

1869
 RAJA PRATAP
 CHANDRA SING
 BHADUR
 v.
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 MARCH AND CO.

The result is that, in our opinion, the decision of the Court below ought to be reversed, the decree in favor of the plaintiffs ought to be set aside, the suit dismissed, and the plaintiffs must pay the costs both here and in the Court below.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

GURU DAS DEY AND ANOTHER (TWO OF THE DEFENDANTS) v.
 SAMBHU NATH CHUCKERBUTTY AND ANOTHER
 (PLAINTIFFS).*

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Document—Proper Custody—Evidence—Special Appeal.

A document 30 years old does not prove itself, in the absence of evidence, that it has come from the proper custody.

The finding of a fact by the lower Appellate Court upon evidence, a portion of which was inadmissible, is not such a finding of fact as cannot be interfered with in special appeal.

Baboo *Rashbihari Ghose* for appellant.

Baboo *Akhil Chandra Sen* for respondents.

THE judgment of the Court was delivered by.

BAYLEY, J.—Thesetwo cases are, it is admitted, to be governed by one and the same decision in special appeal. The plaintiffs sued for declaration of right, on the allegation that the six kanis in suit were their ancestral lakhiraj property, and had been in their possession from generation to generation; and that the defendants having obtained pattas from them at a mokurrari jumma, have all along paid rents to them of those lands. The defendants denied the lakhiraj title of the plaintiffs in the land in dispute, and alleged that they were rent-paying lands appertaining to the zemindari of the Raja of Tippera, and were held in izara by them (defendants). The first Court dismissed the plaintiffs' case, holding that the plaintiffs did not prove their title or possession as lakhirajdars. The lower

*Special Appeals, Nos. 422 and 423 of 1869, from a decree of the Subordinate Judge of Tippera, dated the 9th December 1868, reversing a decree of the Moonsiff of that district, dated the 13th August 1868.

Appellate Court reversed that decision, and held that the plaintiffs had proved both their title and possession as lakhirajdars.

The lower Appellate Court first states: "In this case it is not necessary to refer to, and adjudicate upon, the documents regarding the validity of the lakhiraj tenure." It then goes on to say. "The plaintiffs in both the cases, in order to prove the fact of their possession as lakhirajdars have adduced several witnesses and filed the kabuliats of the ryots, and they have also produced several letters, bearing the seal of Raja Kishen Deb and Mussamat Chandra Kalla, and the signature of Ram Kamal Thakur, the talookdar s, dated in the years 1221, 1237, and 1244, Tippera; as well as a "terij" bearing the seal of Raja Kishen Deb, talookdar, dated in the year 1222, Tippera. These documents being more than thirty years old, are not, according to law, subject to proof and attestation by the evidence of witnesses. The fact of these documents being old is evident from their very appearance, and they are not open to any suspicion. The Talookdar Ram Kamal Thakur was cited as a witness by the plaintiff, and his residence being within the hills of the Raja of Tippera, steps were taken for his examination by means of a commission. But before his deposition was taken down, the said Thakur died; hence the seals and signatures on the letters could not be attested. It would however appear that the above documents are legally admissible in Court. The Moonsiff observes that the said documents do not set forth any boundaries, and that they cannot therefore be said to relate to the lands in suit. I find however that in the letters above alluded to, a mention is made of 1 dhur and 9 kanis of ancestral lakhiraj land belonging to the appellants, and the name of the mauza is also mentioned therein. It is contended by the plaintiffs that the lands in dispute in the two cases, viz., the 6 kanis of land involved in each of the two cases, form part and parcel of the 1 dhur and 9 kanis of land mentioned in the above letters. This must be held from the oral evidence adduced by the plaintiffs to be the true state of things, for both the plaintiffs appear to to have all along held possession of the disputed land by receiving rents from the respondents." The lower Appellate Court then refers to certain kabuliats on which

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it relies, and to a terij put in by the plaintiffs. On these documents, and on the oral testimony to which the lower Appellate Court refers, it holds, that the plaintiffs' possession is proved and it concludes by stating that in this case the validity or otherwise of the lakhiraj tenure need not be determined.

The substance of the contention of special appellant in special appeal is, that the letters, kabuliats, and the terij are not legally proved or attested, and are not therefore legal evidence in the case; and that this being so, the oral testimony of witnesses standing by itself might not possibly, in the judgment of the lower Appellate Court, have been thought sufficient to prove the plaintiffs' title, the declaration of which is sought for in this suit.

We think that these objections are valid.

The first argument in support of the lower Appellate Court's judgment, that because the documents are thirty years old they prove themselves, is entirely untenable, when it is not proved that those documents come from proper custody. The plaintiffs in these cases were *prima facie* the persons who had knowledge of the place from which the documents come, but they have not come forward to prove the custody of the documents. The letters are not attested by their writers or by any one who could swear that they were written or sent by those who purported to be the writers thereof. The kabuliats are not attested, and the lower Appellate Court appears to have committed an error in law in relying on the facts that the signature of Imamuddin on the kabuliat appeared to correspond with his signatures on the vakalutnama and the answer. It also erred in denying that the fact that the stamp for the kabuliat was purchased by Bholanath, the son of the grantor of the two kabuliats, was legal evidence *per se*. It is not alleged that the best evidence to the kabuliats was not available. Those who gave or those who received them, or those who saw them given or received, would give naturally the best evidence to those kabuliats, but no attempt has been made to adduce such proof. The terij is without any attestation at all, nor is the seal purporting to be that of the Raja of Tippera on that document deposed to be such. It is just possible that the oral testimony of the witnesses

deposing to the plaintiffs' possession as lakhirajdars might be sufficient evidence of their lakhiraj title irrespective of the documentary evidence produced in the case; but looking to the judgment of the lower Appellate Court as given above in full, it is impossible to say that the lower Appellate Court has based its decision upon the oral testimony only. On the contrary, a reasonable interpretation of the judgment of the lower Appellate Court taken as a whole, must lead to the conclusion that it was the strength which the lower Appellate Court considered the documents gave to the plaintiffs' case, which, taken together with the oral testimony, induced the lower Appellate Court to give the plaintiffs a decree; but still as there is some oral testimony on the record in support of the plaintiffs' case, the plaintiffs have a right to obtain the benefit of the lower Appellate Court's judgment on that testimony.

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The cases are therefore remanded to the lower Appellate Court to try whether on the oral testimony on the record the plaintiffs have proved their title, the declaration of which they sue for, either directly or by reason of any possession held for upwards of 12 years as lakhirajdars.

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 June 21.

Before Mr. Justice Loch and Mr. Justice Miller.

RADHA MOHAN NASKAR AND OTHERS (DEFENDANTS) v. JADU NATH DAS AND OTHERS (PLAINTIFFS).*

Act X. 1859. ss. 142 and 143—Wrongful Distraint of Crops—Jurisdiction of Collector's Court.

Certain sub-lessees sued in the Collector's Court the zemindar and others employed by him for the value of crops seized and carried away, under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. The Collector gave plaintiff a decree, which was upheld by the Judge. The defendants appealed only on the point of jurisdiction.

Held, the suit was properly brought in the Collector's Court; that sections 142 and 143 of Act X. of 1859 applied to the case. Section 143 contemplates not only the case of a person who professes to follow the provisions of the law, though he has no

* Special Appeals, Nos. 2618, 2621, 2622, 2623 and 2624 of 1868, from the decrees of the Judge of the 24-Pergunnas, dated the 15th August 1868, modifying the decrees of the Deputy Collector of Diamond Harbour of that district, dated the 30th April 1868.