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BYJNATH v. GRAHAM.

PIGOT, J.—In this case there is a point of law determined which did not arise in the other cases heard with it, and on that point, at least, the Judges express their opinion that their construction of s. 103 of the Contract Act is not free from doubt. The case of *Ko-khine* v. *Snadden* (1) is not without some bearing on the question arising in this application. The several cases heard by the special bench are closely connected in subject matter, and as the Judges in the case alluded to thought the matter fit for appeal, so I think here that the applicants, although not interested to the extent of Rs. 10,000 in the amount of the decree passed against them, still are interested, to a substantial amount, in the question, which must be in issue in the appeals which are allowed as of right. I think, therefore, that I ought to grant a certificate under s 295 that the case is one fit for appeal to Her Majesty in Council.

Application allowed.

Solicitors for plaintiffs: Messrs. *Sanderson & Co.*

Solicitors for defendants: Messrs. *Roberts, Morgan & Co.*

APPELLATE CIVIL.

Before Mr. Justice Cunningham and Mr. Justice O'Kinealy.

PEARI MOHUN MUKERJI (PLAINTIFF) *v.* DROBOMOYI DABIA AND OTHERS (DEFENDANTS.)*

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July 16.

Evidence—Judgments, not inter partes—Admissibility of evidence.

In a suit for possession of land the defendant, in order to show the character of his possession, offered in evidence a judgment obtained by him in a suit to which the plaintiff or his predecessors in title were not parties.

Held that the judgment was admissible in evidence.

THIS was a suit for *khas* possession of certain lands held by the defendants with mesne profits. The facts of the case are sufficiently set forth in the judgment of the High Court.

Baboo *Guru Dass Bonnerjee*, Baboo *Bipro Dass Mukerji* and Baboo *Pran Nath Pandit*, for the appellant.

The *Advocate-General* (*the Hon. G. C. Paul*), Baboo *Srinath Dass*, and Baboo *Ram Lukhee Ghose*, for the respondents.

* Appeal from Original Decree No. 105 of 1884, against the decree of Baboo Bhuban Chunder Mukherji, Second Subordinate Judge of Hooghly, dated the 20th of December 1883.

(1) L. R., 2 P. C., 50.

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PEARI MOHUN MUKERJI v. DROBOMOYI DABIA.

The judgment of the Court (CUNNINGHAM and O'KINEALY, JJ.) was delivered by

CUNNINGHAM, J.—In this case the plaintiff Peari Mohun Mukerji sues the defendants Girish Chunder Chatterji and others for *khas* possession. The plaintiff alleges that the lands in dispute are lands within his *seputni*, and that the defendants have no right or title to them. The defendants set up, *first*, that they have been more than twelve years in possession of the lands; *secondly*, that, with the exception of the plots mentioned in paragraph 2 of their written statement, the lands claimed by the plaintiff are held by them as their *ayma;* and, *thirdly*, that of the plots mentioned in paragraph 2 of their written statement, some belong to other mouzahs, and some to certain lakhirajdars whose names are not given. The Subordinate Judge was of opinion that the defendants had proved their title to the lands; that the settlement made by the plaintiff, or by the people who carried on the case for him, that he was in possession of the lands, was false; and he came to the conclusion that the plaintiff, or at least the people who carried on the case for him, had fabricated the documents used in support of his claim. Against this decision the plaintiff has appealed.

Now, if we go back to the origin of the cause, we find a document purporting to be a copy of the original *sunnud* given for these *ayma* lands in 1194. This document is at page 136 of the appellant's paper-book. Objection to it has been taken to its reception in evidence that it is a copy of a copy, and is therefore inadmissible. No such objection was taken in the lower Court, and it is doubtful whether we should accede to the objection. But admitting that the document should not be received in evidence, we do not think that this in any way impeaches or destroys the title of the defendants. It is in evidence that a case arose in 1799 between Ramkanto Roy and the predecessors in title of the defendants. In that case the *ijaradar* claimed, as the plaintiff now does, the land as *mal*, and in that case, as in this, the defendants set up the title that they held the lands under the *sunnud* of 1194 and the subsequent *chucknama*. The decision in that case recites as follows: "The defendants in their answer state that in 1194 B. S.

