

*Before Mr. Justice Mitra and Mr. Justice Causpersz.*

DUNNE

v.

DHARANI KANTA LAHIRI.\*

1908

Mar. 6.

*Thakbust and Revenue Survey maps, evidentiary value of—Statement recorded in the presence of parties, effect of.*

In a dispute, whether certain land belonged to the estate of the plaintiff or to that of the defendant, the plaintiff produced *thakbust* as also survey maps of the year 1852-53; the *thakbust* map contained a statement, which supported the plaintiff's case.

The predecessor of the appellant defendant had full notice of the *thak* proceedings, and he objected to the boundary line as laid between his and the plaintiff's estate, but the objection was disallowed.

The defendant produced a survey map of 1855-56, of the district, which contained his estate, in support of his case, but he did not produce any *thakbust* map of the same year, and there was no evidence to support the accuracy of the survey map:—

*Held*, that the evidentiary value of the *thakbust* map, and the survey map produced on behalf of the plaintiff, was greater than that of the survey map produced on behalf of the defendant.

The cases of *Jagadindra Nath Roy v. Secretary of State for India*(1), *Syama Sunderi Dassya v. Jogobundhu Sootar*(2) and *Nobo Coomar Dass v. Gobind Chunder Roy*(3) referred to.

APPEAL by the defendant, Mr. A. M. Dunne, Receiver to the estate of the late Hon'ble Prasanna Kumar Tagore.

This appeal arose out of an action brought by the plaintiff to recover possession of certain chur lands with mesne profits. The plaintiff claimed the land partly as reformed lands of mouzah Manikdiar, belonging to the plaintiff, and partly as derelict land of river Daokoba, a twelve annas of which was measured by the Thak authorities as appertaining to the said mouzah, and partly as the dried-up bed of a channel called

\* Appeal from Original Decree, No. 239 of 1904, against the decree of A. N. Majumdar, Subordinate Judge of Mymensingh, dated Dec. 23, 1903.

(1) (1902) I. L. R. 30 Calc. 291;

(2) (1889) I. L. R. 16 Calc. 186.

I. R. 30 I. A. 44.

(3) (1881) 9 C. L. R. 305.

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Chatal. The river Daokoba, which was variously called Jamuna, Brahmaputrā or Konai, by constantly shifting its course, wrought considerable changes at Manikdiar. In 1301 B.S., the river, suddenly shifting its main channel, left in a portion of the old bed, an arm or branch separated from the main channel by a long stretch of sand bank. In 1302 B.S., when a portion of the chur became fit for cultivation, a dispute arose between the plaintiff and the proprietor of the neighbouring estate, the defendant; this led to a proceeding under s. 145 of the Code of Criminal Procedure, which was decided against the plaintiff, and the defendant thus obtaining a footing encroached upon the land further west, and in consequence the suit was instituted.

Defendant *inter alia* pleaded that the suit was barred by limitation, that the plaintiff had no title to the lands in suit, as they appertained to Katma Krishnagar, a zemindary of the late Prasanna Kumar Tagore.

The Court of first instance, relying upon the *thakbust* and survey maps produced by the plaintiff, decreed the plaintiff's suit.

Against this decision the defendant appealed to the High Court.

Feb. 14. *Mr. Caspersz, Mr. B. Gangoly, Babu Nilmadhub Bose, Babu Mukunda Nath Roy and Babu D. N. Bagchi*, for the appellant  
*Mr. Hill and Babu Jozesh Chunder Roy*, for the respondent.

*Cur. adv. vult.*

MITRA AND CASPERSZ JJ. We are now in a position finally to dispose of this appeal. The defendant having failed to make out his original case, that the land in controversy was a part of his village Katma Kristopore in parganah Patiladaha, put forth, by his amended written statement filed in this Court, a new case, viz., that the land was re-formation on the site of, and accretion to, a part of his village Chur Dulka in the same parganah. Copies of the survey map of Chur Dulka prepared in April, 1856, and the parganah map of Patiladaha, prepared in the same season,

were relied on by the defendant in his amended written statement.

