

(1936) 08 CAL CK 0018
In the Calcutta High Court

Sahabaddin Sarkar and Others

APPELLANT

Vs

Moulvi Kafiladdin Tapadar and Others

RESPONDENT

Date of Decision : 19-08-1936

Acts Referred:

Citation : AIR 1937 Cal 18

Hon'ble Judges : R.C. Mitter, J

Bench : Division Bench

Judgement

R.C. Mitter, J.—The subject matter of this appeal is a parcel of land admitted by both parties to be land gained by accretion from the river Meghna. The plaintiffs and the defendants are tenants of the same landlord. The plaintiffs are the tenants of the asli lands shown as dags Nos. 682, 718 and 702 in the Cadastral settlement map and the defendants are tenants of asli lands depicted in dags Nos. 701 and 717 of the said map. The river Meghna originally flowed by the east of all these plots and it is admitted by the parties that the land in suit has accreted to the lands of both parties. The controversy between them is how the land is to be divided between them. To follow the contentions raised by the plaintiffs and the defendants a rough sketch of the locality is necessary.

2. The subject matter of contention before me is the triangular piece of land enclosed by the letters A, B, C in the above sketch. There is no dispute now with regard to the rest of the char land in front of the asli lands of the respective parties. The plaintiffs contend that the dividing line must be the prolongation of the common boundary line DA, that is the line AC. If their contention be accepted the whole of the triangular piece of land shown in the sketch ought to go to them. The defendants contend that the dividing line ought to be the line drawn from the meeting of their asli lands i. e., from point A, perpendicularly to the existing river bank, that is the line AB. If their contention be accepted the whole of the triangular piece of land shown in my sketch would go to them. Before going into the question as to the principle to be adopted in fixing the common boundary line on the accreted land it is necessary to notice a contention

raised by Mr. Huq, the learned advocate appearing for the appellant. He says that there is a local custom by which accretions are possessed in accordance with the prolongation of the boundary lines of the asli portions. No such custom is pleaded in the plaint and the evidence does not support such a custom. Mr. Huq refers to para. 6(wrongly numbered 5) of the written statement and to the deposition of witnesses 1 and 2 examined on behalf of the defendants. In para. 6 of the written statement I do not find any admission by the defendants of the existence of any such custom or usage. The said paragraph of the written statement merely states that hath ails separated the asli lands of the plaintiffs and defendants, namely that dags Nos. 701 and 717 had been separated from dags Nos. 682, 718 and 702 by hath ails. It then states that the said hath ails had been used as a path way for going to the river, that the pathway was continued to the river bank with the recession of the river and the said path way is the boundary between the plaintiffs" and the defendants" land. This path. way existing on the accreted land has been located by the Commissioner for local investigation and he found it to be not in continuation of the common boundary line of the asli lands but is in the middle of the disputed land. The depositions of D. Ws. 1 and 2 do not also support Mr. Huq's contention. They state that with the receding of the river they have been possessing portions of the accreted land with reference to their hath ails. The witnesses are speaking to the fact of possession only, without reference to the right to possess, and in my judgment their statements do support a case of custom neither pleaded nor attempted to be proved by the plaintiffs. The fundamental principle governing the apportionment of accreted lands among the riparian proprietors whose lands abut on the sea is that the division must be made fairly amongst them giving each of them a share in the new frontage in proportion to the extent of their old frontages. This principle had been recognized by Roman law which has furnished the foundation of the important principles of the law of alluvion. In the Institutes of Justinian the law is stated thus:

When an island is formed in the sea, which rarely happens, it is the property of the first occupant, for before occupation it belonged to no one. But when an island is formed in a river, which frequently happens, if it is placed in the middle of it, it belongs in common to those who possess lands near the banks on each side of the river, in proportion to the extent of each man's land adjoining the banks. (Justinian's Institutes Book 2, Title 1, para. 22, Bandar's Translation Edn. 5, pp. 98 and 99.)

3. No doubt the case dealt with in this passage is the case of an island formed in the river bed, but the equitable principle of proportionate gain is here recognized. The point is not directly considered by Sir Mathew Hale in his *De Jure Maris* but there is a passage in it which indicates that division of newly gained land is to be made in proportion by the riparian owners. The case considered by him is the case of division of the forsaken bed of a river. He states that it is to be divided proportionately amongst the riparian owners. (Hargrave's Law Tracts, p. 23.) Such being the principle it is only a question of the particular mode in which the

division amongst the riparian proprietors is to be made. The first case is where the old bank of the river in front of their estates ran in a straight line and the new bank also runs in a straight line. The manner of division in such a case is a simple one. It is only a simple problem of the rule of three. The old and the new river frontages are to be measured, and each riparian proprietor is to be given a frontage on the existing river bank in proportion to their old frontage. The boundary points on the new bank are thus obtained and the boundary lines of the accreted land would be obtained by joining by straight lines these points with their boundary points on the old bank. This method is indicated at p. 56 of Angell's Law of Water Courses (Edn. 7). But the old bank and the new bank may consist of broken lines approximately straight lines as in the following diagram. (See p. 21). This is the second type.

