

APPELLATE CIVIL.

Before Das and Bucknill, J.J.

CHOUHRY NAZIRUL HAQ

v.

ABDUL WAHAB.*

1921.

Nov., 22.

Evidence Act, 1872 (Act i of 1872), section 36—kistwari map, admissibility of, to prove possession and title.

A survey or *kistwari* map is evidence between the parties *quantum valeat* both as regards possession and title.

Shusce Mukhee Dossee v. Bissessuree Debee(1), *Koomodince Debia v. Poorno Chunder Mookharjee*(2), *Ram Narain Doss, v. Mohesh Chunder Banerjee*(3), *Prosonno Chunder Roy v. Land Mortgage Bank of India Limited*(4) and *Satcowri Ghose Mondal v. Secretary of State for India in Council*(5), referred to.

The facts of the case material to this report were as follows :—

Plaintiff sued for recovery of two estates said to be Dalal Jagir lands and Tica Ram Sipahi lands included in village Banni. In the collectorate land register these two estates were entered separately from the remainder of the village. They had been surveyed and identified only once, *i.e.*, in a survey conducted by Mr. Watson, Superintendent of Survey, in 1853. The map of this survey, called the *kistwari* map, was the basis of the plaintiff's case as the blocks of land appertaining to the so-called *jagirs* were separately plotted and noted in it, and it was signed by the then holders of the proprietary right in the *jagirs*, namely, Punai Chowdhry and Lala Gurdayal Singh.

* Appeal from Appellate Decrees Nos. 554 and 555 of 1920, from a decision of J. A. Sweeney, Esq., District Judge of Monghyr, dated the 10th March, 1921, affirming a decision of Babu Satish Chandra Mitra, Subordinate Judge of Monghyr, dated the 10th March 1919.

(1) (1868) 10 W. R. 543.

(2) (1875) 19 W. R. 202.

(3) (1868) 10 W. R. 300.

(4) (1876) 25 W. R. 453.

(5) (1897) I. L. R. 22 Cal. 252.

1921

CHOUHRY
NAZIRUL
HAQ
v.
ABDUL
WAHAB.

The plaintiff claimed the *jagirs* by virtue of purchase from the successors-in-interest of the persons who held them at the time when the *kistwari* map was prepared. He alleged that he had been in possession of the lands from the time of his purchase (1890-1894) up to 1306F.—1307F. when the lands were diluviated; that the lands were re-formed in 1315F. and become fit for cultivation 1316F. in which year the defendant first party dispossessed him.

The defendant first party contested the suit. He alleged that the disputed lands had always been in his possession as ordinary *mal* lands of village Banni; that the plaintiff had never been in possession; that the lands were recorded in the Record-of-Rights as *mal* lands of village Banni and that the *kistwari* map of 1853 was no authority for the plaintiff's claim. He also pleaded that the suit was barred by limitation.

The trial court held that the *kistwari* map was binding between the parties; that the lands were identifiable; that the plaintiff had a good title to both *jagirs* by virtue of his purchase; that the lands were diluviated in 1306F. and were under water at the time of the Cadastral Survey and the preparation of the Record-of-Rights in 1901 (1308F.); that they became fit for cultivation in 1315F. or 1316F.; that the defendant took possession of the lands and settled them with tenants in 1317F.; that the suits were instituted eight years after the commencement of plaintiff's possession; that the plaintiff was in possession before the diluvion and that the plaintiff was entitled to possession of both *jagirs* as *malik*. Defendant first party having appealed to the District Judge this decision was affirmed. Defendant first party appealed to the High Court.

S. Sultan Ahmed (with him *Syed Md. Tahir*), for the appellant.

Susil Madhab Mullick and *Norendra Nath Sen*, for the respondents.

DAS, J.—The point that has been argued before us

is that the learned Judge in the Court below erred in replying upon matters of description in the *kistwari* map. The plaintiff bases his title upon the *kistwari* map which bears the signature of Mr. Watson who was at that time the Assistant Superintendent of Survey. The map shows that there existed in the *mouza* in question two blocks of lands constituting two *jagirs* one of which was in the possession of Lala Gurdyal, the other being in the possession of Purai Chowdhury, heir of Tikaram Sipahi. Mr. *Sultan Ahmed* on behalf of the appellants has argued before us that we may, if we like, presume the correctness of the physical features represented in the map, but that we are not entitled to presume the correctness of the statements as to the possession of Purai Chowdhury and Lala Gurdyal Singh in the map. I am unable to agree with this contention. Section 36 of the Evidence Act provides that

1921

CHOWDHURY
NAZIRUL
HAQ
"."
ABDUL
WAHAB.
DAS, J.

"Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts".

There are decisions too numerous to mention that the survey map is evidence between the parties *quantum valeat*. Primarily it is evidence of possession, but, as has been pointed out, evidence of possession is always evidence of title. [See *Shusee Mukhee Dosee v. Bissessuree Debee* (1)]. It has been pointed out that co-operation of the parties interested in the measurement is required to be sought by the survey officers and that it is reasonable to presume that the parties were present at, and had notice of, the survey proceedings. There is therefore good reason for receiving survey maps in evidence on the question of possession between the parties. It has been argued that to receive these maps in evidence on the question of possession is to allow a surveyor to usurp the functions of a Civil Court.

(1) (1868) 10 W. R. 343.

1921

CHOUHURY
NAZIRUL
HAQ
†
ABDUL
WAHAB.
DAS, J.

In my opinion the argument is wholly unsustainable. It is true that a surveyor has no authority to decide any question of title between the parties; but as has been pointed out, he has authority to see what are the boundaries and bearings and also, I may add, as to who is in actual possession of the land. It is unnecessary to go through the cases which have been decided with reference to the question which has been argued before us. I may, however, usefully refer to *Koomodinee Debia v. Poorno Chunder Mookherjee* (1). *Shusee Mookhee Dossce v. Bissessuree Debee* (2). *Ram Narain Doss v. Mohesh Chunder Banarjee* (3); *Prosonno Chunder Roy v. The Land Mortgage Bank of India Limited*, (4) and *Satcoveri Ghose Mondal v. Secretary of State for India in Council* (5).

I must dismiss these appeals with costs.

BUCKNILL, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Das and Bucknill, J.J.

SYED ALI ZAMIN

v.

NAWAB SYED MUHAMMAD AKBAR ALI.*

Land Registration Act, 1876 (Bengal Act VII of 1876), sections 42, 52 and 55—Distinction between "succeeding" and "assuming charge"—when Collector decides question of possession no reference to be made to Civil Court—Revision—refusal to exercise discretionary power.

In deciding, under section 52 of the Land Registration Act, 1876, whether the applicant is entitled to be registered or not, a distinction must be drawn between a case where the applicant

* Civil Revision No. 140 of 1921, against an order of Babu Abinash Chandra Nag, Subordinate Judge of Gaya, dated the 15th May, 1921.

(1) (1868) 10 W. R. 300.

(2) (1868) 10 W. R. 327.

(3) (1873) 19 W. R. 202.

(4) (1876) 25 W. R. 461.

(5) (1895) I. L. R. 22 Cal. 252.

1921

Dec., 12.