

only have been brought under section 278. The Court cites with approval the Full Bench decision which I have just referred to. The only difference between that case and the present is that Rani Indomati did not prefer any claim or make any objection to the attachment of the grove when it was attached with other property in the previous litigation. Under these circumstances I allow the appeal, set aside the decrees of both the Courts below, and remand the suit through the lower appellate Court to the Court of first instance with directions to readmit the suit under its original number in the register and proceed to determine the suit on the merits having regard to the observations made above. Costs will abide the event.

Appeal decreed and cause remanded.

1906

RANI
INDOMATI
v.
JAGESHAR.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice
Sir George Know.*

1906
May 4.

NARENDRA BAHADUR SINGH AND OTHERS (PLAINTIFFS) v. ACHHAIBAR
SHUKUL AND OTHERS (DEFENDANTS).*

Alluvion—Gradual accretion—Definition.

Held that accretion to be considered "gradual" must be by gradual, slow, and imperceptible means.

Lopez v. Muddun Mohun Thakoor (1), *Krishn Chandra v. Saseedan Bibi* (2) and *Ritraj Kunwar v. Sarfaraz Kunwar* (3), referred to.

THE plaintiffs sued for possession of certain land on the allegation that formerly it was in their possession, that it was suddenly submerged owing to a change in the course of the river, and that when it reappeared all of a sudden owing to a fresh change in the course of the river, the defendants, neighbouring landholders, took possession of it in the absence of the plaintiffs.

The defendants alleged that the land reappeared gradually and did not bear any old mark.

The Court of first instance (Subordinate Judge of Gorakhpur) framed the following issues:—"Has the land in suit been

* Second Appeal No. 1106 of 1904, from a decree of T. A. H. Way, Esq., District Judge of Gorakhpur, dated the 18th of August, 1904, confirming a decree of Munshi Achal Behari, Subordinate Judge of Gorakhpur, dated the 31st of May, 1904.

(1) (1870) 13 Moo. I. A., 467.

(2) (1905) 2 A. L. J., 821.

(3) (1906) I. L. R., 27 All., 655.

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severed from the plaintiffs' village gradually or suddenly? How has it been accreted to defendants' village?"

On this issue the Subordinate Judge held that there could "be no doubt that the land in suit has been re-formed at its old site;" that the burden of proving that the land in suit was cut away suddenly and by the violence of the stream was on the plaintiffs, but they have not proved this;" that "the cutting away was gradual and imperceptible."

The plaintiffs further contended that it was immaterial whether the lands were severed from their village gradually and suddenly, that if the lands could be identified they could still be claimed by the plaintiffs. The Subordinate Judge came to no distinct finding on this point. It was, however, further found that when the whole of the land eventually became submerged the plaintiffs applied for and were granted remission of assessment.

The Subordinate Judge dismissed the suit and on appeal by the plaintiffs the District Judge dismissed the appeal. The findings of the lower appellate Court are quoted in the judgment of their Lordships.

The Hon'ble Pandit *Madan Mohan Malaviya* and *Munshi Gulzari Lal* for the appellants.

The Hon'ble Pandit *Sundar Lal* and *Munshi Iswar Suran*, for the respondents.

STANLEY, C.J. and KNOX, J.—We have carefully perused the judgment of the District Judge and in view of its language have grave doubts that he fully understands the meaning of the expression "gradual accretion" according to its legal acceptance. In one part of his judgment he states that the river Gogra in the year 1882 "suddenly changed its course and began to flow north of Simri and south of Bili Khurd, submerging two intervening villages." He further finds that, according to the Settlement papers of 1884-85, "29 bighas and 4 biswas of the village of Simri are shown to have been washed away by the river," and that, according to "the quinquennial settlement of 1888-89, 136 bighas 3' biswas 4 dhurs, which had formerly belonged to Simri, were found to have been added to Bili Khurd," and then he finds that in the "settlement of 1893-94 the whole

area of Simri was *either under water or had gradually accreted to Bili Khurd.*" In view of these findings it is difficult to understand how it can be said that the land in dispute which admittedly was included in the area of mauza Simri *gradually* accreted to Bili Khurd. At the same time as the frontal area is not stated, and it does not appear whether the so-called accretion was a continuous process year by year or the work of particular years, we cannot satisfactorily dispose of this appeal without findings upon two issues. Before, however, we state those issues we may best explain our difficulty by reference to some authoritative definitions of the expression "gradual accretion."

Alluvion is described by Justinian as an "imperceptible increase," and land is said to be acquired by alluvion when it is acquired "so gradually that one cannot say how much is added at any particular moment of time. But if by the violence of a river a portion of land is added to the estate of an adjoining owner the land continues to be the property of the original owner" (Institutes, Liber. II, tit. 1, section 201). Lord Justice James in the case of *Lopez v. Muddun Mohun Thakoor* (1), referring to the principle on which title by gradual accession is acquired, uses this language:—"There is, however, another principle recognised in the English law, derived from the Civil Law, which is this, that where there is an acquisition of land from the sea or a river by gradual, slow and imperceptible means, then from the supposed necessity of the case and difficulty of having to determine year by year to whom an inch or a foot or a yard belongs, the accretion by alluvium is held to belong to the owner of the adjoining land." From this it will be seen that accession to be gradual must be by gradual, slow and imperceptible means. The case of *Krishn Chandra v. Saeedan Bibi* (2) is an instructive case upon this subject. In the case of *Ritraj Kunwar v. Sarfaraz Kunwar* (3) their Lordships of the Privy Council reaffirmed the principle laid down in *Lopez v. Muddun Mohun Thakoor* and observed in the course of their judgment:—

"Here is no question of a gradual and slow process of acquisition to be measured by the inch or the foot or the yard; here

(1) (1870) 13 Moo. I. A., 467. (2) (1905) 2 A. L. J., 821.

(3) (1905) I. L. R., 27 All., 655.

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land to the extent of more than 2,000 acres is claimed, not on the ground that the action of the river has been slowly and gradually to push forward the northern boundary of the appellants' land, but that the northern channel of the river, however it may shift, must be taken to be that boundary."

The Court of first instance found that there could be "no doubt that the land in suit has been re-formed on its own site in mauza Simri." There is no express finding by the learned District Judge as to this, and there is no clear finding of fact necessary to establish a gradual accretion. The issues of which we desire to have a determination by the lower appellate Court are as follows:—

- (1) Whether the land in dispute which was submerged re-formed and is capable of identification and is identified as having formed part of the plaintiffs' estate?
- (2) Did this land accrete to the property of the defendants respondents; and, if so, was that accretion by gradual, slow and imperceptible means or otherwise?

We refer these issues to the lower appellate Court for determination under the provisions of section 566 of the Code of Civil Procedure, and shall ask the learned District Judge to return to us his findings as soon as possible, together with such relevant evidence as the parties respectively may adduce in support of their case. On return of the findings the parties will have the usual ten days for filing objections.

Curse remanded.