

(2008) 01 AHC CK 0124

In the Allahabad High Court

Case No : Second Appeal No.2544 of 1978

Sri Raymond Benerjee (Since Deceased) Represented By
Smt.Queeni Benerjee and Others

APPELLANT

Vs

Sri C.J.Victor (Since Deceased) Represented By Babloo
Selvestor Victor and Others

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 11

Citation : (2008) 01 AHC CK 0124

Hon'ble Judges : Sunil Ambwani, J

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Shri Manoj Misra, learned counsel for the defendantappellant. Shri P.K. Misra appears for the plaintiffrespondents.

2. The defendantappellant No.2 died on 26.7.2006. The right to sue survives on the remaining appellants, who are already on record as appellant Nos.1/1 to ? as well as appellant Nos.3 and 4. The substitution application No.225409/06 is allowed. Let the record be made by the office of the prayer made by the appellant in the array of parties.

3. Shri Ranjeet Victor, the plaintiffrespondent No.6 died on 31.7.2006 leaving behind his heirs and representatives given in para 2 of the affidavit. Shri P.K. Misra, learned counsel for the respondents has no objection to their substitution. He has filed vakalatnama on their behalf. The substitution application No.225406/06 as allowed. The office will make a record in the array of parties.

4. Shri C.J. Victor & Ors. brought Original Suit No.434 of 1963 in the Court of Munsif, Gorakhpur against Shri R.Banerjee & others for possession over the land in dispute with the allegations that their old house is situated in Plot No.1181. They are owners of a piece of land bearing No.1129 area 0.80 dismals with which the defendants have no concern. The defendants' house is situate in Plot No.1171 situate towards east of Plot No.1129. The plaintiffs have given some

land to Shri Ram Yadav and on the remaining land they are in possession in which there are some trees and a bamboo grove planted by them. They also have a well in the disputed plot. The defendants without any authority started taking possession of the "Khajoor" trees on 21.7.1963 and started raising a wall giving rise to the cause of action to file the suit.

5. The defendantappellant Nos.1 to 4 filed the written statement alleging that the disputed trees are situate in Plot No.1172 area 0.33 dismals owned by the defendants. After the plaintiffs sold their land to Shri Ram Yadav, they were not left with any land between Plot Nos.1129 and 1172. The subject land was settled with the defendants under Section 9 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and that the suit is barred by Section 49 of the Consolidation of Holdings Act, 1963. The defendants further alleged that the Civil Court has no jurisdiction to decide the suit and that the suit was filed beyond the period of limitation.

6. The trial Court framed 12 issues. For the purposes of second appeal only issue Nos.1 to 7 are relevant. These issues are as follows:

- ?1. Whether the land in suit lies in plot No.1129?
2. Whether the land in suit is the Sahan land of the defendant?
3. Whether trees in suit were planted by the defendants?
4. Whether the plaintiffs are the owners of the land in suit?
5. Whether the trees in suit lies in plot No.1129?
6. Whether the plaintiffs are owner of the trees in suit?
7. Whether the land and trees in suit shall be deemed to have been settled with the defendants under Section 9 of the U.P.Z.A. & L.R. Act??

7. Both the parties joined issues on the identity of the land. The plaintiffs claimed suit land to be situated in Plot No.1172, whereas the defendant claimed it to be Plot No.1129. The trial Court appointed a Court Amin to identify the land. In his service report and map (paper No.243 Ga and 244 Ga) the Court Amin found that the land in dispute is situated in Plot No.1129 and that all the trees are situate in the same plot. The trial Court thus held that the disputed land is situated in Plot No.1129. Issue Nos.1 and 8 were decided accordingly. While deciding issue Nos.2, 3, 4 and 6 the Trial Court held that since the disputed land is situate in Plot No.1129, with which the defendants have no concern and that the plaintiff have filed original lease (Ex.A2) to prove the acquisition of the land. Apart from this Khasra No.1363F, Khatauni 1345F and other exhibits also proved that the land is situate in Plot No.1129 and was in possession of the plaintiff for a long period of time. Shri Raymond Banerjee also accepted in his crossexamination that the plaintiffs' land and well is situated in Plot No.1129. The trial Court found that the oral evidence proved that the trees were planted by the plaintiffs. The trial Court thus decreed the suit for possession of the land

and trees described in the Amin's map (paper No.244 Ga) and directed that if the possession is not handed over within two months, the defendants shall be dispossessed at their cost. The Court also issued permanent injunction restraining the defendants from interfering in the rights of the plaintiffs to peacefully enjoy the land and trees.

