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stranger, purchase the estate when sold under a power of sale created by the mortgagor. Upon the whole, then, their Lordships are of opinion that the decision of the Judicial Commissioner is equitable and correct, and they will humbly advise Her Majesty to affirm it, and to dismiss this appeal with costs.

*Appeal dismissed.*

Agents for the appellants: Messrs. *Young, Jackson, and Beard.*

Agents for the respondent: Messrs. *Watkins and Lattey.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Jackson and Mr. Justice McDonell.*

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 April 24.

MOHESH CHUNDER SEN (PLAINTIFF) v. JUGGUT CHUNDER  
 SEN (DEFENDANT).\*

*Thakbust Map—Survey Map—Evidence—Suit for Possession—Ejectment.*

In a suit for possession, the only evidence for the plaintiff was a thakbust map which had been signed as correct by predecessors in title of both the plaintiff and defendant, and on which the lands in dispute were laid down as the lands of the plaintiff's predecessor.

*Held*, that the evidence was not sufficient to justify a decree for the plaintiff.

THIS was a suit to recover possession of certain lands, on the ground that they formed a part of a permanently settled taluk, which had been purchased by the plaintiff at an auction-sale for arrears of revenue on the 8th of March 1865; the defendant, who had admittedly been in possession from a time long anterior to the date of the auction-sale, denied that the land had ever formed a portion of the plaintiff's settled estate.

The only evidence offered by the plaintiff to show that the land in dispute formed a portion of his taluk at the date of the

\* Appeal from Appellate Decrees, Nos. 1851, 1852, and 1869 of 1878, against the decree of C. B. Garrett, Esq., Judge of Dacca, dated the 3rd of July 1878, reversing the decree of Mr. P. M. Banerjy, First Munsif of Moonshee-gunge, dated the 10th of January 1878.

permanent settlement, was a thakbust map upon which it was so marked down. This map was signed by predecessors in title both of the plaintiff and the defendant. The Court of first instance considered this evidence to be sufficient and decreed the suit, but this decision was reversed on appeal. The plaintiff then brought this second appeal.

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Baboo *Kali Mohun Dass*, Baboo *Doorga Mohun Dass*, Baboo *Bycunt Nath Dass*, Baboo *Bhyrub Chunder Banerjee*, and Baboo *Hurry Mohun Chuckerbutty* for the appellant contended, that the thakbust map alone was sufficient to entitle the plaintiff to a decree in the absence of all rebutting evidence, especially where the predecessor of the defendant had by his signature admitted the map to be correct. They cited *Oomut Fatima v. Bhujoo Gopal Dass* (1), *Ram Narain Dass v. Mohesh Chunder Banerjee* (2), *Shusee Mookhee Dossee v. Bissessuree Debee* (3), and *The Collector of Rajshahye v. Doorga Soonduree Debia* (4).

Baboo *Sreenath Dass*, Baboo *Mohesh Chunder Chowdhry*, and Baboo *Mohini Mohun Roy* for the respondent.

The judgment of the Court was delivered by

JACKSON, J. (McDONELL, J., concurring).—The plaintiff, who was the auction-purchaser of a taluk, sued to recover from the defendants, who were very numerous, a certain quantity of land. He claimed this land of course as having been a part of the originally settled estate.

As to the title set up, the plaintiff, in the particular case which has been argued before us, relied chiefly upon a thakbust map, which bore the signature of one Anundo Chuckerbutty, who was the defendant's predecessor in title:

The Judge (who reversed the judgment of the Munsif) refused to consider this thakbust map so adduced as being absolutely conclusive evidence, and so dismissed the plaintiff's suit.

(1) 13 W. R., 50.

(2) 19 W. R., 202.

(3) 10 W. R., 343.

(4) 2 W. R., 210.

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The plaintiff on second appeal before us objects, that the Judge has described this map as evidence *quantum valeat*, which he seems to consider an inadequate application of the thakbust map as a piece of evidence; and it is contended, on the authority of a decision to which I was a party, that a survey map is sufficient, when there is no rebutting evidence to make out the title of the plaintiff. The special appellant's vakeel admitted that he could not put his case so high as to argue that the Court below was absolutely bound to give judgment in his favour upon this piece of evidence, but he was very anxious to show that the Judge was entangled in the meshes of pernicious error which, we are told, is founded upon the judgment in the case of *The Collector of Rajshukhye v. Doorga Soonduree Debta* (1), which error was dispersed by the judgment of myself and another Judge of this Court already referred to.

Now I have no doubt that, in general, where the question is simply one of title, and the available evidence is proof of possession at a particular period, a survey map ought to be, and is most cogent evidence. But the matter of which the plaintiff had to bear the burden of proof in this case, as observed by the Judge, is not title in general, but he had to prove that the land which he claimed, which is not in his possession and was not in the possession of the last owner of the taluk, was land which formed part of the taluk at the time of the permanent settlement; and in my judgment the mere circumstance that a particular owner had possession of a piece of land at a specified time, some years before the bringing of the suit, is not conclusive, or nearly conclusive, evidence of that fact. I do not find any indication of the error under which the Judge is supposed to be labouring, and I do not think, considering the way in which he has dealt with the evidence in disposing of the appeal before him, we should be justified in disturbing his judgment, unless we are prepared to say, and I am certainly not prepared to say, that, in such a case as this, a survey map is conclusive evidence. The special appeal is dismissed with costs. This judgment will apply to the other two appeals, Nos. 1852 and 1869, of 1878.

*Appeal dismissed.*