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ment of the money, and in my opinion may be enforced in any of the modes in which an ordinary money decree may be enforced, either against the person of the debtor or any property of his that may be found. In this view, we think that the view taken by the Subordinate Judge was right, and that this appeal must be dismissed with costs.

T. A. P.

Appeal dismissed.

PRIVY COUNCIL.

*P. C. **
 1889
 May 15,
 16, and
 June 29.

HEMMUNI SINGH AND OTHERS (PLAINTIFFS) v. CAUTY AND ANOTHER
 (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

Land Registration Act (Bengal Act VII of 1876), s. 7.—Delimitation of land of adjoining proprietors—Correction of entry in register.

On a claim for the correction of the entry of the names of proprietors in the general register of revenue-paying lands in a district kept in accordance with Bengal Act VII of 1876, the limits of the area of the estate had not been defined, further than by boundaries mentioned in the plaint, which were disputed by the defendants, who were the owners of land adjoining, and who had obtained from the revenue authorities an order for the entry now alleged to be incorrect. The properties were both parts of an ascertained number of bighas, forming a chuckla.

The High Court, while affirming the decision of the Court below in the plaintiffs' favour, ordered a local enquiry, with a view to the accurate delimitation of their estate. This, with the subsequent decree, resulted in the area being defined therein by reference to a map made and marked by an Amin. This was not a just division; for, while it divided the chuckla so as to give the defendants their full share, it went beyond it, to make up the full area of the plaintiffs' share. Their Lordships therefore made a new order, calculated to secure the division of the whole chuckla in due proportions for the purposes of the entry in the register.

APPEAL from a decree (8th March 1882) of the High Court, varying a decree (1st July 1880) of the Subordinate Judge of Bhagalpur.

The present appeal was preferred from a decree which directed a local investigation as to boundaries, for the purpose of ascertaining the correct entry to be made, in accordance with s. 7 of Bengal Act VII of 1876 (the Land Registration Act, 1876), in

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

reference to an estate, as to which the names of the plaintiffs were entered in the column of proprietors.

The suit out of which this appeal arose was brought to set aside the order of the revenue authorities in the Bhagalpur district, that the names of the defendants should be entered as owners, each of a one-third share of a whole area, or chuckla, comprising a little more than 1,040 bighas, known as Pathurghati of Phagu Sirdar, and lying within or forming a dependency of a mauza called Latouna. This had formerly been part of a taluq named Thalba which belonged to a joint family estate owned in the year 1859 by five brothers. On a partition among the brothers, the chuckla Pathurghati was nominally allotted thus: *viz.*, rather more than 503' bighas to one brother named Nundkishore, and the residue, 536 bighas and a few cottahs, to another brother named Haruckman.

The present suit had reference to the proper registration of the plaintiffs' names as proprietors of these 503 bighas, part of Pathurghati, involving their marking-off and description. The property in the 503 bighas remained in Nundkishore's possession till his death in 1872, descending to his heirs the present plaintiffs. The residue, 536 bighas, came to the defendants as purchasers from Haruckman; and their application made in 1878 to have their names registered under Bengal Act VII of 1876 as proprietors, each of a one-third share of the whole of mauza Latouna and of chuckla Pathurghati, comprising all the 1,040 bighas (instead of only the 536 bighas, which had fallen to the share of Haruckman), occasioned this suit. An order of the Collector, dated 29th March 1879, reversing that of the Deputy Collector, and confirmed on appeal by the Commissioner, directed entry of all that the defendants had applied for, which included entry of two-thirds of Pathurghati in their names.

The Subordinate Judge decreed that the names of the plaintiffs be entered in the register, in respect of that portion of Pathurghati of which portion the boundaries were given in the plaint; the names of the defendants being removed; the orders of the revenue officers being set aside as to the entry in favour of the defendants.

The High Court (Prinsep and O'Kinealy, JJ.) in the main affirmed this decree; but found it necessary to direct the District

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Judge to issue an order to an Amin to make a local inquiry, and a map of the land to which the entry when made would relate. This was done. The Judges then in continuance (3rd April 1883) gave the following decision :—

“It was our intention not merely to find in favour of the plaintiffs, but to restrict the claim so that they might have only, the 503 bighas* odd, to which they became entitled in consequence of the partition between Nundkishore and Haruckman Singh. We certainly never intended to deprive the defendant of the 536 bighas odd to which under that partition he was also entitled.