8. The defendants filed a Civil Appeal No.250 of 1977 against the decree. They challenged the findings on the grounds that the documents on record do not prove that the land and the trees are situated in Plot No.1129 of Village Basaratpur. The Court Amin did not prepare the map (paper No.244Ga) in accordance with the rules for carrying out survey and thus the said report and map could not be relied upon to decree the suit.

9. The appellate Court found that the only issue to be decided was; ?Whether the disputed land and the trees are situated in Plot No.1129?. Shri Roshan Lal was again appointed as Commissioner to prepare the survey map. His map and field book (paper Nos.243Ga and 245Ga) shows that when the Survey Commissioner (Amin) proceeded towards north of the fix point, he used a very long line of "theodolite". The triangle made towards south of "theodolite" take an angle of less than 300 on two angles. The survey as such was defective and should not be relied upon. The counsel for the petitioner relied upon page No.5 of the book ? Surveying and Levelling? of Shri T.P. Kanetkar. The author has opined that survey should be made from the whole to the part, if survey is made from part to the whole, even a small mistake will be magnified and would not identify the land. It is only in exceptional circumstances that a part of the line is used to complete the line. At page 81 the author has described the survey by triangle method and has observed that best triangles are those of which all the three arms are equal, and that only those triangle are good, which have an angle of less than 300 and in any case it should not be more than 1200. If it is not possible to ignore less than 300 or more than 1200, the survey should be made very carefully. The Amin's report thows that the place surveyed by him was densely populated, which can be taken to be the special circumstance. The Amin as such did not commit any error in adopting the special procedure. The appellate Court did not agree with the submissions made by the counsel for the appellant that the survey was not carried out in accordance with the settled principles and should be ignored. The appeal was consequently dismissed.

10. Shri Manoj Misra, learned counsel for the appellants submits that this appeal raises the substantial questions of law as follows:

?1. Whether the decree is sustainable on the basis of evidence furnished by the Amin's report, which was vitiated for not taking into consideration the correct principles of survey.

2. Whether the judgments of the Courts below are vitiated for nonconsideration of the oral testimony, which establishes that the land in dispute was being used as Sehan of defendant, since prior to the abolition of zamindari and as such it

vested under Section 9 of U.P.Z.A. & L.R. Act with the defendant.?

11. I find that the first question regarding the Amin's report following the correct principles of survey is a substantial question of law on which the appeal may be heard. Both the parties addressed on the question at length.

12. Shri Manoj Misra, learned counsel for the appellants submits that five survey reports were rejected by the trial Court on variety of grounds. The trial Court, thereafter, accepted 6th survey report on the same grounds on which the earlier reports were rejected. The orders by which the first five survey reports were rejected are reproduced as follows:

?1.4.64

Case called out.

Present Sri Shambhoo Dayal Singh Vakil for the plaintiff

Sri R.P. Srivastava Vakil for the defendant.

Heard parties learned counsel. Parties counsel have agreed that the map of the Amin is wrong and he had no done the measurement correctly. It is demonstrated before me that the distance between B to Z in map is 145 ft. whereas in map A this distance is about 132 ft. Map B is only as a larger side of map A. thus there is a difference of 13 ft which is a mistake.

Similarly the distance between B and W in map B is about 114 ft. which the same distance in map A is about 122 ft. which is also a glaring mistake.

Fixed points were not tested about their correctness from other points and they were taken as lying at their fixed places. Houses of the parties were not shown in full as was ordered and prayed in the application 32C dated 3.10.63.