The Commissioners have now traced on the case-map the survey boundary lines of Chur Dulka, and it would appear therefrom that a portion of the land, possession of which has been decreed to the plaintiff, occupies the site of the southern part of Chur Dulka. The contention, therefore, of the defendant is, that this portion of the land should be excluded from the decree made by the lower Court, as, also, such land as adjoins it, on the ground of accretion. The plaintiff, however, bases his claim on the evidence afforded by the maps prepared by the survey authorities, about four years before the survey of the defendant's village took place, and these maps show that Chur Dulka either did not exist at the time they were prepared or had not then extended to the south beyond the line of boundary of the defendant's parganah Patiladaha, but was confined within that part of the river-bed which appertained to that parganah. The arguments addressed to us at the hearing have been confined to the relative weight to be attached to the maps filed by the parties. No other question has been argued before us.

A comparison of the *thakbust* and the survey maps leads to the indisputable inference that the part of the land in suit, which is covered by the site of the village Manikdiar of the plaintiff, as depicted in these maps, belongs to him, and he is entitled to a decree for possession of it in supersession of the order made against him in the proceeding under section 145 of the Code of Criminal Procedure, on the 25th June, 1898. The slight variation between the boundary lines of the *thakbust* and survey maps is not material. The variation between the western lines was evidently due to the recession of the river further towards the west during the time that elapsed between the preparation of the maps, the survey having followed the *thak* proceedings.

In the season 1852-53, the Brahmaputra river, which was then locally known as the *Daokoba*, and also the *Konai*, lay on the west of the village demarcated as Manikdiar. The *thakbust* map, as usual, does not give its breadth—lines being traced only to show its existence and not its breadth. The river survey map of the *Daokoba* prepared in the same season, 1852-53,

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however, gives the breadth accurately. The *thakbust* map, however, contains the following statement concerning the river-bed—“A twelve annas share appertains to this mouzah (Manikdiar). A four annas share appertains to mouzah Salmari (a village in parganah Jafarsahi).” This statement shows that three-fourths of the river-bed formed, or were supposed to form, a part of the village Manikdiar. The value of such a statement is not inconsiderable, notwithstanding that the Brahmaputra river is navigable. It is notorious that the course of the Brahmaputra is subject to constant changes and that its derelictions are very frequent. It could not be said, from the mere position of its current at any particular time within the memory of man, or within the last century, that the land covered by the river was not included within a permanently-settled estate. It is now not known where the course of the river exactly was, either at the time of the Decennial Settlement of 1790 or the Permanent Settlement of 1793. That its course underwent considerable changes since 1793 is now fairly established. Mr. Oldham, who was Superintendent of the Geological Survey of India, refers, in his book on the Geology of India, (p. 441), to the change of the course of this river, as also of the Ganges, the two great deltaic rivers of Bengal. Speaking of the modern changes in the delta as due to the upheaval of the elevated tract known as the Madhupur jungle, which had the effect of diverting the Brahmaputra eastward into the Sylhet *Jhils*, the learned author says:—“The result was that scarcely any sediment found its way to the sea by the Meghna, the great estuary of all the Sylhet rivers, and hence the sea face of the delta to the eastward curves back in the form of a gulf. The gap was much greater at the commencement of the present century (the nineteenth), but about that time the Brahmaputra having by the deposit of silt greatly raised the portion of the Sylhet *Jhils*, into which it flowed, changed its course completely in the course of a few years and, instead of flowing to the east of the Madhupur jungles, cut out a new channel to the west of the new tract. Since its change of course, the Brahmaputra has been brought much nearer to the main stream of the Ganges.” The precise period of the avulsion, and its dereliction from east to west, cannot now be easily ascertained.

but it was undoubtedly in the beginning of the last century. Major Rennel's maps of the rivers of Bengal refer to a period antecedent to the Decennial Settlement. The Brahmaputra was then, after leaving the Assam Valley Districts, flowing in a bed that lay more to the east than now. The change occurred at a considerably later period. The subsequent shiftings of its bed during the last century were remarkable and also well known. It might be that a change had occurred only a few years before the *thakbust* map was prepared, and that the effect of the change had been to submerge a large portion of the village Manikdiar. The survey party in 1852-53 might have obtained satisfactory evidence of the fact, and recorded the river-bed to be private property and not property of the Government. We cannot hold, from the mere fact that the river was navigable, that the statement in the *thak* map is erroneous. The statement is good evidence against the appellant, who had evidently no title to put forward to the river-bed in this part of its course.

