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MAHARAJADHIRAJ OF DARBHANGA v. COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

LORD TOMLIN.

Their Lordships will accordingly humbly advise His Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.

Solicitors for appellant: *Hy. S. L. Polak and Company.*

Solicitors for respondent: *Solicitors, India Office.*

LETTERS PATENT.

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March, 6, 7, 8, 9, April, 4.

Before Courtney Terrell, C.J. and Varma, J.

BHARATH MAHTON

v.

MOD NARAYAN SINGH.*

Reformation in situ—principle, whether applies to identifiable lands of landlord accreted to tenant's holding—Alluvion and Diluvion Regulation (XI of 1825), section 4—Regulation, whether applies to lands reformed in situ—defendant, whether entitled to rely on adverse possession of third party as extinguishing plaintiff's title.

The mere fact that a river has uncovered land belonging to the landlord and adjacent to the tenant's holding does not necessarily imply that it is to be treated as an accretion to his holding under Regulation XI of 1825, although in general the law of the Regulation is applicable to the alluvion of land belonging to the landlord as much as it is applicable to the law of alluvion of land belonging to the Crown.

Khubi Mahto v. *Mahant Lachman Das*(1), followed.

When land emerges from water and it can be identified as the property of one who had previously occupied it, the

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* Letters Patent Appeal no. 72 of 1933, from a decision of the Hon'ble Mr. Justice Khaja Mohamad Noor, dated the 26th April, 1933, in second appeal no. 1242 of 1930.

(1) (1922) I. L. R. 2 Pat. 18.

former owner does not lose his rights in the submerged land and can exercise them again when the land is once more uncovered. This is what is known in legal language as reformation *in situ*, which only means the uncovering of an identifiable site whether or not the site has been denuded of a portion of the soil or has received a deposit of fresh soil brought by the water from some other place.

Lopez v. *Muddun Mohun Thakoor*(1), referred to.

The Regulation (XI of 1825) does not apply to lands reformed *in situ*.

The principle of reformation *in situ* applies not only to cases between rival proprietors but also to cases in which a dispute has arisen between a landlord and a tenant over land belonging to the landlord which has alluviated to the tenant's holding.

Rahimuddi Mattabar v. *Noimadi Howladar*(2), followed.

A defendant is not entitled to rely on the adverse possession by a third party as having extinguished the plaintiff's title.

Appeal by the defendants.

The facts of the case material to this report are set out in the judgment of Courtney Terrell. C.J.

S. M. Mullick and *N. K. Prasad II*, for the appellants.

Sir Sultan Ahmed (with him *D. C. Varma* and *A. A. Khan*), for the respondents.

COURTNEY TERRELL, C.J.—This is an appeal from the judgment of Noor, J. rejecting the appeal of the defendants from the decision of the Subordinate Judge who in turn had rejected their appeal from the decision of the Munsif.

The plaintiffs are the proprietors of a 15 annas 10 gandas odd share in village Bahuara and the

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

(2) (1927) 104 Ind. Cas. 547.

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defendants are the raiyats of the village. The defendants are also proprietors of the remaining 9 gandas odd share. The river Gandak flowing from west to east at one time formed the northern boundary of the dry land of the village and the property in the bed of the river was vested in the proprietors thereof. On the north bank of the river was village Tetri. Many years ago the river began to shift its course northwards until it was flowing north of Tetri with the result that the original bed between the two villages became uncovered. The finding is that it was the property of the maliks of Bahuara but it seems to have been cultivated by the people of Tetri as an accretion to their holdings in Tetri and it was so recorded in the Cadastral Survey in 1902. The river then began to move southwards again until it passed once again over its old bed submerging these lands which had accreted to Tetri. In 1924 the river again began to move north and once again to uncover these lands and also uncovered more which had always until then been the bed of the river. Of the total area of 15 bighas 19 kathas 13 dhurs thus uncovered, 13 bighas 18 kathas 5 dhurs are identifiable as having previously been uncovered and 2 bighas 1 katha 8 dhurs have not previously been uncovered. The defendants in their capacity as tenants say that the whole land is an accretion to their holdings which they are entitled to hold as raiyats paying rent therefor. Alternatively they say that such lands are identifiable as formerly in the cultivation of the people of Tetri and belonging to those people who alone have any title thereto. The view of all the Courts hitherto has, in my opinion, rightly been that the mere fact the river has uncovered land belonging to the landlord, and adjacent to the defendants' holding does not necessarily imply that it is to be treated as an accretion to their holding under Regulation XI of 1825, although in general the law of the Regulation is applicable to the alluvion of land belonging to the landlord as much as it is applicable to the law of