These things shown that the Amin has done the work carelessly and without following the directions of the map and report as such are set aside.

Sd.

1.4.1964.

Plaintiff to move another application for the map by a commission within 7 days.?

?14.8.64

Case called out.

Parties counsel are present.

Heard them at length.

Plaintiff has filed the objection against the map and report of the Commissioner. Plaintiff's counsel pointed out that the Commissioner has committed mistake is not testing the two fixed points from any other fixed point as such the map is

wrong. This contention does not appear to be correct. The Commissioner has given the distance between the two stones in the field book and after making a chanda at point P drew a line from P up to the well in plot 1181 and there tested the wide from the stones of plot No.1122 and 1102. He found the distances tallying with the map filed in the case. In the said strength, he has prepared the map.

Plaintiffs' learned counsel could not demonstrate any mistake in the measurement, and so, the map cannot be assailed on that ground.

Other objections were not substantive anything was shown about there. As such objection is rejected and the map and report are confirmed.

Sd/

14.8.64

Fix 16.9.1964 F.H.?

13. Relying upon the second report the arguments were heard on 8.12.1964 and the suit was decreed on 19.12.1964. The defendant filed an appeal, which was allowed and the matter was remanded for a decision afresh after a fresh survey is made by Amin. The third report (paper No.147C) was considered and that by order dated 7.5.1966 objections were allowed and Shri Kishori Lal, Advocate was appointed on the joint request of parties to visit the spot and check the measurement done by the Amin in the field book and submits his report by 20.7.1966:

?7.5.66

Case called out.

Parties counsel are present.

Defendant has filed objection and the affidavit that the measurement is wrong and does not tally with the spot measurement.

Plff. Has filed counter affidavit that the stones are present on the spot and the measurement is correct.

Defendant's learned counsel submitted that the controversy cannot be solved unless an expert Commissioner is appointed to check the measurement and check the field book prepared by the Amin. I agree with the suggestion and appoint Sri Kishori Lal advocate on the joint request of the parties counsel to visit the spot and check the measurement done by the Amin in the field book and submit his report by 20.7.66. He will get Rs.25/ as fee from the defendant besides T.A.?

14. Once again objections were filed against the report of Shri Kishori Lal on which the report was set aside by order dated 18.8.1966:

?18.8.1966

Heard the parties learned counsel.

The Commissioner wanted the spot objection intimating the parties counsel. The Commissioner's field book shows that there were stone in the field book Chak A & Chak O is 17 links. That is a marked difference. The Amin's map & report & field book are set aside.

Order

Plaintiff taken step & issue a commissioner on 29.9.66.?

The 4th report was rejected by order dated 19.4.1967:

?19.4.67

Case called out. Heard the parties learned counsel Shri S.D. Singh, Advocate and Shri Lalta Prasad Vakil. The Commissioner's map and report are not dependable. The Commissioner have to take the changes that they form the triangular of 30 degree only. The result is that the area are cutting and a definite point is not found where they actually cut. The result is that the result has become a little constant with the file of the plaint.

The Commissioner's map & report are set aside.?

The 5th report and the map (paper No.198C and 199C) was rejected by order dated 27.7.1968:

27.7.1968.

198C & 199C Commissioner's report and map and the Defendant objection. I have heard parties no triangular resting. The Commissioner should have tested the points taken by him as fixed with the help of the third point especially when he has to take help of the map of 1892 to fix one stone as the distance on the spot falls to one corner of the stone as shown in the stone of 191415.

Consequently 198C and 199C is set aside.

Steps by 3.8.68.?

15. The 6th report and map (paper No.219C and 220C) was considered on 12.1.1970 and that Court passed the order:

?12.1.70

Heard parties on map and report 219C and 220C.

The Vakil Commissioner has not given full dates in his field book.

Fix 30.1.70 for F.H.?

