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that the interest of Tara Prasanna in Rautara did not pass by survivorship to the appellant, independently of the question whether the parties are governed by the Dayabhaga or the Mitakshara.

After the most careful consideration of all the materials on the record we see no escape from the conclusion that the Subordinate Judge has rightly decreed the suits and that the appeals must be dismissed with costs.

B. M. S. *Appeals dismissed.*

APPELLATE CIVIL.

Before Walmsley and B. B. Ghose JJ.

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Jan. 8.

DARAPALI SADAGAR

v.

NAJIR AHAMED.*

Lease—Construction—Boundary line—Settlement map, misdescription in.

Where in a lease the plaintiff's land was thus described, "land lying within the boundaries as shewn in the map which is in the settlement papers, etc." and in the map where the boundary line had been drawn, a *gopath* had been depicted, but no such *gopath* actually existed there :—

Held, that the plaintiff was entitled to all the lands up to the line as drawn in the map, without reference to the actual site of the *gopath*.

"As soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it."

Llewellyn v. *Earl of Jersey* (1), *Mellor* v. *Walmesley* (2) and *Lyle* v. *Richards* (3) followed.

* Appeal from Appellate Decree, No. 1500 of 1920, against the decree of W. A. Seaton, District Judge of Chittagong, dated Feb. 27, 1920, affirming the decree of Narayan Chandra Ghosh, Munsif of that place, dated April 15, 1918.

(1) (1843) 11 M. & W. 183. (2) [1905] 2 Ch. 164.
(3) (1866) L. R. 1 E. & Ir. App. 222.

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SECOND APPEAL by Darapali Sadagar, the plaintiff.

This appeal arose out of a suit for declaration of the plaintiff's title to some lands and for khas possession. Two conterminous plots of land were leased out to the plaintiff and the defendants by the Government. In the leases, the Settlement map was referred to for the purpose of showing the boundary line. In the map, however, a *gopath* was depicted near the boundary line, but as a matter of fact there was no *gopath*. The plaintiff claimed all the lands covered by his lease up to the boundary line irrespective of the misdescription of the *gopath* in the map. The lower Courts dismissed the suit.

Babu Jogesh Chandra Roy and *Babu Narendra Kumar Bose*, for the appellant.

Babu Mahendra Nath Roy and *Babu Paresh Chandra Sen*, for the respondents.

GHOSE J. This appeal arises out of a dispute between grantees of two conterminous plots of land within the khas mehal of Government. Plaintiff was given lands in the south and defendants lands in the north, the grant to both parties being from the year 1312 B.S. The dispute is regarding the boundary line between the parcels. The Courts below have decided against the plaintiff. Hence this appeal by him. The question depends upon the construction of the leases with regard to the boundary line. In the lease of the plaintiff the land is thus described,—"land lying within the boundaries as shown in the map which is in the settlement papers and appertaining to the Sadar khas mahal, etc."; and again in the schedule as "4 drones 14 kanis of land in dag No. $\frac{1742}{1379s}$ of the present survey, etc." The defendants' land is similarly described in his lease, "land lying within the

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boundaries as shown in the map which is in the settlement papers, etc.," and in the schedule as "1 drone 5 gandas of land in all covered by dag No. $\frac{1742}{137\,97}$ of the present survey, etc." It is admitted that the reference to the map in the leases has this effect, that it should be treated as incorporated in the leases and forming part of the documents. If things stood alone, there would have been no question that each party would be entitled to the dag as shown in the map as forming his parcel and the boundary line would have been the line drawn in the map. In the map, however, at the place where the boundary line has been drawn a *gopath* has been depicted, but as a matter of fact there is no *gopath* in the locality. There is, however, actually a *gopath* in existence further to the south of the boundary line as drawn in the map. Plaintiff's case is, that notwithstanding the fact that a *gopath* has been shown near the boundary line which does not exist there, he is entitled to all the lands up to the line as drawn in the map, without reference to the actual site of the *gopath*. He further urges that the *gopath* not having been described as the boundary, the mistake in the map as to the true position of the *gopath* is immaterial and no enquiry should have been directed as to its exact situation. The contention of the defendant on the other hand is that the *gopath* having been depicted in the map where the boundary line was drawn, it was the clear intention of the parties that the boundary line should be at the place where the *gopath* actually is, and that the boundary ought not to be the line as drawn in the map. The question is not free from difficulty, but in my opinion having regard to the authorities the plaintiff's contention should prevail. The manner most beneficent to the defendant in which the lease of the plaintiff may be

read incorporating the map, seems to me this, "land lying within the boundaries as shown in the map and near the northern boundary line is a *gopath*." The map is referred to in the leases not for the purpose of showing the site of the *gopath*, which is not mentioned at all, but for the purpose of showing the boundary lines, and the mistake in the drawing of the *gopath* at the place is immaterial. Even if there had been a description in the lease of the *gopath* in the manner I have stated, that, in my judgment, would not have affected the boundary as marked in the map, as it would be merely a false description—a mere false demonstration, which does not affect that which is already sufficiently conveyed. The well-known rule is, "as soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it." Parke, B. in *Llewellyn* v. *Earl of Jersey* (1). In *Mellor* v. *Walmesley* (2) there was a conveyance of land, the exact dimensions being stated in the parcels and marked on a plan and stated to be "bounded on the west by the seashore", which was not a fact. The majority of the Court of Appeal held that the latter words must be rejected. In *Lyle* v. *Richards* (3), the boundary of a leasehold was described as, "a line drawn from J. V.'s house to a bound stone", and the description of the parcels was followed by the words, "which said premises are particularly delineated by the map on the back of this sett". On this map the boundary line appeared to be drawn from the north-east corner of the house. The position of the house itself was incorrectly represented in the map. It was held that the map was a part of the description and that the boundary line

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must be taken as drawn on the map. The reasoning of these cases appear to me to be applicable to the case before us. In my judgment the northern boundary of plaintiff's land is the line drawn on the settlement map, and the fact that the *gopath* is erroneously delineated there does not affect the question. In this view, on the report of the Commissioner appointed for relaying the map which has not been objected to, the plaintiff would be entitled to 7 kanis 2 gandas out of the disputed land, and the northern boundary of plaintiff's dag would be the line drawn by the Commissioner in accordance with the settlement map.

A question of limitation was raised by the defendants but as the leases of both parties commenced from 1312 there does not appear to be any substance in it, and no reliance can be placed by defendant on possession prior to that date in support of his plea.

I would therefore set aside the decree of the Court of Appeal below and decree the appeal in the terms set forth above with costs in all Courts.

WALMSLEY J. I agree.

B. M. S.

Appeal allowed.