“The local inquiry has now been held, and the Amin has submitted a map showing the area claimed by the parties, as well as the boundaries of Pathurghati fixed by the survey of 1817, that is to say, about eleven years before the partition took place. Within these boundaries the Amin has found an area of 1,040 bighas which was the area dealt with by the partition. The case therefore is practically a mere boundary dispute. The only difficulty arises from the fact that the boundary between the two properties of the parties runs almost entirely through jungle land having no defined features.

“The main objection which has been taken before us to the correctness of the Amin's proceedings relates to the northern boundary. Now it does not appear that any such objection was taken while these proceedings were being held, or at any previous stage of this case. It would seem rather as if the correctness of that delineation was accepted by the parties, since it generally accords with the boundaries which they pointed out. There is no reason to suppose that, as regards the eastern and western boundaries of the entire tola Pathurghati of Phagu Sirdar, any error has been committed; and the correctness of the entire demarcation is in some way corroborated by the fact that the area corresponds with that dealt with by the partition.

“It seems to us therefore that we should be doing justice between the parties in the present case, if we were to give the defendant the full amount of the 536 bighas to which under the partition he is entitled, leaving the remainder to the plaintiffs.”

The judgment then gave a more detailed description of what the entry was to be by reference to the map; and a decree followed to the same effect.

The plaintiffs appealed to Her Majesty in Council, as to the question of the correctness of the entry of the boundaries, as decreed by the High Court.

Mr. R. V. Doyme, for the appellant, argued that, as the plaintiffs sought, not to obtain possession by decree, but to have their

title cleared from the doubts that would be cast upon it by the mistaken entry under the erroneous orders of the Collector and of the Commissioner, it was not incumbent on the plaintiffs to have the division ascertained and delineated. All that was necessary for the plaintiffs was that the orders should be set aside, and that the parties should be restored to their former position. If any thing more was required, the boundaries alleged in the plaint were capable of being laid down. The decree of the High Court would have the effect of apparently transferring to the defendants lands which, as to part, had been in the possession of the plaintiffs and of Nundkishore since 1859; and that decree prescribed an unjust division for the purposes of the register.

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Mr. C. W. Arathoon, for the respondents, supported the decree of the High Court.

Mr. R. V. Doyne replied.

Their Lordships took time to consider their judgment, which was afterwards (on 29th June) delivered by

SIR R. COUCH.—The appellants were the plaintiffs in the suit, and the plaint stated that upon a partition between the members of a joint Hindu family of property, of which a chuckla known as Pathurghati formed part, and the entire 16 annas of which chuckla was 1,040 bighas 1 cottah 2 dhoors, 503 bighas 7 cottahs 12 dhoors 12 rains of jungle-land fell to the share of Babu Nundishore Singh, the father of the first and grandfather of the second and third plaintiffs, and the remaining 536 bighas 13 cottahs 9 dhoors 8 rains of jungle-land of the chuckla went to the share of Baboo Haruckmun Singh, from whom the defendants derive their title. That upon petitions of the plaintiffs and defendants for registration of names under Bengal Act VII of 1876, an order for registration of names of the plaintiffs in respect of the 503 bighas, &c., was made by the Deputy Collector; but on appeal the Collector reversed that order, and directed the names of the first and second defendants to be recorded in regard to two-thirds of the entire chuckla, and this order was confirmed by the Commissioner, and in accordance with it the name of the second defendant was also registered in respect of one-third. The plaint prayed for an order for registration of the plaintiffs'

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names in respect of the 503 bighas, &c., out of the 1,040 bighas &c., and for the registration of the defendants' names only in respect of the remaining 536 bighas, &c., and for other relief giving boundaries of the 503 bighas. The written statements of the defendants said that the boundaries given in the plaint did not comprise 503 bighas of land; that the entire area of chuckla Pathurghati was not 1,040 bighas, and the boundaries given by the plaintiffs were wrong. The Subordinate Judge of Bhagalpur made a decree that the names of the plaintiffs should be registered in respect of that portion of the lands which is called Pathurghati Phagu Sirdar, the boundary of which has been given in the plaint, and that the names of the defendants in respect of that share should be expunged, and that portion of the order of the Mutation Department which is prejudicial to the interests of the plaintiffs should be set aside.