16. On 16.3.1970 the application of the plaintiff to get the map prepared was allowed. Shri Bageshwari Narain Rai was appointed as Vakil Commissioner. The

objections on his report and map (paper No.235C and 236C) filed on 11.5.1970 were considered on 17.7.1970. It was found that the report was deficient and that the matter was sent back to the Commissioner to give his additional report. The order dated 17.7.1970 is as under:

?17.7.70

Sri R.B. Pandey for plaintiff.

Sri Shitla Prasad for defendant.

Sri Rajendra Prasad.

235C and 236C.

Map and report.

233CObjeciton

One of the objection raised that the Vakil Commissioner has not measured trees in suit, as prayed in 232C. It has also been pointed out that from K point E to the eastern and southern corner of plot No.1171 and Eastern and northern corner of plot No.1174 one line has been shown which is altogether about the Vakil Commissioner shall give his addl. Report on them two point by 18.8.70. Sent the papers back to Vakil Commissioner for addl. Report.?

17. The additional report (the 7th report) was filed on 18.8.1970 and was again set aside on 27.8.1970:

?27.8.70 235C, 236C and 239C

237C and 240C objection.

Apart from the fact that the Chandas" of less than used. Plotting also appears to be incorrect. The field book indicated point S on the north east corner of the boundary wall while in the map, the point has been shown the road. I, therefore, set aside the map and report.

Sd/

Steps by plaintiff within 15 days.?

18. Finally the Commissioner"s map and report (paper No.243C and 244C) were confirmed after inviting objections on 20.10.1970:

?20.10.70 243C and 244C Map and report filed.

246C Objection by Defdt 1 & 2.

Heard counsel for the defendant on the objection.

The learned counsel raised his objection in respect of method adopted by the C.C. Amin in preparing the map. According the learned counsel the person to whose method adopted by the C.C. Amin might cause great errors and that the

chanda taken in less than 30 would have also resulted in overlapping and consequently doubtful points. It has also been submitted that measurement the stones have been adopted. But the learned could not show any error caused by adopting these method.

The learned counsel then pointed out towards measurement of the two stones and submitted that they were not correctly plotted at 500" and 600". I have seen the same and it appears to be correct. Another point was referred from D to south west corner of the defendant house and uses admitted that it was not?..I have also seen the same. It is correct. It was also submitted that field book is incomplete in respect of interse measurement of the west verandahs of the defendants house. To my it is immaterial and field book contains more than sufficient action more than sufficient dates.

Accordingly I confirm this map and report.?

19. Shri Manoj Misra submits that the survey made by the Amin was patently erroneous and that the findings based on the report have vitiated the entire decree. The survey map is against the settled principles of survey, and is in variance of the situation existing on the spot. It is factually in contradiction with other maps. The plot in dispute is Sehan of the defendant appellant irrespective of numbers 1129 and 1172. The disputed portion is just in front of the appellant's house. There are several houses of the strangers existing between plaintiffs"respondents" house and appellant's house and the Sehan, wherein the plot in dispute lies. The Civil Judge misdirected himself by considering that if the map is confirmed, the plaintiffs" suit must be decreed and that there was no necessity to consider other arguments and other aspects of the case.

20. Shri Manoj Misra submits that rejection of the objections to the Commissioner report would not preclude the Court at a later stage in the suit from examining the Commisisoner or from considering the report in the light of evidence on record (Ashutosh & Anr. v. R.C. Dey & Ors., AIR 1953 Patna 133). He submits that where the survey map and various boundaries were plotted and surveyed, and not the constructions within those boundaries, the question whether a building or constructions was in the concerned plot should be decided from what such plot was shown to contain and not whether there was any mark near the boundaries. Where atleast three walls or three sides meet, commonly known as "Sihadda", it should be taken as fixed point for the purpose of measurements. Where only two walls are meeting, it should not be made as fixed point.

