something of a recoil. The endorsement, which is the bone of contention, proves simply (and that, if it be accepted as verified by mere production) that the Ameen declared, he had measured the kismut which he was directed to measure, certain gomastas or agents being present at the measurement.

31. The suit in its entirety is to try title. The origin and the base of this defendant's pretensions, is, the false record in the Thak map. That error relates to four areas or parcels. Defendant has actually ousted plaintiffs of one parcel, the 43 bigas. [Mr. Paul--We do not ask now to interfere with your decree for possession.] With respect to two other parcels, the 17 bigas and the 24 bigas, defendant has successfully sued the ryots, and she has it in her power at any time to proceed (with the same pretence) as to the remaining parcel. Although, therefore, the map is nothing in itself as disproving title, it may be mischievously used, and the error as to this parcel may well be added to the others so as to complete the rectification. Our title is found by both Courts as to the four parcels. How can the relief as to one of them prejudice defendant? The form of complaint, or of relief asked, may be illogical, viz., to set right a piece of possessory evidence, a mere document; but the substantial and obvious relief is, a judicial declaration of title, and although as to this one parcel no offensive action has yet been taken, why should not the declaration be complete according to the proof?

Bayley, J.

32. In this suit, which was originally for 89 bigas, 18 katas, the review now before us will not require any order in regard to 43 bigas 8 katas and 8 chittaks. In regard to these lands, the suit was to obtain possession based on title, and the title having been found to be good, a decree for possession has followed.

33. The review is in regard to three other plots of lands, in respect of which we do not think that our previous judgment has been correct, and we therefore

reverse it and remand the case to the lower appellate Court for re-trial.

34. These lands are conveniently divisible into three parcels:

The first consists of 17 bigas, 13 katas, in regard to which the plaintiffs allegation was, that they still held possession thereof, but that as the opposite party, the zamindar, had improperly caused the lands to be demarcated so as to take them out of the plaintiffs' shikmi talook, and have them surveyed as part of the defendant's kharija mehal, they (plaintiffs) sought for a declaration of title and confirmation of possession and rectification of the survey map.

35. The two other plots, consisting of 4 bigas, 9 katas and 24 bigas, 7 katas, 4 chittaks, were plots in respect to which it was alleged by the plaintiffs that their right and power to collect rents had been interfered with by the survey demarcation, and by Act X decrees obtained against ryots in suits for kabuliats and such like acts. The same relief was prayed for in regard to these two plots as in regard to that for 17 bigas 13 katas.

36. The case was decided by us on the 13th April last, but in review it has been urged that the copy of the map filed by the plaintiffs in the case was not a correct copy of the original, and by consent of both the parties the original was sent for from the Dacca Survey Office, and has been this day brought before us.

37. It appears that the original map does not, in fact, altogether coincide with the copy filed by either of the parties to this suit. The original contains certain endorsements on the back, while the copy of the plaintiffs does not contain them.

38. In regard to the copy put in by the defendant, it was not a part of the original record at all, and we have not therefore allowed the defendant to argue upon it as evidence in her favor; but as the original map ought to have been before the Court at the first hearing, and was the best evidence available upon which the lower appellate Court could find whether the allegation of the defendant was correct or not, viz., whether the agents of the respective Zamindars, specially Tilak Chandra Roy, acting as the authorized agent on the part of Baboo Raj Mohan Bose and Hari Mohan Bose, the plaintiffs did sign and certify by his signature to the correctness of the map, it is necessary that the original map itself should be sent to the lower appellate Court, and that that Court should adjudicate whether Tilak Chandra Roy was the agent of the plaintiffs, and as such agent, and acting within the scope of their authority, did sign the map as a correct map on behalf of the plaintiffs; and whether, as stated by the Ameen in the endorsement, on the back of the map, Tilak Chandra, as one of the karmacharis, did point out the lands as belonging to the defendant's talook, and if so how far these acts of the agent are binding on the plaintiffs.

39. In regard to the whole of these three plots, it is urged by the appellant for review that the plaintiffs have no cause of action, but in respect of the two plots, consisting of 4 bigas, 9 katas, 4 chittaks and 24 bigas, 7 katas and 4 chittaks, it is quite clear that the plaintiffs' right and power to collect rents had been

actually and directly interfered with by the decrees given against the ryots for rent under Act X of 1859, and therefore the plaintiffs had a good cause of action.

