

APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Tottenham.

JUNMAJOY MULLICK (DEFENDANT) v. DWARKANATH MYTTEE
(PLAINTIFF).*

1879
May 30.

*Maps—Presumption as to accuracy—Indian Evidence Act (I of 1872),
ss. 13, 83.*

A map prepared by an officer of Government, while in charge of a khas mehal, Government being at the time in possession of the mehal merely as a private proprietor, is not a map purporting to have been made under the authority of Government within the meaning of s. 83 of the Indian Evidence Act (I of 1872), the accuracy of which is to be presumed, but such a map may be admitted as evidence under s. 13 of that Act.

THE plaintiff in this case, Dwarkanath Mytee, was the proprietor, by purchase from Government, of a zemindari called Mehal Hijultola, and complained that some 31 bigas and 5 cottas of land, which belonged to Hijultola, had been wrongfully taken possession of by the defendant Junmajoy Mullick as part of his Mouza of Kasiabheri.

The defendant pleaded that the land in dispute had always belonged to his Mouza of Kasiabheri, and also that neither the plaintiff nor his predecessors in title had been in possession of the land in dispute within twelve years.

The Munsif, who tried the case in the first instance, disbelieved the whole of the evidence adduced by the defendant. The case of the plaintiff was, that in 1859, and while Mehal Hijultola was in the khas possession of Government, it had been measured, and a collectorate map, showing its boundaries, had been prepared and made by the then Deputy Collector in the course of his official duties, and that from this map the land in dispute appeared to be comprised in Mehal Hijultola. The plaintiff

* Appeal from Appellate Decree, No. 2083 of 1876, against the decree of Baboo Kally Prosunno Mookerjee, Second Subordinate Judge of Midnapore, dated the 3rd of July 1878, affirming the decree of Baboo Jodooapaty Banerjee, Officiating Sudder Munsif of that District, dated the 6th of February 1877.

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also called as one of his witnesses, a man who had been an ijaradar of Mehal Hijultola, and who deposed that, as such ijaradar, he had been in actual possession and enjoyment of the land in dispute within twelve years before the institution of the suit.

Accepting the collectorate map as evidence under s. 83 of the Indian Evidence Act, and relying upon the other evidence put in by the plaintiff, the Munsif passed a decree in favor of the plaintiff.

From this decree the defendant appealed to the Subordinate Judge, on the ground that the collectorate map, having been prepared while the mehal was in the khas possession of Government, it ought not to have been received in evidence, or its accuracy presumed, under s. 83 of the Indian Evidence Act; and that, in the absence of independent evidence of its accuracy, and that it correctly defined the boundary line between Mehal Hijultola and Mouza Kasiabheri, it should have been rejected by the Court of first instance; and that, as the Court of first instance had given great weight to this map, its decision ought to be reversed. The Subordinate Judge was, however, of opinion, "that the collectorate map," relied upon by the Munsif, "could be treated as evidence, and should be presumed genuine under s. 83 of the Evidence Act, and accordingly confirmed the decree of the Court of first instance."

From this decision the defendant appealed to the High Court.

Baboo *Nulit Chunder Sen* for the appellant.

Mr. *Mendies* for the respondent.

Baboo *Nulit Chunder Sen*—Section 83 only applies to a map or plan made for public purposes, and cannot apply to a map or plan prepared by a servant of the Government, of lands which, at the time of its preparation, were the property of Government. The presumption permitted by s. 83 is, that when a map or plan is prepared solely for public purposes, and at a time when Government had no interest in, and could gain nothing by, its falsification, then such a map or plan, if purporting to be made by the authority of Government, may be presumed to be accurate. In the present case the map was prepared by a servant

of Government, at a time when Mehal Hijultola was in the khas possession of Government, and when any error or inaccuracy by which the area of the mehal would be increased at the expense of its neighbours, would be an error or inaccuracy directly to the advantage of Government. Under these circumstances, neither the Government, nor any one claiming through or under it, can ask a Court to presume the accuracy of the map, but the party relying upon it must offer independent evidence to show, not merely that the map was made by the Deputy Collector, but that, when made, it accurately laid down the boundary line which separated the mehal from the adjacent lands.