21. Shri Manoj Misra submits that in the Commissioner's map and report (paper No.243C and 244C) was confirmed on 20.10.1970. The Commisioner has followed the method of chain survey. In "Surveying and Levelling" by T.P. Kanetkar, Chapter III "Chain Surveying", to secure data for exact description of the boundaries of piece of land, two general methods of land surveying are followed, namely: (1) Triangulation and (2) Traversing. The Triangulation Survey

is a system of survey in which the sites of the various triangles are computed from (i) a single line measured directly, called as the base line; and (ii) the three angles of each triangle measured accurately with a theodolite. In this method the sites of the various triangles are measured directly in the field and no angular measurement are taken. The simplest kind of surveying is chain surveying. It is suitable when the ground is fairly levelled and open with simple details; plans are required on a large scale such as those of estates, fields etc. and the area is smaller in extent. T.P. Kanetkar observed:

It is unsuitable for large areas, and areas crowded with many details or difficult or wooded country. The principle of a chain survey is triangulation. It consists of the arrangement of framework of triangles, since a triangle is the only simple plane figure, which can be plotted from the lengths of its sides alone. The exact arrangement of triangles to be adopted depends upon the shape and configuration of the ground, and the natural obstacles met with. If a point is located by the intersection of two arcs, its displacement due to errors in the radii is a minimum if the arcs intersect at 90°. The three sides of a triangle being equally liable to error, each of the three angles of a triangle should be nearly 60°, i.e. the triangle should be equilateral. An equilateral triangle can, therefore, be more accurately plotted than an obtuse-angled triangle. Hence the best shaped triangle is equilateral and it is desirable to approximate to this form in order that the distortion due to errors in measurement and plotting should be a minimum. The framework should, therefore, consist of triangles which are as nearly equilateral as possible, such triangles being known as well conditioned, or well shaped. A triangle is said to be well conditioned or well proportioned when it contains no angle smaller than 30° and no angle greater than 120°. Ill-conditioned triangles having angles less than 30° or greater than 120° should always be avoided. If, however, they are unavoidable, great care must be taken in chaining and plotting.

Survey Stations: A survey station is a point of importance at the beginning and end of a chain line. Stations are of two kinds: (1) main, (2) subsidiary or tie. Main stations are the ends of the lines which command the boundaries of the survey, and the lines joining the main stations are called the main survey or chain lines. Subsidiary or tie stations are the points selected on the main survey lines where it is necessary to run auxiliary lines to locate the interior detail such as fences, hedges, buildings, etc., when they are distant from the main lines. They are conveniently fixed while the chaining of the main lines is in progress. The lines joining the subsidiary or tie station are called the subsidiary, or more commonly, tie lines. Stations are usually denoted with a small circle round the station point thus. They are lettered or numbered, capital letters being used to denote main stations and small letters tie stations, e.g. A, B; a, b; or 1, 2 etc. Sometimes the letters denoting stations are written within the circle thus (A), (B). Survey lines are indicated by the letters of the stations, e.g. AB, BC; ab, bc; or by figures within a circle e.g. (3). The system of lines of triangles covering the area to be surveyed is called the selection or framework of a survey.

Selection of Stations: The following points should be kept in view in arranging the framework of a survey:

- (1) Main stations should be mutually visible (intervisible).
- (2) The main principle of surveying, viz. working from the whole to the part and not from the part to the whole should be strictly observed. If it is found necessary to produce any line on paper after it is plotted, the part produced should be as short as possible. Otherwise small errors in plotting will be magnified when the line is produced.
- (3) If possible, a long line should be run roughly through the centre and the whole length of the area. It should be laid off, as far as possible on level ground. It is regarded as the base line on which is built up the framework of triangles covering the major portion of the area.
- (4) All triangles should be well conditioned.
- (5) Each triangle should be provided with at least one check line.
- (6) The survey lines should be as few as practicable.
- (7) A number of subsidiary lines called 'tie lines', should be run to locate the detail and to avoid long offsets.
- (8) The survey lines should be so arranged as to avoid obstacle to ranging and chaining.
- (9) The survey lines should lie over as level ground as possible.
- (10) The sides of the larger triangles should pass as close as possible and as parallel as possible to the boundaries, roads, building, etc., to be located in order to have short offsets. Similarly, tie or subsidiary lines should be placed close to the detail to be picked up.

