

(1915) 06 CAL CK 0027
In the Calcutta High Court

William Graham

APPELLANT

Vs

Phanindra Nath Mitter and Others

RESPONDENT

Date of Decision : 11-06-1915

Acts Referred:

Bengal Survey Act, 1875 — Section 63
Evidence Act, 1872 — Section 83

Citation : 31 Ind. Cas. 41

Hon'ble Judges : D. Chatterjee, J;Chapman, J

Bench : Division Bench

Judgement

1. In the suit out of which this appeal arises the plaintiffs claimed a plot of land roughly thirteen kotas in area in Kidderpore, suburb of Calcutta. The plaintiffs derived their title in the following way. At the beginning of the last century the Government constructed a new road in that locality. A survey was made in 1800 and again in 1801 for the purpose of assessing the compensation to be awarded to the persons from whom the lands for the road were taken. It appears that certain side-lands, which had been taken and might subsequently be required for the purposes of the road, were then noted as dar-i-pin lands: the lands which had been taken and which lay outside these dar-i-pin lands were noted as be-darkari or surplus lands and these latter surplus lands were settled with former holders under lakheraj sanads. In 1810 the plaintiffs' ancestor Ram Bhadra Mitra received such a sanad (Exhibit 11) in respect of seven kotas of this surplus land. In order apparently to regularise these settlements and to assess rent for land improperly held, a fresh purvey was undertaken with the result that, in 1837 the heirs of Ram Bhadra Mitra received a notice to the effect that they had been found in possession of 9 kotas 9 chittaks 10 gundas of land and were asked to prove their title to it. The heirs of Ram Bhadra Mitra were invited to take settlement ,of the excess land found in their possession. In 1840, however, there appears to have been yet another survey and measurement by an amin, Kalipada Chatterjee. The Board of Revenue were not satisfied and directed yet another survey. This was carried out by a Deputy Collector, Radha Nath Gangully

in 1846. He found the heirs of Ram Bhadra Mitra in possession of eight kotas 7 chittaks 12 gundas in two plots which were numbered 168 and 169 (Exhibit 8c). The Board of Revenue however, eventually decided that no rent could reasonably be demanded for any of the excess lands reported to be in possession of tenants. The heirs of Ram Bhadra Mitra therefore remained in possession of their two plots Nos. 168 and 169 rent free as before. The plaintiffs claim, and we think reasonably, that their possession of plots Nos. 168 and 169 can be related back to the sanad granted to their ancestor Ram Bhadra Mitra in 1810 (Exhibit 11). It is not disputed that the plaintiffs are the heirs of Ram Bhadra Mitra, the grantee of that sanad.

2. The defendants do not now contest the facts above set forth, except to somewhat faintly suggest that the connection between the sanad of 1810 and the plots Nos. 168 and 169 had not been made out. We are satisfied, however that the connection has been made out. The questions for our determination, therefore are: First, whether the land which has been decreed to the plaintiffs has been properly identified with the plots Nos. 168 and 169 above referred to and secondly whether the plaintiffs have been in possession within 12 years of the suit?

3. It will be observed that 13 kotas were claimed in the plaint. But as the case was put before us the plaintiffs did not claim more than the land which had been identified with the said plots Nos. 168 and 169.

4. The immediate occasion of the suit was a decision under the Bengal Survey Act, 1875, affirmed by the Commissioner in appeal in July 1908 to the effect that the plaintiffs were in possession of two kotas odd only. We shall deal in the proper place with the bearing of this decision on the merits. The present suit was instituted in July 1909. The suit was decreed in part, that is, a decree was given for the land identified as plots Nos. 168 and 169 above referred to. The defendants appealed to this Court, and the plaintiffs filed a cross-objection averring that they were entitled to the entire 13 kotas claimed by them. At the hearing of the appeal the learned Judges observed that the western boundary of the land had not been determined and remanded the case for a finding on this point. A finding has been come to and has been submitted. The whole case has been argued before us de novo. The cross-objection by the plaintiffs has not been pressed.