the zemindar of Burdwan gave a *sunnud* in respect of 2,000 bighas of *chur* lands to their father Jagat Narain Mitra, deceased; that agreeably to that *sunnud*, the Maharajah made a *chuckbust* of 1,754 bighas 13 cottas of land in the seventeen mouzahs, Amerpur, &c.; and that they have been holding possession according to that *chuckbust*." That suit was dismissed, and it was found that, with the exception of 16 bighas 16 cottas, the plaintiff was not entitled to the lands which he claimed. One thing is of some significance, namely, that in the judgment there is the following description of the nature of the suit. "In this suit on a claim for possession of 4,226 bighas of *mal* lands, the plaintiff in his plaint, dated the 3rd January 1792, stated that the defendants had forcibly taken possession of the six mouzahs, Amerpur, &c; and half of the lands of the other mouzahs, comprising an area of about 4,226 bighas. So that in that suit the plaintiff claimed the whole of Amerpur and five other villages and a portion of each of the remaining villages as *mal*. The suit being dismissed so far as the claim of *ayma* was concerned, it was found that the defendants were in possession under the *sunnud*. Objection has been raised to this judgment that it is not *inter partes*, and is therefore inadmissible in evidence. As regards this objection we think that the document is admissible in evidence as showing the nature of the possession of the defendant's predecessor in title. As a rule judgments are evidence only between parties, but there is an exception to this. In the case of *Davies* v. *Lowndes* (1) it was decided that decrees in Chancery between other parties, concerning the same lands, were admissible in evidence, to show the character in which the possessor enjoyed the lands. That decision is in consonance with the decision of their Lordships of the Privy Council in the case of *Rameshur Pershad Narain Singh* v. *Kunjbehari Pattuck* (2). There, as here, the question was as to a right to certain property, and in that case criminal proceedings not *inter partes* and agreements entered into between parties not parties before the Court were held to be admissible in evidence. Their Lordships in that case say: "It was objected that this *razinámah* does

(1) 1 Bing. N. C., 606. (2) L. R., 6 I. A., 33.

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not bind the proprietor of Mahooet, but although it was apparently made between tenants, it seems to have been subsequently acted on, and may properly be used to explain the character of the enjoyment of the water." We think, therefore, that this decree is admissible in evidence to show the nature of the enjoyment which the defendants then had in the lands.

The first matter for consideration is, whether the lands held as *ayma* include the whole or only a part of the villages. If we turn to a copy of the *chucknama* given at page 141 of the appellant's paper-book, we find the headings as follow: Description Dhamla—the next heading gives the total quantity of land by *ayma* standard; the next heading gives the land transferred; the next heading gives the *mal* lands; the next heading gives the *baja* land; the next heading gives the Government land; the next heading gives the remaining land held as *ayma*. It is said that looking at the top of the *chucknama* itself it would appear that only the *ayma* mehal was measured, and that there is nothing to show that it contains the whole of the villages. We think, on a construction of the document itself, especially looking at the decision of 1199, that what it did intend to describe was the lands of the whole village of every denomination.

But as the *ayma* lands were given according to the *ayma* measurement there arises the question, what was the standard pole according to the *ayma* measurement. The evidence on this point consists of several documents. The learned Subordinate Judge was of opinion that, as the *ijaradar* in the year 1799 sued for 4,226 bighas of land, and the predecessors of the defendant in the present suit claimed 1,754 bighas by *ayma* measurement, these 1,754 bighas by *ayma* measurement were equal to 4,226 bighas by ordinary measurement. This of course is evidence to a certain extent, but it is not conclusive of what the *ayma* measurement was. Then there is the *chucknama* of 1199 which shows that 56 *guz*,—which ordinarily means a yard—are required for every *ayma rassi* or bigha: 40 *guz* are only required in the ordinary standard pole; and if it be admitted that the *guz* in both cases is the same, an *ayma* bigha would be greater than two bighas by ordinary measurement. This, however, is uncertain

because we do not know what the length of an *ayma gus* is or was. Then, again, in the judgment referred to at page 52 of the respondent's paper-book, it was found between the same parties that two bighas nine cottas by *ayma* measurement were five bighas by the current ordinary measurement. This also is very good evidence but still not conclusive, because we do not know whether the lands described were the same lands that were measured in 1199.