Base line: This term though it is applied to the prime linear measurement in a trigonometrical survey, is often used in chain surveying. The longest of the chain lines used in making a survey is generally regarded as the base line. It is generally the most important line. It fixes up the directions of all other lines as on the base line is built up the framework of a survey. It should be laid off on as level ground as possible through the centre and the length of the area. It should be correctly measured horizontally. To obtain its accurate length, it should be measured twice or thrice. Since the accuracy of the whole of the detail depends upon the straightness and accuracy of the base line, great care should, therefore, be taken to ensure the straightness of the base line. If convenient, two base lines in the form of the letter "X" should be laid out. The object of selecting the base line in the centre of the area under survey is to avoid accumulation of errors in the system of triangles formed on it, as the liability to inaccuracy in the triangulation increases with distance from the base.

Check Line: A check line such as Ed. also termed as a proof line, is a line joining

the apex of a triangle to some fixed point on the side opposite or a line joining some fixed points on any two sides of a triangle. A check line is measured to check the accuracy of the framework, as the length of a check line as measured on the ground should agree with its length on the plan. Thus there is a complete check on the field measurements as well as on the accuracy of the plotting work.

Tie Line: A tie line such as *ab* is a line joining some fixed points termed as tie stations on the main survey lines. A tie line usually fulfils a dual purpose, viz. it checks the accuracy of the framework and enables the surveyor to locate the interior details which are far away from the main chain lines.

Offsets: In a survey the positions of the details such as boundaries, buildings, fences, roads, nallas, etc., are located with respect to the survey (or chain) lines by means of lateral measurements (i.e. Distance measured from the chain lines) to such objects right or left of the chain lines. These lateral measurements are called offsets. There are two kinds of offsets: (1) perpendicular offsets, and (2) oblique offsets. In the strict sense, offsets are always taken at right angles to the survey line. They are also called perpendicular or rightangled offsets. The measurements which are not made at right angles to the survey line are called oblique offsets or tieline offsets. Thus in fig. 3.3a *pP* is an offset, which *aP* and *bP* are the oblique offsets.

The offsets are usually measured with a metallic tape. But if the scale is large and great accuracy is required, a steel tape should be preferably used. For taking short measurements, an offset rod is sometimes used.?

22. Shri Manoj Misra has also relied upon "Surveying", Second Edition by Shri S.K. Duggal published by the McGrawHill Companies, Volume 1 in which the principles of surveying have been stated at page 7 and 8 as follows:

1.4. Principles of Surveying

There are two basic principles of surveying. These find their inherent applications in all the stages of a project, i.e. from initial planning till its completion.

1. To work from whole to part.
2. To locate a point by at least two measurements.

1.4.1 to Work from Whole to Part

It is the main principle of surveying and a method violating the principle of working from whole to part should not be adopted unit and unless there is no alternative.

The main idea of working from whole to part is to localize the errors and prevent their accumulation. On the contrary, if we work from part to whole, the errors accumulate and expand to a greater magnitude in the process of expansion of survey, and consequently, the survey becomes uncontrollable at the end. This can be explained by taking a simple example of measuring a horizontal distance

AB, say about 120m with a 20m chain. The process consists in measuring the distance in parts, as the length of chain is smaller than the distance to be measured and is accomplished by the process of ranging. There can be two alternatives.

In the direct method, various points such as C, D and E are established independently at a distance of about 20m each with respect to the two end control points and the distance AB can be measured. As C, D, E, etc. are established independently with respect to the main control points, error, if any, introduced in establishing any intermediate point will not be carried in establishing the other points. For example, suppose that point D has been established out of the line AB, as D" and E, F, etc., have been established correctly. The actual distances DC and ED will be in error (C"C and D"E) but all other distances AC, EF, FG, etc. will be correct. Therefore, the error in this procedure is localized at point D and is not magnified. This method observed the principle of working from whole to part.