5. We proceed to consider the first question, namely, whether the land which has been decreed to the plaintiffs has been properly identified with plots Nos. 168 and 169 of the survey of 1846. No map of 1846 is forthcoming. What we have is a serial list of holdings (Exhibits 8a to 8c). The relation of each holding to the holding bearing the previous number is noted. The name of the possessor and a description of the boundaries of each holding is given. The length, breadth and area are also noted. It is also noted whether the land is dar-i-pin i.e., within the boundaries of the lands reserved as side-lands for the purposes of the road or whether it is surplus land. The results obtained by the amin in 1840 and by the

Deputy Collector in 1846 are both given. These lists are called chittas. They are more than 30 years old, have been produced from proper custody and can be presumed to be genuine.

6. It has been argued that these chittas cannot be treated as evidence without proof of their accuracy. It is said that they are not public documents within the meaning of Section 83 of the Evidence Act and that the chittas having been prepared by the Government for their own private use, they cannot in any case be used as evidence. Among other cases the case of *Ram Chunder Sao v. Bunseedhur Naik* 9 C. 741 : 7 Ind. Jur. 653 is relied oil. But in the case now before us the chittas are only part of and in explanation of proceedings which were regularly taken for the assessment of rent upon lands said to be improperly held rent free. The whole of the proceedings have been put up in evidence including the petition under which the proceedings were initiated, the reports of the Collector and the orders of the Board of Revenue. All these papers taken together furnish valuable evidence that the Government recognised the right of the plaintiffs' predecessors to hold the land described in the chittas as rent free. In the case of *Ram Chunder Sao v. Bunseedhur Naih* 9 C. 741 : 7 Ind. Jur. 653 upon which the appellants relied Garth, C.J., was of opinion that the chittas in that case coupled with the resumption proceedings would have been admissible. Here the chittas are coupled with proceedings which are of the nature of resumption proceedings. The persons who made the measurements are dead, but there is evidence on the record that measurement was actually made. The appellants have not in fact had the temerity to contend that the chittas were prepared without any measurement at all. The report of the Commissioner leaves no doubt in our minds that there was actual measurement. Whether it was sufficiently accurate to make identification of the plots Nos. 168 and 169 possible is a question which we shall proceed next to determine. If that be determined in favour of the chittas, the remaining objection to their admissibility must fail.

7. We proceed then to consider in detail whether plots Nos. 168 and 169 of the chittas have been properly identified. For the preliminary consideration of this question the map recently prepared by Mr. Smart, Superintendent of Survey, may be referred to. A cursory examination of the chittas will reveal the fact that they assume that the Circular Garden Reach Road runs due north and that the directions of east and west and south are assumed to correspond. That this is the basis upon which the chittas have been prepared has now been conceded in argument. The next point to consider is that there are two landmarks on the map which can reasonably be assumed to have remained unaltered since the time of the chittas, one is the Panchanan Tola, an ancient shrine at the corner of Watgunge Street (plot No. 153 of the chittas), and the other is the Munshigunge Road (plot No. 166 of the chittas). Considerable argument was addressed to us regarding the location of plot No. 158 and the plots intervening between it aid the Munshigunge Road. We do not think it necessary to go into this in detail, as the result intended was only to indicate that the chittas of these plots were somewhat carelessly prepared. There is nothing to suggest that the location of

the Munshigunge Road, plot No. 166, has altered except in the matter of two feet in breadth, which may be neglected. The plots which we are concerned with are on the other side of the Munshigunge Road and their identification is not affected by any carelessness in preparing chittas of the plots on the Panchanan Tola side.

8. The area between the Munshigunge Road and Tolly's Nala is comparatively small. Assuming, as we are entitled to do, that plots Nos. 168 and 169 of the chittas are the lands granted by the sanad of 1810, the area within which these plots must be found is still further restricted, for according to the sanad they must be within 250 feet of the Bridge Road.