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Mr *Mendies*—Section 83 itself points out the only case in which the accuracy of a map, purporting to be made by the authority of Government, is not to be presumed; that case is, when the map was made for the purposes of any cause. If prepared for the purposes of any cause, its accuracy must be proved, although Government may have no sort of interest in the issue of the cause; but in all other cases its accuracy must be presumed. The presumption directed by s. 83 is merely a presumption that Government will appoint competent officers to execute the work entrusted to them, and that such officers will do their duty. To deny this presumption, whenever Government has an interest in the lands mapped, is to deny the presumption that, in the absence of any immediate temptation to act otherwise, Government servants will generally perform their duty with ordinary care and honesty; and to assume that no Government servant can be trusted to make a fair map of lands held by Government, because it may at some time be used for or against it. Such a contention is an insult to the entire body of Government servants. The presumption I contend for, involves no injustice to any one, as it is not an irrebuttable one. If any error or mistake had crept into the collectorate map, it was open to the defendant to point it out and expose it, and to show, that the boundary line indicated in it, was not at the time when it was made, the recognized boundary line between the two properties. Further, the judg-

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ment of the Court below is not based solely on the collectorate map. It refers to and accepts the evidence of the ijaradar, and the ijaradar's evidence if true, is the strongest corroboration of the map and proof of its accuracy, for it shows that, long after the map was made, the witness had claimed and possessed and enjoyed as ijaradar of the mehal the lands which the map showed to belong to that mehal, and that, at that time, the owners of Mouza Kasiabheri acquiesced in, or at all events made no opposition to his claim.

The judgment of the Court was delivered by

MITTER, J.—This is a suit to recover possession of 31 bigas and 5 cottas of land as appertaining to Mouza Hijultola. A dispute arose between the plaintiff and defendant as to the boundary of their respective villages during the survey of 1873. The defendant, who is the owner of Mouza Kasiabheri, claimed the disputed land as appertaining to his mouza. The survey authorities decided that question in favor of the defendant, and the lands in suit were included in the survey map of Kasiabheri. The plaintiff has, therefore, brought this suit for the rectification of the survey map, and also for recovery of possession of the lands in dispute. The Courts below have decreed the claim of the plaintiff.

One of the documents produced by the plaintiff in support of his claim, is a map of Hijultola, prepared by a Government officer when it was in the possession of Government as a khas mehal. The lower Courts have admitted this document as evidence in the case under s. 83 of the Evidence Act, and it seems to us, from the judgment of the lower Appellate Court, that it was to a very great extent influenced in its judgment by this document.

The contention raised before us in special appeal is, that the lower Courts were in error in treating this document as evidence under s. 83 of the Evidence Act; in fact, the special appellant contends that this document is not admissible in evidence at all.

We are of opinion that the lower Courts were in error in holding that this document was admissible as evidence under

s. 83 of the Evidence Act. That section says—"The Court shall presume that maps or plans, purporting to be made by the authority of Government, were so made and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate." Now this map does not purport to be made by the authority of Government within the meaning of this section. It was a map prepared by an officer of Government while he was in charge of a khas mehal, the Government being in possession of that mehal merely as a private proprietor. It seems to us clear, therefore, that the document in question does not come within the purview of that section. But we are not prepared to hold, as contended for by the pleader for the appellant, that this map is not admissible in evidence at all. It may be admissible as evidence under s. 13 of the Evidence Act. But it is one thing to treat it as mere evidence of possession or of assertion of right under s. 13, and it is another thing to presume it to be accurate under s. 83 of the Act.

We think, therefore, that the error complained of has materially affected the merits of the decision of the Subordinate Judge in this case. We accordingly set aside his judgment, and remand the case to him for re-trial. Costs will abide the result.

Case remanded.

Before Mr. Justice Miller and Mr. Justice Tottenham.

DHUNPUT SING (PLAINTIFF) v. SHAM SOONDER MITTER
AND OTHERS (DEFENDANTS)*

1879
June 12.

Res-judicata—Suit for Arrears of Rent—Joint, and Joint and Several Liability.

In the year 1877 A, who was the owner of a fractional share of a zemindari, which was let in patni, and of a four-anna share in the patni, sued his co-sharers in the patni for his share of the arrears of rent for the years 1873 to 1876, after deducting the rent of his four-anna share. Before the hearing of the suit, B intervened alleging that he had purchased a six-anna share of the patni,

* Appeal from Appellate Decree, No. 2273 of 1878, against the decree of S. H. C. Tayler, Esq., Judge of Bheerbhoom, dated the 9th September 1878, reversing the decree of Baboo Nilmony Nag, Munsif of Doobrajapore, dated the 27th June 1878.