In the other method, a part, say AC, of the whole distance AB to be measured is fixed by fixing a point C as C" by judgment or by the process of ranging. Then the other points D, E, F, etc. are fixed with respect to A and C". Now if point C is not in line with AB, all the points D, E, F, etc. established will be out of line with an increasing magnitude of error. The length measured will, therefore, be incorrect to a larger extent as compared to the direct method. This method may introduce serious error as the survey at the end becomes uncontrollable and hence working from part to whole is never recommended.

1.4.2 To Locate a point by at Least Two Measurements

Two control points (any two important features) are selected in the area and the distance between them is measured accurately. The line joining the control points is plotted to the scale on drawing sheet. Now the desired point can be plotted by making two suitable measurements from the given control points.

Let A and B be the two control points, whose positions are already known on the plan. The position of C can be plotted by any of the following methods.

1. By measuring distance BC and angle $\angle C$, as shown in Fig. 1.7 (a).
2. By dropping a perpendicular from C on the line AB and measuring either AD and CD or BD and CD, as shown in Fig. 1.7(b).
3. By measuring the distances AC and BC, as shown in Fig.1.7 (c).

1.5.2 Based on Instrument Used

Chain Survey: When a plan is to be made for a very small open field, the field work may consist of linear measurements only. All the measurements are done with a chain and tape. However, chain survey is limited in its adaptability because of the obstacles to chain like trees and shrubs. Also, it cannot be resorted to in densely builtup areas. It is recommended for plans involving the

development of buildings, roads, water supply and sewerage schemes.?

23. It is submitted that the entire case depends upon the identification of the plot. The Amin in his report dated 8.10.1970, confirmed by the Court, committed gross errors and completely misdirected himself in carrying out the survey. The marking stones found towards south of the Plot No.1191 were marked as Cha, Chha, Ja. He could not find any other marking stones due to rainwater logging in the area. He could not draw straight line between stones Cha, Chha and Ja as there were constructions in between. He placed theodolite (Chanda) at a place from where plot No.1122 and 1172 were visible and after calculating the distance from these two points, he proceeded to measure the distance, and by using theodolite determined point Chha and then proceeded to go further north and concluded that the disputed constructions were found in plot No.1129. The triangle drawn by him far south of the subject plots was at a distance of more than 1000 foot. The angles were not drawn. The triangles were not well conditioned as he had drawn some angles, which were smaller than 20° and greater than 120° , which should have been avoided in chaining and plotting.

24. Shri Manoj Misra submits that the Amin committed the basic mistake of failing to select the stations and proceeded from part to the whole. He did not draw a line from the centre and rather relied upon a place from where the plots were visible. The Amin did not draw the check lines. The report was flawed, violating the principles of surveying. The Courts below could not have placed reliance upon such a report, to decree the suit.

25. Shri P.K. Misra appearing for the plaintiffrespondents submits that the Amin's report was confirmed after calling for objections. The Trial Court found that the two stones were correctly plotted and that the field book was complete in respect of interse measurement. The order confirming the report was not challenged and that any argument against the Amin's report would be barred by principles of estoppel contained in Section 11 CPC. He submits that when a finding is recorded and directions are given like in the present case when the report was confirmed, the parties are precluded from raising objections in respect of same matter at a later stage in the same proceedings and relies upon Y.B. Patil & Ors. v. Y.L. Patil, (1976) 4 SCC 66 and Bengali v. District Judge, Allahabad & Ors., 1985 (2) ARC 455.

26. In this case the only issue to be considered and decided was whether the disputed land and the trees are situate in Plot No.1129. Any mistake committed by the Court's Amin in locating the plot could vitiate the findings recorded by the Courts. The trial Court confirmed the Amin's report and relied upon it to hold that the plaintiffs are owners of plot No.1129 and which is not Sehan of the defendants. The trees are also not planted by the defendants. These findings are based on the Amin's report, which was confirmed by the trial Court. The appellate Court accepted the principles of surveying and held that a good survey should be based upon the planning in which the working should be made from whole to part and that the angles of the triangle should be well proportioned,

with no angle smaller than 30° and greater than 120°.