There is another point too which also goes to support the idea that the *ayma* measurement was at least much larger than the ordinary measurement. In the defendant's written statement, paragraph 2, they pleaded that certain plots, namely, 32, 52, 56, 57, 58, 63, 65, 66, 67, 70, 137 and 382, were lands not in their possession, but were lakhiraj lands belonging to certain other people. The Subordinate Judge held that these lands were the plaintiff's *mal* lands within the original eight *chucks* of Dhamla, and that these lands as now measured amounted to 206 bighas. It is contended before us by the learned pleader who argued the case for the appellant that this finding is erroneous. But this finding was not contested in any way in appeal, and there was nothing brought to our notice in argument which would lead us to believe that it is erroneous. If the 45 bighas held by the plaintiff's predecessor is now found to be 206 bighas, the defendants would be entitled to hold more land than they actually hold.

Looking at these facts and the important fact found by the lower Court that the plaintiff and his predecessor in title have never been in possession of these lands, the only conclusion we can come to is that from the 5th of January 1799, the date of the order in the suit between the *ijaradar* and the predecessor in title of the defendants, the defendants have held these lands under an *ayma* title. The case then comes within the decision of their Lordships of the Privy Council in the case of *Huro Pershad Rai Chowdhuri* v. *Gopal Dass Dutt* (1) decided on the 26th of May 1881. In that case the plaintiff sued for certain lands, asking *khas* possession, the defendants set up a *chuckdari* title, and they were able to prove that from 1838 they

(1) I. L. R., 9 Calc., 255.

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had held these lands under a colour of title. In that case their Lordships of the Privy Council said: "The result is, their Lordships think, that the defendants, even if not in possession under a well-proved legal title, are in possession under a colour of title which might have been avoided as far back as the year 1838; and that, inasmuch as no proceedings were then taken to avoid it, time has run in their favor. Their Lordships will therefore humbly advise Her Majesty that the decree of the Courts below must be affirmed, and that this appeal be dismissed." Following that case we think that the present case should also be dismissed. But even if that decision were not final of the matter, as we think it is, the plaintiff would fail on another ground, namely, that as regards the lands in dispute he has shown neither title nor possession. That he was never in possession was found, and we think rightly, by the Court below, and he is not able to show us any title whatever to lands not *ayma* lands. In this view also the suit must fail.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Wilson and Mr. Justice Beverley.

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SHAMA CHARAN DAS (PLAINTIFF) *v.* JOYENOOLAH AND ANOTHER (DEFENDANTS.)*

Registration Act (III of 1877), ss. 23, 34, 77—Presentation for registration—Limitation for completion of registration—Attendance of executant before Registrar, Time for—Refusal to register.

There is no provision, either in the Registration Act or in the Stamp Act, which lays down that where a document is presented for registration insufficiently stamped, such a presentation shall have no effect. The only effect of such a presentation is that the actual registration is delayed.

There is in law no limitation for the actual fact of registration, provided that the requirements of the Act have been complied with in the matters for which a limitation of time is provided. *Sah Malchun Lall Pandey* v. *Sah Kundun Lall* (1), followed.

* Appeal from Appellate Decree No. 1512 of 1884, against the decree of Baboo Mati Lal Sirkar, Subordinate Judge of Rungpore, dated the 26th of May 1884, affirming the decree of Baboo Sharoda Prosad Chatterji, Second Munsiff of Koorigram, dated the 6th of February 1884.

(1) 15 B. L. R., 228.