1927 November, 10.

Before Sir Grimwood Mears, Knight, Chief Justice and Mr. Justice Kendall.

RAMANAND AND OTHERS (PLAINTIFFS) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT).*

Regulation No. II of 1825, *article* 4—*Act* (*Local*) *No. III of* 1901 (*United Provinces Land Revenue Act*), *section* 99—*Permanent Settlement—Alluvion—Assessment of land added by alluvion to a permanently settled village.*

Where, subsequent to the date of the settlement, land is added by alluvion to a permanently settled village, there is nothing in the law to prevent such additional land being assessed to revenue. *Nogender Chunder Ghose* v. *Mahomed Esoff* (1), *The Secretary of State for India in Council* v. *Fahamidannissa Begum* (2), and *The Secretary of State for India* v. *Maharaja of Burdwan* (3), referred to.

THE facts of this case sufficiently appear from the judgement of the Court.

Dr. *M. L. Agarwala*, for the appellants.

Pandit *Uma Shankar Bajpai*, for the respondent.

MEARS, C.J., and KENDALL, J. :—This is the plaintiff's appeal from a decision of the Subordinate Judge of Mirzapur, who decided that certain land in the possession of the plaintiffs, situate on the east side of a stream, by name Jargo, was assessable to revenue. The plaint set out that the stream Jargo flowed between the villages Bagheri and Manikpur, and that each village was permanently settled. Paragraph 5, which was not admitted, ran as follows :—

"That according to custom or usage prevailing in the locality, land cut away by fluvial action from one village and added or accreted to another becomes the property of the proprietors of the village to which such land has been so added and becomes part and parcel of such village."

*First Appeal No. 485 of 1924, from a decree of Kameshar Nath, Subordinate Judge of Mirzapur, dated the 9th of September, 1924.

(1) (1872) 18 W.R., C.R., 113. (2) (1889) I.L.R., 17 Calc., 590.
(3) (1921) I.L.R., 49 Calc., 103.

Paragraph 6 alleged that—

"according to the said custom or usage the proprietors of villages liable to be affected by fluvial action have to bear any detriment or loss or enjoy any benefit or gain that may be caused by such fluvial action."

It was then said that more than 25 years ago the river Jargo began to cut away land from Manikpur and added such land to Mauza Bagheri and that by about the year 1907 some 30 acres of land had been so added to Bagheri. It was alleged that in a suit between the proprietors of Manikpur and Bagheri it was judicially decided that the said area had become the property of the owners of Bagheri. The contention was then put forward that as the added land had become part of the village Bagheri, which had been the subject of the permanent settlement, the proprietors of Bagheri were not liable to be assessed to revenue on account thereof.

After indicating certain points of law based upon Regulation II of 1819, Regulation II of 1825 and the Land Revenue Act (No. III of 1901), the plaintiff alleged that in disregard of the permanent settlement and of the absolute undertaking then given, the revenue authorities had assessed the said 30 acres to revenue, and the plaintiff asked for a declaration that the zamindars of Bagheri were not liable to pay any additional revenue in respect of the land detailed below. Some importance is to be attached to the word "additional". The plaintiffs also asked that the Government might be restrained from realizing the annual revenue, and that a sum of Rs. 4,200 paid under protest might be refunded to them.

A reference to the map marked G. M. and C. H. B. K. shows the stream Jargo flowing in a north-easterly direction and falling into the Ganges. The relatively straight red ink line marks the boundary between the two villages at the time of the settlement in 1882. The

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curved green pencil line superimposed on the red ink one marks the boundary line of the two villages at the time of the settlement in 1921. The areas hatched in green pencil are agreed to be the 30 acres in question in this case. The contention of the revenue authorities, when they assessed the land, was that they did so under the provisions of clause 4 of Regulation II of 1825 read with section 99 of the Land Revenue Act (No. III of 1901). Clause 4 provided that land gained by gradual accession—

"shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II of 1819, or of any other Regulation in force."

The revenue authorities say that the Regulation in force when they imposed the assessment was the Land Revenue Act (No. III of 1901), and that section 99 entitled them in terms to assess this particular land. The section is as follows :—

"Land added by alluvion to a mahal may be assessed and settled by the Collector in accordance with rules made under section 234."

In the circumstances of the case it was quite certain that land had been added. It was quite certain that it had been added to a mahal, and in the opinion of the Board of Revenue the land so added was in its nature alluvion. They, therefore, assessed the 30 acres to revenue.

The plaintiff contested the legality of that assessment but an appellate order of the revenue court of the 1st of November, 1922, decided the assessment to be valid; and thereupon the plaintiffs brought this suit.

Dr. *Agarwala*, on behalf of the plaintiffs, contends that as the land of both the villages was permanently settled, no additional settlement could ever be imposed,

no matter in whose hands any particular area of land might happen to be at any moment. That is to say, if the zamindars of Bagheri held at any particular moment land which had been included in the permanent settlement of Manikpur, then the zamindars of Bagheri could claim that the added land should not be the subject of any taxation, because a portion of the revenue permanently settled was being in fact paid in respect of that land by persons living across the other side of the stream, namely, the zamindars of Manikpur. Dr. *Agarwala* contended that as the village of Bagheri was permanently settled, it must follow that everything which had become part of the village of Bagheri is by reason of the permanent settlement protected from further imposition. He also said that the added land could not fairly be called alluvion, and the Land Revenue Act (No. III of 1901) and the Circular 8-I were *ultra vires* in so far, if at all, as they purported to affect permanently settled land.

