

1869
 SHAMA CHARAN GHOSH
 v.
 TARAK NATH MUKHOPADHYA;

appeal had been filed by mistake in the name of his father; that he himself desire to carry on the appeal, and prayed to be made appellant. The Subordinate Judge refused to make the order requested, on the ground that there had been no mistake in the matter, that the party interested, Shama Charan, had been falsely described as a minor, and he therefore declared that the appeal be dismissed.

I observe that there could hardly have been a mistake in this matter, because not merely was the appeal preferred in the name of the father, and the son described as a minor, but the vakalutnama to prosecute the appeal was executed and signed by the father. Still I do not question, but that the Subordinate Judge, if he had thought fit, and considered that the conduct of the parties made it desirable, might have ordered the record to be amended by placing the name of Shama Charan, in the place of the appellant.

But I think it was entirely a matter in his discretion. It cannot be said that under the circumstance, the Subordinate Judge was in law bound to make the alteration, and therefore I think the special appeal must be dismissed with costs.

MARKBY, J.—I am of the same opinion:

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

HARI KISHOR DUTT AND OTHERS (PLAINTIFFS) v. THE
 COLLECTOR OF DACCA AND ANOTHER (DEFENDANTS)*

1869
 July 3.

Nadi Bharati—Accretion.

Nadi Bharati, or land raised out of the river, is not an accretion, and belongs to the person to whom the river was released by the Resumption Authorities.

Mr. G. C. Paul and Baboos Chandra Madhab Ghose and Ananda Chandra Ghosal for appellant.

Baboo Jagadmand Mookerjee for respondent.

BAYLEY, J.—The plaintiff in this case sued for possession of two plots of land as belonging to his Patni Mehal, which he says he acquired from one Aka Golam Ali. The plaintiff's allegation was that his cause of action arose from the fact of the lands being demarcated in Magh 1264 (1857) as Jagir and Khas Mehal lands in the Dacca Collectorate, and that then his lessor Golam Ali and he himself were dispossessed. The defendants pleaded limitation and their right to the lands as Jagir and Khas Mehals.

The first Court held that the suit was barred by limitation.

*Special Appeal, No. 616 of 1869, from a decree of the Judge of Dacca, dated the 17th December 1868, affirming a decree of the Sudder Ameen of that district, dated the 25th March 1868.

In appeal the Judge records (and this is not disputed) that the whole matter of appeal was confined to an area of 3 kanis 14 cowries of land in plot No. 2 only. The Judge upheld the decision of the first Court on this point. He found that the lands in suit belonged to the defendant's Jagir and Khas Mehals. The plaintiff appeals specially, and in special appeal there is no contention as regards the lands in plot No. 1. The special appeal is only limited to the 3 kanis 14 cowries of the lands in plot No. 2.

1869
HARI KISHOR
DUTT
v.
THE COLLECTOR
OF DACCA.

It is urged that the lower Appellate Court has not tried the question raised in the plaint and in the case throughout, viz. that plot No 2 was "Nadi Bharati" (land raised out of the river) of the plaintiff's property released by the resumption officers; that is to say, the plaintiff's contention is that by the resumption proceeding, the river, measured then to contain $2\frac{1}{2}$ drones, was made over to him as part of the estate which would not be resumed, but was released with other property to him. The plaintiff alleges that the portion of the lands marked A. in the Ameen's map represents the land which in fact had taken the place of the water comprised in the property released to him in the $2\frac{1}{2}$ drones above-mentioned.

On the other side, Baboo Jagadanand Mookerjee for special respondent contends that the point of limitation has not been adjudicated by the lower Appellate Court, although that point formed the basis of the decree of the first Court.

It appears that the lower Appellate Court has found as a fact that the land in suit was an accretion to the defendant's property; but the Court has not tried the point contended for by the plaintiff, viz., that the 3 kanis 14 cowries of the land which formed the "Nadi Bharati," or land raised out of the water and taking the place of the water of the river, were not accretions, but merely substitution of land for water of the river $2\frac{1}{2}$ drones, which were released to the plaintiff by the resumption officers. Nor has the lower Appellate Court decided the point of limitation, which was raised by the defendants. In both these respects there seem to us to be defects in the investigation of the case by the lower Appellate Court affecting its decision on the merits.

We therefore remand the case to the lower Appellate Court, to be re-tried on the evidence on the record on the following issues:

1stly.—Whether Limitation has barred the plaintiff's suit; and if not
2ndly.—Are the 3 kanis 14 cowries of land in plot No 2, claimed by the plaintiff as "Nadi Bharati," actually lands which have taken the place of the water of the river released to him in the $2\frac{1}{2}$ drones specified in the order of release by the resumption authorities.

The costs of this remand will follow the result.