27. After accepting these two principles of survey, the appellate Court found that the place of survey was densely populated and thus in the special circumstances the procedure adopted by the Amin could not be said to be contrary to the established principles of survey. It was then observed that the objections against the Amin's report and the map did not point out any specific irregularity in carrying out the survey and thus there was no good ground to reject the report.

28. The confirmation of the Amin's report does not decide any issue between the parties. Such objections can always be taken in appeal, when the only question involved is the correctness of the report of the Amin, which is basis of deciding the suit. In *Y.B. Patil (supra)* the High Court at the time of decision in an earlier writ petition recorded a finding, and gave directions to the Tribunal not to reopen the question of fact in revision. The judgment was binding upon the parties and it was not open to the Tribunal to go behind such findings. In this context the Supreme Court observed that the principles of *res judicata* can be invoked not only in separate subsequent proceedings; they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of proceedings becomes final, it would be binding at the subsequent stage of that proceedings. In *Bengali (supra)* the issue involved was whether Section 11 would apply to proceedings under U.P. Act No.13 of 1972, the Court held that U.P. Act No.13 of 1972 (the Rent Act) is a complete Code in itself. The Courts exercising jurisdiction under the Act are Courts of exclusive jurisdiction and in the circumstances the general principles of *res judicata* would be applicable to the case.

29. In the present case the confirmation of the report of the Amin does not make the report or finding based on such reports to be final, operating as *res judicata* in the same proceedings in the first appeal or in the second appeal. The first appeal under Section 96 of CPC is continuation of suit and that all findings including the confirmation of the Amin's report and the findings based on such report are open to challenge in the appeal. If the Amin had committed fundamental mistakes of surveying, the rejection of objections and confirmation of such reports in the trial Court can be challenged in second appeal and that such a question would also be substantial questions of law to be considered in the second appeal.

30. I find substance in the submissions of Shri Manoj Misra that the field book was not scaled and that whenever there is discrepancy between the field book and the scale map, the survey on the basis of field book will be incorrect. The Amin only verified three points. Points Ka, Chha was not on scale and that in point Chha, Ja point Ja was not verified on the spot. There was an error of 104% in using the theodolite. The base line was not cutting from the fixed point. It was a curved line and that the basis of survey was not from whole to part but from part to whole. The triangles were more than 1200 at many place and thus entire report, prepared on the basis of faulty base line (main station) situate at a distance of more than 1000 feet, was flawed and could not be relied upon, to

decree the suit. The Amin admitted in his report that he could not fix the points as there was water logging and that he chose an easy method (contrary to the principles of surveying) by fixing points from a place from where both the plots were visible. The Amin further admitted in his report that the area was thickly populated and thus the survey was not possible.

31. In this case it will not be useful to remand the matter for fresh survey as five survey reports were rejected and the 6th survey report found defective, was relied upon to decree the suit. In such circumstances the Courts below could not have proceeded to decide the suit on the basis of survey report and should have assessed other material and the oral evidence to decide the matter.

32. It is unfortunate that this appeal is pending in this Court since 1978, and that the matter has to be remanded to the appellate Court after 29 years to consider the oral evidence or any other evidence or material on record to find out whether the disputed land falls in Plot No.1121. Both the counsels did not chose to rely upon the oral evidence or any other evidence on record for the purposes of deciding the matter and thus it would be appropriate that the matter is remanded to the appellate Court to consider the oral evidence or any other evidence or material on record to record findings whether the land falls in plot No.1129.

33. The substantial question of law with regard to violation of the established principles of surveying in preparing a report, which was made the basis of claim of the plaintiff, is decided in favour of the defendant appellants. The second appeal is allowed. The judgment of the first appellate Court dated 12.5.1978 in Civil Appeal No.250 of 1977 is set aside. The office shall forward the entire record to the appellate Court to decide the matter afresh on the basis of other evidence including oral evidence on record. The appellate Court shall not consider and rely upon the Amin's report confirmed by the trial Court. The deposit of measne profit in terms of the interim orders of this Court shall abide by the result of the judgment of the first appellate Court.

(Second Appeal allowed)