Before considering the law on this matter, it is necessary to state a few facts.

The facts in relation to the movement of the river and the deposit of the added area are as follows. During each and every rainy season, or during some but not every rainy season and during the period of subsidence of the river, the river Jargo has gradually altered its course, principally to the westward, cutting into Manikpur; but on two small sections it has moved eastward cutting into Bagheri. There has been no occasion on which the river has markedly altered its course, so that any zamindar of Manikpur could point to land of his which originally lying on the left bank of the river has suddenly appeared on the right bank. The result of the movement has been to add in a course of years the area of 30 acres to Bagheri and a relatively small area to Manikpur. The area of 30 acres was built up in the rainy seasons and during the subsidence of the river, as we have

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already said, month by month, but it was in the nature of a gradual and not a sudden accretion. We are of opinion that in the circumstances the land so added to Bagheri satisfies the meaning attached to the word "alluvion", which according to Webster's Dictionary is—

"accession to land by gradual or momentarily insensible addition of matter by the action of water, or (as broadly used by some) by the insensible reliction of the water from its bank."

A much shorter definition is given in the Circular 8-I printed at page 186 of eighth edition of Dr. *Agarwala's* Commentary on the Land Revenue Act. There alluvion is said to mean "an actual increase in area caused by fluvial action." Dr. *Agarwala* objects to our acceptance of that definition, on the ground that the Board have no authority to define the meanings of words appearing in the statute. But taking the definition given by Webster, we are of opinion that the added area of land fits in with that definition and is in fact alluvion.

The first case to which we were referred was that of *Nogender Chunder Ghose* v. *Mahomed Esoff* (1). This case does not establish any principle of law which helps Dr. *Agarwala*, but contains a convenient summary of Regulation No. II of 1825 (at page 118 of the report). The Judges point out the fourth section of the Regulation is divided into five clauses, and the first deals with land gained by gradual accession (i.e., alluvion in the proper sense of the word).

He brought to our notice the case of *The Secretary of State for India in Council* v. *Fahamidannissa Begum* (2) and it certainly is an authority in point and has helped us to arrive at a decision in this case. Their Lordships of the Privy Council, after dealing with the opening clauses of Regulation II of 1819, discussed at page 600 of the report the various clauses of section 31. It

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seems perfectly clear that lands permanently settled are not to be the subject of any additional assessment, and the decision of the revenue authorities may be reversed by a civil court, "in any case in which it shall appear that lands which actually formed at the period in question a component part of such an estate have been unjustly subjected to assessment." The important words are, of course, "lands which actually formed at the period in question component part of such an estate."

Now this added land did not at the date of the permanent settlement form any part of the village of Bagheri, and the position has been that since the year 1907, according to the pleadings, the zamindars of Bagheri have been holding these 30 acres revenue-free. The difficulty in Dr. *Agarwala's* way throughout has been the very short answer that this land was never included in the permanent settlement of 1793 with the zamindars of Bagheri. At that date Bagheri had an acreage of 735 *bighas*, 4 *biswas*, and at the time of the assessment complained of the acreage was 797 *bighas*, 8 *biswas*, the increase being represented by the 30 acres in dispute.

Another case cited before us was that of *The Secretary of State for India* v. *Maharaja of Burdwan* (1). There is a marked difference in the facts of that case and the one we are at present considering, but there is an important passage which we shall quote :—

> "On an analysis of the terms of these regulations, so far as they are material to the question now under consideration, it appears that, while lands included in a permanent settlement were carefully excluded from further assessment, this protection was extended only to lands actually in existence at the time of the settlement and specifically included in the estate as settled."

Their Lordships further point out at page 116 of the report that "property is one thing and assessability is

(1) (1921) I.L.R., 49 Calc., 103.

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another". In the present case we accept the statement of the plaintiffs that a suit was brought with reference to the ownership of this particular 30 acres and it was decided that that new land must pass to the zamindars of Bagheri; but because the property in the land has been declared to be theirs, it by no reason follows that that land is not assessable.

The plaintiff's contention, limited to the assertion that they are entitled to hold land permanently settled free from any additional settlement, is good; but when the investigation discloses that the land was not included in the permanent settlement of Bagheri, it becomes apparent that clause 4 of Regulation II of 1825 and section 99 of the Land Revenue Act (No. III of 1901) come into operation. It was contended in fact that revenue on the basis of a permanent settlement was paid by the zamindars of Manikpur. That may be so. The zamindars of Manikpur may, if they please, ask for relief against a payment in respect of land which has passed out of their possession. The zamindars of Bagheri wish to take credit for the payment made by the zamindars of Manikpur, but no case has been cited by Dr. *Agarwala* in support of that supposed right and in our opinion the test must be whether the lands in dispute ever formed the subject of a permanent settlement in the hands of the present zamindars of Bagheri—that is, formed part of that estate so permanently settled. It is conceded that they did not.

As in our view the land is alluvion and as it cannot be said that the assessment in dispute is an additional one, we are of opinion that this case is governed by article 4 of Regulation II of 1825 and section 99 of the Land Revenue Act. Agreeing therefore with the learned Subordinate Judge, we dismiss this appeal with costs.

Appeal dismissed.