9. Taking the plot next in number to the Munshigunge Road in chittas we come to plot No. 167. This is described in the chittas as at the corner of the Munshigunge Road and the Bridge Road. There are two plots now at this corner numbered in Mr. Smart's map No. 145 and 45/1. Plot No. 145/1 is at the corner but has been found to be dar-i-pin land, i.e., land included in the side-lands of the road. Plot No. 145 has thus been identified as plot No. 167 of the chittas. We are satisfied that the finding that plot No. 145/1 is dar-i-pin land is correct. From the configuration of the approaches to the road in Mr. Smart's map it is fairly obvious that it is dar-i-pin. It is so described in the official register and that it is dar-i-pin is in accord with the statement in an old official paper (Exhibit C) (referred to without objection) that 15 feet of dar-i-pin land was left on each side of the road after the drain. The actual width of plot No. 145/1 is about 18 feet. If No. 145/1 is dar-i-pin land, then plot No. 145 of Mr. Smart's map is certainly plot No. 167 of the chittas. The area of plot No. 145 differs from plot No. 167 by five chittaks odd only and this the Commissioner says can be accounted for, by the recently constructed drains. Plot No. 167 of the chittas being thus determined it follows that plots Nos. 168 and 169 must be where they have been located by the decree. The only argument that can be put forward to the contrary is to suggest that the words *purba dakshin* in the description of the boundaries of plot No. 167 in the chittas mean south and east, and not south-east as they undoubtedly do and that a portion of plots Nos. 168 and 169 lay directly to the so-called east of plot No. 167 and had been absorbed by the *thakurbari*. We are not prepared to accept the meaning sought to be put on the word *purba dakshin*. There is evidence that the area of the *thakurbari* plot has increased considerably since the time of the chittas, but there was room for considerable encroachment towards the road side. There is nothing to indicate encroachment towards plot No. 145; on the contrary, there is evidence that there was formerly a boundary wall on that side (defence witness No, 8). We are satisfied that plots Nos. 168 and 169 have been properly located by the decree. We may say that in the argument in appeal the location of the western boundary was not seriously attacked, except upon general grounds such as those indicated above. Assuming our reasoning to be correct, nothing has been said to lead us to think that the western boundary has not been properly determined. We are satisfied with the grounds given by the Commissioner for his finding on this point.

10. The decision under the Survey Act was based upon a partition map made behind the backs of the plaintiffs. It is not, of course, binding upon us upon the question of title. And it does not preclude us from finding that during a period anterior to that decision the plaintiffs were in possession.

11. It has been argued that the extract from the official register (Exhibit 3), which as will be seen above we relied upon for proof that plot No. 145/1 was dari-i-pin land, was not admissible in evidence. The register was produced by a Government Survey Inspector (plaintiff's witness No. 1). It is a register of the Survey Office. Now the registers kept in the Survey Office are prescribed by the Board of Revenue u/s 63 of the Bengal Survey Act, 1875. The register, therefore, appears to have been prescribed by law. In any event, it was a public register kept for the public benefit under the sanction of official duty. It matters not whether the clerk who actually wrote the entries had any personal knowledge or whether the register was a copy of a previous register which had become untidy. The entry was clearly relevant u/s 35 of the Indian Evidence Act.

12. As regards possession within 12 years of the suit we are satisfied that this has been made out. Defendant No. 2, Khetra Mohan Ghose and his father before him held the land (the plaintiffs say) under them. Khetra Mohan sub-let to defendant No. 3, Shayama Charan and under arrangement with Khetra, Shayama Charan paid Khetra's rent direct to the plaintiffs. The defence case was that only two kotas of the land were thus -held by Khetra and Shayama Charan under the plaintiffs and that the remainder was held under the defendants. Khetra is in the service of the defendants and his evidence on the point is, therefore, wholly unreliable. The plaintiffs, after giving Khetra and Shayama Charan notice to produce the original rent receipts, themselves produced counterfoils showing that rent was paid to them till well within 12 years of the suit for the entire area in suit. This is supported by the following circumstances. The defendant No. 2 Khetra Mohan, says in his evidence that before Shayama Charan his mother, Hara Sundari was the tenant. In 1902 the principal defendants sued Hara Sundari in ejectment. The suit ended in a compromise in which the principal defendants agreed with Hara Sundari to pay the rent and tax which is paid to Thakurdas Mitra" (the father of the present plaintiffs). The areas roughly correspond to the areas in dispute in the present suit and the inference is that the principal defendants then admitted that the father of the present plaintiffs was in possession in 1902. The suit, therefore, was not barred by limitation.

13. We agree with the finding that the attempt to deprive the plaintiffs of the property was engineered by the defendant No. 2, Khetra Mohan Ghose, who was in the service of the principal defendants when he became a tenant of the land under the plaintiffs.

14. We desire to acknowledge the assistance we have received from the Bar.

15. The appeal is dismissed with costs. Hearing fee three hundred rupees.

16. The cross-objection is dismissed.