

P. C. \*  
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25th April.

RADHA PERSHAD SINGH (DECREE-HOLDER) v. TORAB ALI  
AND OTHERS (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

*Decree—Construction of decree—Construction in execution of an order in Council.*

An order of Her Majesty in Council was that a decree-holder should recover what was demarcated by "the thakbust map and proceedings of 1839." *Held*, on the construction of the order, that the latter words meant the proceedings relating to the thakbust map, and did not include a survey map which differed from it.

APPEAL from a decree (2nd May 1887) of the High Court, affirming a decree (15th April 1886) of the Subordinate Judge of Shahabad.

This appeal arose out of proceedings in execution of an order of Her Majesty in Council of 17th May 1879, and the matter in dispute is stated in their Lordships' judgment.

On two occasions in the Court of the Subordinate Judge, first on 30th June 1881, and again on 15th April 1886, it was found that the amin deputed to the spot, and directed to report, had taken into consideration the survey map instead of confining himself to the thakbust. An appeal from the order of the latter date was preferred to the High Court, whereupon a Division Bench (TOTTENHAM and NORRIS, JJ.) was of opinion that the Subordinate Judge had been right in limiting the decree-holder to the thakbust, and that he had, as a matter of construction of the order in Council, strictly adhered to its terms, correctly declining to give it a wider scope.

Mr. R. V. Doyne and Mr. J. D. Mayne appeared for the appellant.

Mr. C. W. Arathoon for the respondents.

For the appellant it was argued that he was entitled to lands appearing by the survey proceedings of 1839, in other words, by the thakbust, as corrected by the subsequent proceedings, and the scientific survey maps, to lie to the north of the northern bank of the true channel of the Ganges in 1839. Reference was made to Wilson's Glossary, 501, for the definition of thakbust.

\* *Present*: LORD WATSON, SIR B. PEACOCK, and SIR R. COUCH.

Counsel for the respondent was not called upon.

Their Lordships' judgment was delivered by

SIR R. COUCH.—This is an appeal from a decree of the High Court of Calcutta affirming an order of the Subordinate Judge made in the execution of an order in Council of the 17th May 1879. The judgment of this Board upon which that order in Council was made was given on the 22nd March 1879. It referred to and adopted a judgment which was given on the same day in another case of a similar nature. In that judgment their Lordships said that the Board, when the matter was previously before them, came to the conclusion that the Maharaja, the present appellant, had had adverse possession of all the land that was above the northern bank of the river Ganges in 1839, and from that time to 1857, and had therefore established a title to that portion of the land in dispute, but to no more, and that a map of the amin which was made in a great measure from the thakbust proceedings of 1839 which had been referred to was at that time assumed by the Board to be correct, but that their attention having been called to a statement of the amin, showing that this map was not a correct map, they "thought it better and safer in this case to take the thakbust map of 1839." That being so, they came to the conclusion that the Maharaja was entitled to recover "so much, if any, of the land claimed by him in this suit as was demarcated by the thakbust map and proceedings of 1839, as then lying to the north of the northern bank of the river Ganges." Her Majesty's order in Council was made in the same terms.

Now the present contention of the appellant is fairly stated in the appellant's case, and it is this:—"In the present case it has appeared on the proceedings in execution of Her Majesty's Order in Council that the professional survey made in the same year as the thakbust, 1839, differed materially from the latter, and would give this appellant a much larger area as lying to the north of the northern bank of the Ganges, and that the thakbust map was unscientific and untrustworthy. This appellant contended"—that is, before the lower Courts—"and now submits that his contention was well founded, that the intention of their Lordships' judgment and report was to give him all the land which in fact lay to the north of the true river bed of 1839, and

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that such true river bed is that shown by the survey map of 1839." In the reasons of the appellant's case it is said that "it should have been held that this appellant was, on a due construction of the judgment of the Judicial Committee of the 22nd March 1879, and the order of Her Majesty in Council of the 17th May 1879, entitled to whatever lands should by the survey proceedings of 1839, *i.e.*, the thakbust map as corrected by the subsequent proceedings, and scientific survey map, appear to have lain to the north of the northern bank of the true bed of the river Ganges in 1839." So that in fact what the appellant contended for in the lower Courts and now contends for here is that the survey map is to be taken as the map showing the demarcation of the land, correcting the thakbust map, where it differs from it; in fact that the survey map should be substituted for the thakbust map.

Now, whatever may be the merits of the one map or the other, about which it is not necessary to say anything, because their Lordships have not the materials before them to enable them to say whether the survey map is the map which ought to have been used by the Judicial Committee when this judgment was given, the words of the judgment and of the order in Council are not in any way ambiguous. There is no difficulty in interpreting them. They say distinctly that the Maharaja is to recover what was demarcated by the thakbust map and proceedings of 1839, and it appears from the judgment to be obvious that the proceedings in 1839 meant the proceedings relating to the thakbust map. It could hardly be that their Lordships, when they gave that judgment, intended by the words "proceedings of 1839" to include a survey map which it is now said differs from the thakbust map and is sought to be used to correct it. The lower Courts in the execution of this order in Council appear to have taken the right view, and their Lordships will therefore humbly advise Her Majesty that the appeal be dismissed and the decree of the High Court be affirmed. The appellant will pay the costs of this appeal.

*Appeal dismissed.*

Solicitors for the appellant: Messrs. *Burton, Yeates, Hart & Burton.*

Solicitors for the respondents: Messrs. *T. L. Wilson & Co.*

C. B.