

# Appeal Cases

BEFORE THE

## JUDICIAL COMMITTEE

AND

### LORDS OF HER MAJESTY'S MOST HONORABLE PRIVY COUNCIL.

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BARADAKANT ROY v. CHANDRA KUMAR ROY

AND OTHERS.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT  
FORT WILLIAM IN BENGAL.

*Possession—Title—Act IV. of 1849—Jalkar.*

A originally owned two zemindaries between which lay a Bil, or marsh, of which he also owned the fisheries. One of the zemindaries was sold and purchased by B, but the Bil fisheries still continued with the remaining zemindari held by A. After the sale, certain lands reclaimed from the Bil were, for some years, held by B as part of his purchased zemindari. A instituted a summary suit under Act IV. of 1840, and was by an order of the Magistrate put in possession of these lands. B brought a regular suit against A to recover the lands, and set aside this order.

*Held* (reversing the decision of the Courts below), that it was necessary for B to show a better title to the land than A could produce. It was not enough for him to prove possession anterior to the Magistrate's order under Act IV. of 1840. The presumption was that the land of the Bil belonged to A, who had admittedly owned both estates before, and had retained the fisheries of the Bil after the auction sale. B ought to have shown when and how, if at all, the right to the fisheries and the right to the soil were severed.

CHANDRA KUMAR ROY CHOWDHRY, zemindar of Pergunna Dattia, sued Raja Baradakant Roy, to regain possession of a large plot of land, which he alleged belonged to Pergunna Dattia, and from which he had been dispossessed by orders of the Magistrate made in favor of the Raja defendant, in 1851 and 1857, under Act IV. of 1840. Pergunnas Dattia and Sydepore had both

See also 12  
B. L. R. 229.

\* *Present*: LORD CHELMSFORD, SIR JAMES WILLIAM COLVILLE, SIR ROBERT PHILLIMORE, AND SIR LAWRENCE PEEL.

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belonged originally to the Raja's ancestors ; but Pergunna Dattia had been sold separately for arrears of revenue, many years before, and bought by plaintiff's predecessors. The land in dispute had been reclaimed, subsequently to the separation of the pergunnas, from a Bil. or marsh, the jalkar of which appertained to Pergunna Syedpore. The Raja defendant contended that the reclaimed land belonged to his estate of Syedpore. The issue fixed by the lower Court was the following : " Whether the land belongs to plaintiff's zemindari, and was held by him through his ryots till he was dispossessed by the Act IV. decree ; or whether it belongs to defendant's zemindari of Syedpore." The whole of the evidence laid before the lower Court went to show, that plaintiff had collected rents from ryots on the reclaimed lands for several years. The Judge also considered that the conformation of the ground showed that the land belonged to Dattia, and not to Syedpore. The records of a resumption suit were produced with a view to showing that the lands had been in plaintiff's possession. The real issue in the resumption suit was, however, only whether Government were entitled to assess the lands, and this had been determined in the negative. The Judge of Jessore, on 3rd September 1860, on a review of all the evidence, gave a decree for plaintiff. The High Court (BAYLEY and CAMPBELL JJ.) on 28rd April 1863, upheld the Judge's decision on precisely similar grounds.

The case was then appealed to Her Majesty in Council.

Their Lordships' judgment was as follows :

THEIR LORDSHIPS would not have departed from their usual course of not disturbing the concurrent judgments of the Courts below on a question of fact, if the facts, as found, were, in truth, decisive of the real issue between the parties.

That issue is whether the lands in dispute belong to the zemindari of the appellant, or to the estate of the respondent.

The appellant is in possession under the Magistrate's order, and it, therefore, lay upon the respondents, who were the plaintiffs in the suit, to oust him from that possession, by showing a better title to the property claimed. It is an admitted fact that at the date of the perpetual settlement both estates were settled

for with the defendant's ancestor, either as one zemindari or as two separate revenue-paying estates. It is also clear that the Bil, from which these lands have been gained, was part of that zemindari. The resumption suit proves that no right to re-assess lands which might be gained from the Bil remained in the Government.

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In 1796, the two properties were severed by means, as it is said, of a sale for arrears of revenue, and Pergunna Dattia, which includes the village of Jhanpagram, was acquired by the Pal Chowdhrys, through whom the plaintiffs claim.

It is also an admitted fact that the jalkar and every right which could be exercised by the zemindar while the land was covered with water (what the Judge calls the "aqueous assets,") remained in the appellant or those whom he represents. In these circumstances it lay upon the respondents to show that the effect of the revenue sale was to transfer to them, as part of the village of Jhanpagram, any soil which might be recovered from the Bil. It has been argued, at the bar, that this alleged title of the plaintiffs must be inferred from the conformation of the ground, or the name of the village. But if any presumptions, however slight, can be drawn from these circumstances, they seem to their Lordships to be more than rebutted by the admitted fact that, after the sale, the jalkar of the Bil remained in the appellant's ancestor. It has been argued that the right in the jalkar may be distinct from the right in the soil, and this, no doubt, is true. But here both had been admittedly in the appellant's ancestor, and it lay upon the plaintiffs, the respondents, to show when and how they were severed.

The facts found by the two Courts below bear only upon the latter part of the first issue settled in the cause, *viz.*, whether the plaintiffs were in possession of the lands through their tenants, and had been ousted by the order in the Act IV. case. That finding does not touch the material part of the issue, *viz.*, whether the land in dispute appertains to the plaintiffs' Mauza Jhanpa. Even if it were proved that some *jalibila* land was annexed to the village, and passed as part of it at the time of the sale, it does not follow that the land which has since been

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recovered from the Bil (and great part of the land in question has been admitted to have been so reclaimed since the date of sale) would so pass. Yet the argument at the bar went the full length of contending that the whole site of the Bil, if cleared of water and made capable of cultivation, would fall into, and become part of, the respondents' village, Jhanpagram, though 'whilst it was covered with water it remained under the dominion of the appellant. For such a contention their Lordships can see no ground. The decision of the Fouzdari Courts, as to the point of possession, was final. The question in this suit was, whether the plaintiffs, by showing a better title than the defendants, could recover possession from them. In their Lordships' judgment, the original title to this land was in the appellants' ancestors, and it has not been shown that they ever lost it. It is possible, though not very probable, that if there had been fuller evidence of the original settlement of these properties, and of what passed by the revenue sale, this might have been done. Their Lordships, therefore, in the peculiar circumstances of this case, though they think that the appeal ought to be allowed, and the present suit dismissed with costs, and will make their humble recommendation to Her Majesty accordingly, will also recommend that Her Majesty's order be made without prejudice to the right of the respondents to bring, if they shall be so advised, a new suit for the recovery of the lands in question, upon the ground that the title to these lands passed to the Pal Chowdhrys, from whom the respondents derive their title by the revenue sale.

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EKOWRI SING AND OTHERS *v.* HIRALAL SEAL  
AND OTHERS.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT  
FORT WILLIAM IN BENGAL.

*Chur Lands—Proof of Title by Claimant.*]

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The reformation of land in the bed of a navigable river is not *prima facie* to be ascribed to a loss from any particular riparian estate, nor is the land which

\* Present: LORD CHELMSFORD, SIR JAMES WILLIAM COLVILLE, SIR ROBERT PHILLIMORE, AND SIR LAWRENCE PEARL.