alluvion of land belonging to the Crown [as was laid down in *Khubi Mahton* v. *Mahant Lachman Das*(1)]. Mr. Sushil Madhab Mullick has argued strenuously that it was the intention of the Legislature that if land belonging to the landlord, under water, become uncovered adjacent to the land of that landlord's tenant it was to be the tenant's accretion no matter what might have been the previous history of such uncovered land, and that such previous history was irrelevant. But in a regular series of cases [of which *Lopez's*(2) case is best known] it has been laid down that when land emerges from water and it can be identified as the property of one who had previously occupied it the former owner has not lost his rights in the submerged land and can exercise them again when the land is once more uncovered. This is what is known in legal language as reformation *in situ*. The term is unfortunately misleading, for the law of diluvion and alluvion is concerned solely with the results of covering and uncovering by water of sites and not at all with the removal of soil from one site and its deposit on another site or re-deposit in the same site. It is the site which is important and reformation *in situ* only means the uncovering of an identifiable site whether or not the site has been denuded of a portion of the soil or has received a deposit of fresh soil brought by the water from some other place. Regulation XI of 1825, clause 4(*1*), is as follows :—

"When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed whether such land or estate be held immediately from Government by a Zamindar or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever....."

In my opinion it is clear that as regards the 2 bighas odd which have newly been uncovered and have hitherto been under water these are an accretion

(1) (1922) I. L. R. 2 Pat. 18.
(2) (1870) 13 Moo. I. A. 467.

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to the raiyati holding of the defendants and the defendants are entitled to cultivate them subject to the payment of rent to the whole body of proprietors.

The 13 bighas odd which were formerly uncovered and recorded as in the raiyati holding of the tenants of Tetri are in a different category. The oft quoted words of Sir Barnes Peacock in *Ramanath Thakore* v. *Chandernarain Chowdhuri*(1) are clearly applicable and show that in such circumstances the Regulation is not applicable " We are of opinion that the word 'gained' in section 4 of Regulation XI of 1825 does not extend to cases of land washed away and afterwards re-formed upon the old site, which can be clearly recognised.....In such a case we think the land formed by accretion on the old recognised site remains the property of the owner of the original site.....The principle is that where the accretion can be clearly recognised as having been reformed on that which formerly belonged to a known proprietor it shall remain the property of the original owner ".

Mr. Mullick, however, argued that this and similar cases were of disputes between rival proprietors and have no application to cases in which a dispute has arisen between a landlord and a tenant over land belonging to the landlord which has alluviated to the tenant's holding. He has also contended that the plaintiffs' title to this land had been extinguished by the adverse possession from 1902 till 1924 by the people of Tetri. As to the first argument it may be said that the claim of the tenants rests solely on the rights given by the Regulation and if the Regulation is not applicable to lands reformed *in situ* the tenants have no right as tenants at all. The 13 bighas odd have been found identifiable with that previously uncovered and that when previously uncovered it was part of Bahuara though cultivated by the people of Tetri. In *Rahimuddi Mattabar* v.

(1) (1862) 1 Mar. 136.

Noimadi Howladar(1) Graham, J. said " I am further of opinion that, although the Privy Council Cases referred to above are almost all cases between rival proprietors, and not as between proprietor and tenure-holder the principle laid down in those decisions applies with equal force. That principle as I understand it is, that where it can be demonstrated that a particular bit of land is the property of a particular person, if it should be submerged and then again reappear, it is restored to the owner, or to be more precise, it continues to remain his property. To allow a tenure-holder, whose land happens to adjoin the land thus accreted to claim the land thus formed as an accretion to his tenure would, in my judgment, be an infringement of the full proprietory right of the owner, and would go against the principle repeatedly laid down by the Privy Council ".

As to the second argument the defendants in their written statement originally themselves claimed adverse possession and the adverse possession by Tetri which is relied on before us in appeal is not even mentioned. Moreover in my opinion the defendants are not entitled to rely on adverse possession by a third party as having extinguished the plaintiffs' title and there is no finding that the possession by the people of Tetri was in fact adverse to that of the plaintiffs and there was no issue framed thereon.

In my opinion the decisions of the lower Courts and that of the learned Judge of this Court were right. As to the 2 bighas odd of the uncovered land it has accreted to the defendants' holding and as to the 13 bighas odd the plaintiffs as co-sharers are entitled to the decree for compensation for use and occupation. I would dismiss this appeal with costs.

VARMA, J.—I agree.

Appeal dismissed.

(1) (1927) 104 Ind. Cas. 547, 551.