Upon an appeal to the High Court, that Court considered that the partition was made as stated; but the real difficulty in the case consisted in the indefinite character of the boundaries given in the plaint upon which the plaintiffs' case had been decreed; that those boundaries, so far as they understood them, were natural boundaries, but from the extensive area of the land in dispute, it was not improbable that these natural boundaries indicated only a small portion of the boundary lines. They therefore thought it necessary that the boundaries given in the plaint should be ascertained and clearly indicated in a map before a final order was made. The District Judge was accordingly requested to direct a competent Amin to prepare a map, after proper inquiry, showing the boundary as stated in the plaint, and having ascertained these boundaries, the Amin should proceed to measure the area falling within them, and should then submit his report for the orders of the High Court. The District Judge accordingly, by an order dated the 10th of June 1882, commanded a Civil Court Amin to make the local investigation and the map thus required.

The Amin made his report, dated 12th August 1882. In that he states that the servants of the plaintiffs and defendants had pointed out the land which they said was in the possession of their masters, and it was measured; but the lands as pointed out when added together, did not tally with the amount of land speci-

fied in the partition, and was deficient by 256 bighas 2 cottahs 14 dhours. He then says that in order to ascertain why the amount of land had decreased, as well as to know the boundary limit of chuckla Pathurghati, he summoned several persons; but they only stated that the lands appertaining to mouza Babhungaon, named in the plaint as on the west of the 503 bighas claimed, were on the western limit of chuckla Pathurghati. After this he called for a survey map made in 1847, which had been filed on behalf of the plaintiffs, and using this and taking a point on the east side where Pathurghati joined two mouzas, Doparkha and Burakurwa, which was pointed out and admitted by the agents of both parties and the servant of the proprietor of those mouzas, he fixed the boundary of Babhungaon farther to the west than the point which had been pointed out to him by the agents of the plaintiffs as on the western limits of Pathurghati, so as to include the 256 bighas which were deficient. This was done in the absence of any representative of the proprietor of Babhungaon. The Amin appears to have thought he was bound to fix the boundaries of Pathurghati so as to give an area which exactly tallied with that in the partition. But it was not his duty to do this, and the defendants had denied that the entire area of the chuckla was 1,040 bighas.

The case came again before the High Court on the 3rd April 1883, the respondents (the plaintiffs) having filed objections, in which they said that as the partition did not take place with reference to the survey map, the Amin was wrong in calling for the survey map, and in finding on the strength of it that the chuckla extended more on the west, contrary to the allegations of both parties. But the Court adopted the boundaries found by the Amin, and decided to give to the defendants the full amount of 536 bighas to which they said they were under the partition entitled, leaving the remainder to the plaintiffs; and also that the defendants were to have the portion which lies to the extreme east, and they were to obtain the services of some competent person to delineate on the map submitted to the Court by the Amin the boundaries between the 536 bighas and the lands belonging to the plaintiffs. This was done, and the case with the map of the surveyor again came before the Court on the 6th June 1883,

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when it was objected on behalf of the plaintiffs that the balance remaining in their possession was considerably less than 503 bighas ; but the Court said they had then no concern with that matter, it was considered before the decree was settled, and ordered that the map should form part of the decree, and that out of the lands in suit the plaintiffs should receive any land outside the boundary shown by the line marked by the surveyor, and the other boundaries described in the order of 3rd April, and the defendants should get 536 bighas lying within those boundaries. The result is that the defendants would obtain possession of 536 bighas, and the plaintiffs might have to engage in a suit with the proprietors of Babhungaon before they could obtain possession of the whole of the 503 bighas. This is not a just division, and their Lordships are of opinion that in this suit the boundaries of the land to be divided should be taken to be those pointed out by the servants of the parties, and that the proper decree will be that the land within those boundaries, and which are within the line marked green on the copy of the map of the Amin to be annexed to the order of Her Majesty in Council, shall be divided, by a competent surveyor, by a line beginning on the northern boundary at a point in a straight line with the north-west corner of the tank, and going thence to the southern boundary as nearly in a direct line as will conveniently divide the whole area in the proportion of 503 to 536, and that the plaintiffs shall obtain possession of the land lying on the western and the defendants of the land lying on the eastern side of such line, and that the suit should be remitted to the High Court that the line shall be so marked, and the decree of the High Court be varied accordingly. Their Lordships will thus humbly advise Her Majesty. The parties will bear their own costs of this appeal.

Decree varied.

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

Solicitors for the respondents : Messrs. *Barrow & Rogers.*

C. B.