4. The third type is where there are coves and indentations of the new and old banks. The last mentioned case is reduced to the second type by drawing suitable straight lines from suitable points as indicated at p. 59 of Angell's Treatise (where he is dealing with "flat" grounds) as explained by the diagrams at pp. 60 and 61. In each of these three cases the production of the common boundary lines of the asli lands would lead not only to manifest injustice and militate against the principles of fair and proportionate distribution, but there would be overlappings in almost all cases. In that case the owner of the plot abc in the diagram whose frontage on the old bank is about the same with the owner of the plot fghi would not only get nearly ten times the area on the accreted land than the latter but would get the whole of the new river frontage to the exclusion of the other riparian proprietors, with the result that if there be further recession of the river he would become the sole owner of these further accretions, because he has the advantage of having an absolute angle at the apex of his asli land. The owner of the plot bed whose frontage on the old river was almost nil would get not only a big slice but would have a big river frontage on the new river. The diagram also would indicate the nature of overlappings on the accreted land if common boundary lines of the different riparian owners are produced to the new bank. The complications would be so great as to baffle solution. I am accordingly unable to accede to the principle of division formulated by the plaintiffs.

5. The method that is to be adopted must lead to a fair and proportionate division of new river frontage, for unless that is done, there would be great prejudice to many of the riparian owners if more lands are gained later on by accretion of the river receding further and further from its original bed. That I think is the correct principle. Perpendicular lines dropped from the common boundary point of the asli land on the old river bank to the new river bank would secure this equitable distribution of the new river frontage amongst the riparian proprietors. (I have indicated some of the perpendiculars by dotted lines in the diagram.) If such method is adopted there may be little overlappings of gaps triangular in shape according to the configuration of the new river bank, but these small triangular plots can be divided amongst the adjoining proprietors by the process of bisection. This method is indicated in the diagram printed at p. 61

of Angell's book.

6. The question that I am considering was raised and decided by the Court of Chancery in *Crook v. Corporation of Seaford* (1870-71) 6 Ch A 551. There the question that arose was to what portion of the flats of a seabeach the plaintiff was entitled under an agreement executed by the defendants, the Corporation of Seaford, which allowed the plaintiff to possess that flat part of the beach opposite his land of which the plaintiff claimed specific performance. The plaintiff contended that he was entitled to all the flat part of the beach which would be included within the limits of the lines drawn in prolongation of the boundary line of his field, but the defendants contended that the enclosing lines ought to be lines drawn perpendicularly to the seacoast from the extremities of his land. Lord Chancellor Hatherley overruled the plaintiff's contention and accepted the defendants', pointing out if the angle of the apex of his field were very obtuse, it would give the plaintiff an unreasonable amount of frontage on the sea, in fact would give them lands in front of his neighbours, a position which I have explained with reference to the triangle abc of my diagram. The method adopted by Lord Hatherley was adopted, though without discussion by the Judicial Committee of the Privy Council in *Pahalwan Singh v. Maharaja Muhessur Buksh Singh* (1871) 9 LR 168 which case was decided only 21 days after *Crook's* case *Crook v. Corporation of Seaford* (1870-71) 6 Ch A 551. The relevant passage at the top of p. 168 of the report, when read with the map, attached to the report, bears out the said position. That the division is to be made by lines drawn at right angles to certain lines was the position accepted by the *Sudder Dewany Adalat* in *Kunwar Hurree Nath Rai v. Mt. Jyedoorga Burwan* 2 Macnaghten's Select Reports 269, a case more complicated as the map given in the report would show. Dass, J., in his *Tagore Law Lectures* of 1899, says that the principle which I am accepting had been accepted in many unreported judgments of this Court, but as no reference has been given by him I have been unable to trace those judgments. On the grounds stated above, I hold that the triangular piece of land over which the controversy has centred before me belongs not to the plaintiffs but to the defendants; and the appeal must be dismissed with costs. Leave to appeal under the Letters Patent is granted.