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(1912) 05 CAL CK 0003

In the Calcutta High Court

Tarini Charan Sarkar and Others — APPELLANT

Vs

Fakarannissa Chowdhueani and Others — RESPONDENT

Date of Decision : 09-05-1912

Acts Referred:
Evidence Act, 1872 — Section 36

Citation : 15 Ind. Cas. 459

Hon'ble Judges : Woodroffe, J;Coxe, J

Bench : Division Bench

Judgement

Woodroffe, J.—The first Court found that the kairni jote, which is called kotibari jote, belonged to Mr. Bray and had been purchased by the plaintiffs, and that there was no rebutting evidence, and it accordingly held that the plaintiffs, the appellants before us, had acquired good title to this jote. It then proceeded to deal with what is the real issue in this case, namely, whether the disputed lands are included in this jote. The manner, however, in which this question has been dealt with has raised some confusion. I would point out here that the question whether the land belonged to Mouzah Ramchandrapore or to Mouzah Deara Ramchandrapore is not material. If the disputed land covers Mr. Bray''s jote, it is not material to inquire as to who the plaintiffs'' landlords may be. The question is, did the lands in dispute form part of Mr. Broy''s jote? Now, it has been contended that this is a question of fact, and that we are concluded by the findings of the lower Appellate Court. Those findings are challenged, and it is said that in coming to them the lower Court has proceeded illegally in relying upon evidence which is irrelevant and inadmissible. This ground is stated in the second of the grounds of appeal to this Court, in which it is said that the only evidence on the record, on which the lower Appellate Court relies in holding that the proprietor of Mouzah Ramchandrapore obtained abatement of revenue in respect of the lauds dilapidated, is a remark made by a Kanungo in Exhibit I, which is not admissible in law, and that it could not be used as evidence against the plaintiffs who were no parties to the proceedings in which it was made.

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2. Now, the only question before us in this appeal is this, namely, whether the map upon which this remark occurs is or is not admissible in evidence. Some faint attempt was made to show that the case might fall within the provisions of Section 36 of the Evidence Act. But I am of opinion that that is not so, that the map was not one which was prepared for public purposes and, therefore, of that character which the map must have to fall within the terms of that provision. And the proceedings upon which this map was used raise the question whether the land, the subject-matter of these proceedings, was the property of the owners of Deara Ram-chandrapore or whether it was land which formed part of no settled estate and to which the Government were, therefore, entitled.

3. Then it was further argued that if it does not fall u/s 36, it falls u/s 35 of the said Act. Section 35 deals with entries in public records. That is the general section dealing with public records, Section 36 deals with particular classes of public documents, namely, maps, charts and plans. In my opinion, this map does not fall within the provisions of Section 35; nor has any authority been produced before us in support of this contention. It follows, therefore, upon this that the document was inadmissible and should not have been referred to in coming to the conclusion in this case.

4. I may mention here that it has been further contended that even if the document were admissible, it was used to show that the land fell with the ambit of Deara Ram-chandrapore, a fact which, as I have explained, does not affect the real question before us, namely, whether it was Mr. Bray''s jote or not.

5. It has been further contended that the result of the Collector''s proceedings was to release the land, which, it was suggested, belonged to the Government, and that, therefore, in fact the map has been used to prove something which the proceedings in which it was used negative. This, however, has been denied by the learned Pleader for the respondent and is rather a question of fact than a question of law with which we are concerned. . What we are concerned with is not what the result of these proceedings was but what was their nature and what was the nature of the documents to which objection has been taken. I merely mention this point in order that it may be considered by the lower Appellate Court when the case goes back for re-hearing. It has been further pointed out in connection with these documents that neither the tenants nor the owners of Ramchandrapore were parties to the proceedings.

6. We observe that the learned Subordinate Judge who tried this appeal did not come to a clear finding upon the issue before him, that is, whether the disputed land is included in Mr. Bray''s jote. The judgment and decree of the lower Appellate Court must, therefore, be reversed and the case remanded to that Court for re-hearing and for determination of this issue, after excluding from the evidence Exhibit I, to which objection has been taken and which we hold to be inadmissible.

7. The costs of this appeal will abide the result of the decision on remand.

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Coxe, J.

8. I agree.

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