40. In regard to the 17 bigas, 13 katas, the plaintiffs allege possession, but there is no Act X decision either against his ryots or other interruption of right, but only the alleged wrong demarcation of the property into the defendant's talook. As regards this plot of land, therefore, there possibly might be a question as to whether there was any sufficient cause of action under the recent rulings of this Court; but that question had not been raised in the first Court, and no issue whatever on this point had been joined between the parties, nor had the point been ever mooted until in the last stage of special appeal in this Court. I do not think, therefore, that such a point ought to be allowed to be raised at this late stage of the case.

41. I would remand the case to be re-tried on the evidence afforded by the original map, as to Tilak Chandra being the agent of plaintiffs, as Bach signing the map, and the legal effect of that signature; and as to the said Tilak pointing out the lands in a separate map as belonging to defendant's talook.

42. The issues are: Was Tilak Chandra the agent of the plaintiffs? As such agent had he authority to sign the map, and to point out the lands, and did he do those acts? The best evidence, we may remark, is that of the plaintiffs themselves, of Tilak Chandra and of the measuring Ameen. Each party will bear his own costs as well of this review as of the former hearing.

Hobhouse, J.

43. I agree in admitting the review in this case, and in remanding the case to the lower appellate Court.

44. I understand that the first point that is before us is, whether there is any good and sufficient ground for the review. I think that such good and sufficient ground has been shown in the fact, that the lower appellate Court had before it a copy of a map which was not a correct copy in a very essential particular, viz., in that particular in which, as appears from an endorsement on the reverse of the map, it is stated that the lands in dispute were pointed out in order to being measured by a person who was the agent of the plaintiffs. Had the lower appellate Court had a true copy of the map, or the original before it, and had it remarked this very material particular in the map, it is impossible not to say that it might not have come to a conclusion very different from that to which it has come; and then it seems to me, that the same cause which is a good and sufficient cause for admitting the review, is also a good and sufficient cause for remanding the case in order to re-enquiry on the matters to which Mr. Justice Bayley has referred. But I understand the learned Counsel for the defendant, appellant, to contend that we should at once dismiss the case so far as regards the lands that are still in dispute on two grounds: firstly, because no cause of action has been displayed; and, secondly, because the consent, as he would have it of the plaintiffs indicated by the signature of their agent in the Thakbust map,

prevents the plaintiffs from contesting the accuracy of that map and seeking to have it altered.

45. In the matter of the 4 bigas, 9 katas and 4 chittaks, and of the 24 bigas, 7 katas and 4 chittaks of land, I have no doubt that there was, in accordance with more than one ruling on this point, a sufficient cause of action displayed. The defendant, in the matter of these lands, had actually, it seems to me, invaded the plaintiffs' right to the lands by suing and obtaining decrees against the tenants for kabuliats to pay rent, or for the rent itself; and had thus, I think, there can be no doubt, done acts directly hostile to the plaintiffs.

46. In the matter of the 17 bigas and 13 katas of land, had the question of cause of action or no cause of action been raised in the first Court, I should have had considerable doubt as to whether we could have allowed the plaintiffs to proceed as to these lands; but in regard to these lands the plaintiffs' allegation is, that the defendant disturbed their title by causing a map, which was on public record, to be fraudulently prepared against that title. Had the question of this alleged fraudulent act of the defendant been raised in the first Court, the plaintiffs would have had the opportunity of showing whether or not the act was done, and if it had been done, no doubt the suit could have been proceeded with. But they have not had this opportunity, and the reason, it seems to me, was, that in truth there was no contest between the parties as to the existence or the contrary of a cause of action, and so, I do not think that the defendant can now object that there is no cause of action. In the matter of the signature and endorsement on the map, I think it cannot be disputed that if it should be found that the plaintiffs' agent, acting under authority from them, pointed out the lands for measurement and demarcation, and affixed plaintiffs' signature to the map after such measurement and demarcation, then the plaintiffs could not sue to alter the said map; and then there would be such evidence against plaintiffs' title to the lands as would be fatal to that title, unless the plaintiffs could show that in the acts of their agent there was found misapprehension or the like. But we cannot assume, first of all, either that Tilak Chandra Roy was the agent of the plaintiffs, or that as such agent he gave his consent to the map, or that also as such agent he pointed out the lands in question to the measuring officer. I think therefore that the case must go back to the Court below for determination of these three questions of fact. If the lower appellate Court should find these facts against the plaintiffs, it will then have to determine what bearing these facts have against the plaintiffs' suit: first, on the matter of the amendment of the map, and secondly, in the matter of the confirmation of their title. If necessary, the lower appellate Court may take fresh evidence in the case, giving the parties sufficient opportunity to produce it.