

APPELLATE CIVIL.

Before *Cammiade* and *S. K. Ghose JJ.*

MURARI MOHAN KHOMARI.

v.

KHIRODE NATH JANA.*

1928.

July 16.

Court—Private experiment—Handwriting, removal of.

It is a thoroughly improper proceeding for a court to have something done by a pleader, in the way of proof, to his private satisfaction (*e.g.*, that it was possible to remove writing from paper without leaving any trace behind): such a performance should be done in court and in the presence of the other side.

SECOND APPEAL by Murari Mohan Khomari, plaintiff.

The facts of the case out of which this appeal arose were briefly as follows:—

The defendant No. 1 had borrowed Rs. 100 from the plaintiff and executed a mortgage bond in his favour. The mortgagee thereafter instituted this suit for the recovery of Rs. 650 due as principal and interest on that mortgage bond. The defendant No. 1 had sold the mortgaged land to defendant No. 2, who alone contested the suit, his main defence being one of satisfaction. He deposed in court that, at the time of his purchase, the mortgage bond had been shown to him by his vendor, the mortgagor, and that at that time it contained an endorsement of repayment in full. But the bond produced in court by the plaintiff, the genuineness of which was not challenged, had no such endorsement. Thereupon, the trial court got a pleader to perform an experiment privately, showing that handwriting could be successfully removed without leaving any trace behind. The suit was

* Appeal from Appellate Decree, No. 1199 of 1926, against the decree of Narayan Chandra Ghosh, Subordinate Judge of Midnapur, dated Jan. 21, 1923, affirming the decree of Hem Chandra Sanyal, Munsif of Contai, dated Mar. 16, 1925.

accordingly dismissed. This decision being confirmed on appeal, the plaintiff preferred a Second Appeal to the High Court.

1928.

MURARI MOHAN
KHOMARI
v.
KHIRODE NATH
JANA.

Mr. Sarat Chandra Bose (with him *Mr. Gopendra Nath Das*), for the appellant.

Mr. Santosh Kumar Pal, for the respondent.

CAMMIADE AND S. K. GHOSE JJ. This appeal is by the plaintiff in a suit on a mortgage. The mortgagor had sold the mortgaged property to defendant No. 2, who contested the suit. His defence was that the mortgage had been satisfied. The mortgage bond was produced in court by the plaintiff and it contains no endorsement of satisfaction. Defendant No. 2 stated to the court that the bond had been shown to him by his vendor, that is to say, the mortgagor, defendant No. 1, at the time of the sale to him, and that at that time that bond contained an endorsement of satisfaction. Both the courts below dismissed the suit, holding on certain oral evidence that the bond had been satisfied and the mortgage redeemed. The learned Munsif found that he had to explain away the fact that the mortgage bond produced in court, the genuineness of which was not disputed, bore no endorsement of satisfaction. He, therefore, resorted to the thoroughly improper proceeding of having something done by a pleader, in the way of proof, to his private satisfaction, that it was possible to remove writing from paper without leaving a trace of the writing having been there. The learned Munsif should have had this performance done in court and in the presence of the other side. The learned Subordinate Judge entirely ignored this matter. Therefore, what one finds is that the learned Subordinate Judge, without explaining away a very serious circumstance, professed to rely, not on the testimony of his own eyes, but on the statement of witnesses who could lie. The question being one of fact, we must send this case back, so that the appeal may be reheard.

1928.

MURARI MOHAN
KHOMARI
v.
KHIRODE NATH
JANA.

The judgment and decree of the lower appellate court are set aside and the case is sent back to that court for a rehearing.

Costs in this appeal will abide the result.

Appeal allowed, case remanded.

G. S.

APPELLATE CIVIL.

Before Cammiade and S. K. Ghose JJ.

JADABENDRA NANDAN DAS MAHAPATRA

v.

BEHARI MULA.*

1928.

July 24.

Settlement—Record-of-rights—Chitta—Fishery—Permanent right—Grant—Proof.

Mere recording in the Government *chitta* that certain persons have been given settlement of a fishing right does not prove that there was a permanent grant, nor does it lead to the presumption of a lost grant.

In order that there should be a permanent right it is necessary that there should be a grant, or it should be possible to hold that a grant was implied.

The plaintiff (setting up a claim to permanency) should show that it was at least the practice (for Government) to give permanent leases of fishing rights.

SECOND APPEAL by Jadabendra Nandan Das Mahapatra and others, defendants.

The facts of the case out of which this appeal arose are briefly as follows:—

In 1923, the plaintiffs brought a suit for recovery of possession of a *khal* after declaration of *jalkar* right to the same, on the allegation that they and their predecessors had held the *khal* in question under the defendants Nos. 1 to 4 from time immemorial, that in the last settlement of the Midnapur district in 1898 the *khal* had been recorded as in the *khas* possession of the *zemindar* defendants, and that the defendant

* Appeal from Appellate Decree, No. 1477 of 1926, against the decree of Narayan Chandra Ghosh, Subordinate Judge of Midnapur, dated Jan. 30, 1926, reversing the decree of Lalit Mohan Bose, Munsif of Danton, dated Dec. 15, 1924.