

(1934) 12 CAL CK 0041
In the Calcutta High Court

Rasik Lal Mukhuti and Others

APPELLANT

Vs

Prasanna Kumar Saha and Others

RESPONDENT

Date of Decision : 12-12-1934

Acts Referred:

Evidence Act, 1872 — Section 13

Citation : AIR 1935 Cal 367

Hon'ble Judges : Mitter, J

Bench : Division Bench

Judgement

Mitter, J.

1. This appeal is on behalf of the plaintiffs and arises out of a suit for recovery of khas possession on establishment of their title. The land in suit is a very small strip of land and a very narrow ditch on the border of the plaintiffs' land recorded in dag; No. 362 of the settlement map and the defendants' homestead recorded in dags Nos. 364 and 368 of the settlement map of Mouza Palong, the plaintiffs and the defendants respectively claiming this part of the land and ditch and parts of their respective homesteads. A Commissioner was appointed to relay the Thak map and the settlement map in the locality. He could not relay the Thak map accurately and both the Courts below have held that the Commissioner's relaying in reference to the Thak map cannot be accepted.

2. The Court of first instance held that the Commissioner's relaying of the settlement line was reliable and in accordance with the Commissioner's report in this, respect made a decree in part in favour of the plaintiffs. The plaintiffs preferred an appeal to the learned Subordinate Judge and the defendants a cross-objection. The learned Subordinate Judge gave very cogent reasons for not accepting the Commissioner's relaying of the settlement line and pointed out that a pathway on the east of the defendants' land shown as beyond the homestead in the settlement map but the Commissioner's relaying would include it within their land. He pointed out further that the dispute related to a very narrow plot only 44 links wide and having regard to the errors which he pointed

out in the Commissioner's relaying with regard to the eastern boundary it was not safe to act upon the report of the Commissioner which on the face of it was wrong. He accordingly held that the plaintiffs were not entitled to the decree as passed by the trial Court. The learned Subordinate Judge then observed that there is a hedge on the north of the ditch in question near about the southern extremity of the defendant's land and he observed that this is a fact which is strongly in favour of the plaintiffs and would lead to the inference that the hedge was the southern boundary of the defendants' land. If that were so, the whole of the disputed land would fall to the plaintiffs' dag No. 362, but the learned Subordinate Judge observed that it would be unsafe to proceed upon the existence of the said hedge because there are two documents one of the year 1288 and the other of the year 1313 which would show that the ditch is included not in the plaintiffs' land but in the defendants' homestead. The document of the year 1307 is a conveyance by which the defendants purchased their homestead and the document of the year 1288 is a purchase-deed of the defendants' predecessors in title by which the homestead was purchased by them. The learned Subordinate Judge, as I have stated, said that these documents show that the Kacha (ditch) is included in the defendants' homestead.

3. Mr. Sen Gupta appearing on behalf of the plaintiffs appellants has urged that the above-mentioned two documents are inadmissible in evidence; secondly, that the learned Subordinate Judge has placed a wrong construction upon them. I do not see how these documents are inadmissible. They are the defendants' title-deeds and in them a claim is made, at least a right is asserted by the defendants and their predecessors to the Kacha or ditch in suit. These documents, in my judgment, will be admissible in evidence under the provisions of Section 13, Evidence Act Mr. Sen Gupta argues that if there is no evidence of possession in accordance with the recitals in these documents, these documents would be no evidence at all. I cannot give effect to this contention. In the case of *John King & Co. v. Chairman of the Municipal Commissioners of Howrah* 1914 PC 74, such documents have been treated as evidence and as they are old documents some weight ought to be attached to them. In dealing with this question, Mookerjee, J., in the case of *Swarnamoyi v. Sourindra Nath: Mitra* 1925 Cal 1189 pointed out that the absence of proof of possession does not affect the admissibility of such documents but it only affects the weight to be attached to them. In my judgment therefore the two documents are admissible in evidence. Whether they were entitled to have the same weight which has been given to them by the learned Subordinate Judge is really a question of fact and cannot be gone into in second appeal. I do not also agree with the contention of Mr. Sen Gupta that these two documents have been mis-construed. The document of the year 1288 after giving the northern, eastern and western boundaries of the land proposed to be sold by that document proceeds in this way. To the north the house of Madan Mohan Saha including its southern ditch." That clearly indicates that the house of Madan Mohan Shaha to which appertained the ditch is also the subject-matter of the case and the southern boundary of the conveyed lands was the southern side

of the ditch in question.

4. The southern boundary of the lands conveyed by the document of the year 1307 is put in these words: Halot or pathway in the northern extremity of the agricultural land of Raj Kumar Mukherjee (plaintiff). After these words the words "Gar Kacha Saha" are added. These words, in my judgment, convey the idea that the boundary is to be the Halot or pathway of Raj Kumar's land but to make it clear that the Gar or the ditch is being included in the conveyance, the words that I have stated, namely, "Gar Kacha Saha," are added there. In my judgment, the decree made by the learned Subordinate Judge is unassailable and must be affirmed. The result is that this appeal is dismissed with costs.