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It being found that Lolit Mohan has only a life-estate, and that the gift over is bad, it follows that the testator has not made any valid disposition of his estate, beyond the life-estate given to Lolit Mohan, and beyond the specific bequests, and legacies made, and charges created by the will and codicil; and that, subject to such life-estate, bequests and legacies, and the charges created in favour of the religious and charitable institutions, the plaintiffs, as heirs-at-law, are entitled to succeed to the estate.

The result is that the decree of the Court below will be set aside, and a decree made in terms of the views we have just expressed.

The costs both in this Court and in the Court below will be paid out of the estate.

*Appeal allowed.*

T. A. P.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice O'Kinealy.*

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 March 6.

SHOSHI BHOOSHUN BOSE AND ANOTHER (PLAINTIFFS) v. GIRISH CHUNDER MITTER AND OTHERS (DEFENDANTS).\*

*Evidence Act (I of 1872), s. 35—Entries in Collector's register—Land Registration Act (Bengal Act VII of 1876)—Register of Collector as to land registration.*

Entries in a register made under Bengal Act VII of 1876 by the Collector are entries made in an official register kept by a public servant under the provisions of a Statute, and certificate copies of such entries are admissible in evidence for what they are worth.

*Dictum of GARTH, C.J., in Saraswati Dasi v. Dhanpat Singh (1) dissented from.*

THIS case arose out of an application under section 328 of the Code of Civil Procedure.

The plaintiffs alleged that three brothers—Abdul Mujid, Abdul Sukar, and Abdul Rohim—were formerly the owners in possession of a block of land called Chunghuruli Kazi's Chuck, described as

\* Appeal from Appellate Decree No. 1342 of 1891, against the decree of Baboo Kedar Nath Mozumdar, Subordinate Judge of Hooghly, dated the 7th of June 1891, modifying the decree of Baboo Jadub Chunder Sen, Munsif of Sorampore, dated the 28th of April 1890.

appertaining to the Ayema *tooji* mehals, Nos. 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1439, 1440, of which they were the registered proprietors; that after the death of these three brothers their heirs agreed to sell the chuck to the plaintiffs, executing an agreement to that effect; but failing to execute a conveyance, the plaintiffs sued the defendants for specific performance and for possession and obtained a decree, in execution of which they were opposed by the defendants as claimants of part of the property. This claim was set down as a suit. At the hearing the plaintiffs tendered in evidence extracts from the Collector's register kept under Bengal Act VII of 1876, the Land Registration Act, for the purpose of showing that Abdul Mujid, Abdul Sukar, and Abdul Rohim were the registered proprietors of the *toojis* numbered above, and the quantity of land hold by them. This evidence was rejected by the lower Courts on the authority of the case of *Saraswati Dasi v. Dhanpat Singh* (1).

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The Subordinate Judge further refused to receive at all as evidence an extract from a quinquennial register showing the amount of land included in one of the *toojis* numbered above, which had been admitted by the Munsif, and dismissed the suit.

The plaintiffs appealed to the High Court on this and other points.

Mr. *Woodroffe* and Sir *Griffith Evans* for the appellants contended that the extracts from the local register were admissible under section 35 of the Evidence Act, referring to the judgment of Field, J., in *Saraswati Dasi v. Dhanpat Singh* (1) and to *Muttu Ramalinga Setapati v. Perianayagum Pillai* (2).

Mr. *Bonnerjee* and Baboo *Muhendra Nath Roy* for the respondents contended that such evidence was not admissible, relying on the dictum of Garth, C.J., in *Saraswati Dasi v. Dhanpat Singh*.

The judgment of the Court (PETHERAM, C.J., and O'KINEALY, J.) on this point was delivered by

O'KINEALY, J.—This is an action in ejectment, in which the plaintiffs, Shoshi Bhooshun Bose and another, sought to obtain a parcel of land from Girish Chunder Mitter and others.

(1) I. L. R., 9 Calc., 431.

(2) L. R., 1 I. A., 209.

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The plaintiffs succeeded in the first Court; but on appeal the learned Subordinate Judge came to an opposite conclusion, and dismissed the suit. In dealing with the case he rejected certain documents; and it is in connection with the rejection of these documents that this case comes before us in second appeal.

The first documents in the order of time which have been rejected by the Lower Court may be said to be two *kabuliats* \* \*

\* \* \* \* \*

The next are extracts from what is called the Collector's register, kept under Bengal Act VII of 1876. Under that Act, the Collector is directed to keep up a register; and the form is set forth at page 28 of the Paper Book. It contains the name of the estate, its *towji* number, the names of the proprietors or managers, and other particulars regarding the estate, with a statement of their character and extent. In that register there were entries showing that Abdul Rohim and others obtained by inheritance proportionate shares in chuck Boroda Belpara. These extracts were tendered in evidence, and the Judge in the Court below was of opinion that they were not evidence either of possession or of title. It is, however, contended by the appellants that they are admissible under section 35 of the Evidence Act, but they have been repudiated by the respondents, upon the authority of the case of *Saraswali Dasi v. Dhanpat Singh* (1), in which it was held that such entries are not admissible under section 35 of the Evidence Act. No doubt in that case, before the late Chief Justice and Mr. Justice Field, the learned Chief Justice did state that that was his view; but that view was not acquiesced in by Mr. Justice Field, and it is also opposed to a decision of the Privy Council (2).

We also understand that in the Court below the quinquennial papers were considered as not admissible in evidence; but upon the view we take of the matter, it will be necessary for the Court below to consider these also in dealing with the whole case. \*

\* \* \* \* \*

(1) I. L. R., 9 Calc., 431.

(2) See *Lekraj Kuar v. Mahpal Singh*, I. L. R. Calc., 744;  
 L. R., 7 I. A., 63.

We do not in any way express any opinion as to the value of these several pieces of evidence.

The case must therefore be sent back to the lower Appellate Court for re-trial.

Costs will abide the result.

*Case remanded.*

T. A. P.

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