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The *thakbust* surveyor (in 1852-53) of the locality in controversy was Raj Mohan Dutt, and the survey had been made with notice to all interested parties. That the predecessor of the appellant had full notice of the *thak* proceedings conducted by this amin, and that he was carefully watching his proceedings, is clear from the fact that he objected to the boundary line as laid between his parganah Patiladaha and parganah Jafarsahi at an adjacent place. The *Mutanaza* proceeding commenced by the appellant's predecessor for rectification of the boundary terminated, on the 30th March, 1853, by a verdict against him, and this verdict was affirmed in appeal in July, 1853.

In another proceeding for the settlement of a khas mahal, which took place in the year 1872, the parties were, amongst others, the predecessors of the parties to the present litigation. The predecessor of the respondent asserted in his petition, dated the 9th March, 1872, that at the time of the *thakbust* a large quantity of land of his village Manikdiar had been diluviated by the river, and he claimed a three-fourths share of the river-bed which had submerged his land. For this claim he relied on the statement in the *thakbust* map. The claim to three-fourths of the river-bed was not distinctly objected to by the predecessor

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of the appellants. The Amin, Banga Chandra Roy, who was deputed to make a local investigation, reported on the 5th June, 1872, that land measuring 2,104 bighas  $7\frac{3}{4}$  cottahs, over and above the *thak* of Manikdiar, had been previously settled land, and that it was under water at the time of the *thak* measurement, and that for that reason a 12 annas portion of the river Daokoba had been allotted by guess to Manikdiar. The Settlement Officer accepted the report, and, on the 6th July, 1872, directed a release of the land claimed by the predecessor of the respondent, land which included a large part of the river-bed of 1852-53. It appears that, before the year 1872, the river had taken a different course, having solid land on the west of Manikdiar as well as of other villages, and that the Government allowed the claim of the plaintiff's predecessors to the abandoned bed of the river to the extent of three-fourths and did not take possession of it as khas mahal land. This was an abandonment of their claim by the Government and a recognition of the plaintiff's claim, and it is an effectual answer to the *jus tertii* set up by the appellants. In this proceeding for the ascertainment of khas mahal lands the predecessors of the appellants were also parties, and they had claimed a release of portions of the land originally measured as khas mahal land, but no part of the land released as land of Manikdiar was claimed by them. It appears that even up till then the claim of Manikdiar to three-fourths of the river-bed was undisputed.

Fresh submergence since 1872 and the recent appearance of the land resulted in a scramble for possession, and the success of the appellants in the proceeding under section 145 of the Code of Criminal Procedure has given rise to an unfounded contention as to the inaccuracy of the *thak* statement. The original claim of the respondent, based on a title to Katma Kristopore, failed and was, in fact, abandoned in this Court. The case now made, based on reformation *in situ* of Chur Dulka, is not only entirely new but it has also little foundation.

The survey of the district Rungpur took place in the season 1855-56. Chur Dulka was then an island chur in the same river Brahmaputra, and it was surveyed, not as Government property, which it would have been if the bed was not a part of a permanently-settled estate, but as a village in parganah Patiladaha.

belonging to the then predecessors of the appellant. The southern part of Chur Dulka stretches beyond the boundary line between Patiladaha and Jafarsahi as shown in the maps of 1852-53. How it came to be treated in the later survey as land of Patiladaha, when the previous survey had included its site in Manikdiar, is not at all clear. The *thakbust* map of 1855-56 has not been produced, and there is no *thak* statement attached to Chur Dulka on the record. There is no evidence to support the accuracy of the survey map. The subsequent conduct of the predecessors of the appellant leads to a conclusion adverse to their claim as based on Chur Dulka. There is, also, no evidence of the possession of the southern part of Chur Dulka by the proprietors of Patiladaha. Chur Dulka was evidently an ephemeral island in the river-bed; it vanished from sight as well as from the mind of man in a brief space of time. There is nothing to show that Chur Dulka, as an independent village, is now recognized as existing. It hardly admits of doubt that the revenue-survey of Chur Dulka was made in the absence of the predecessor of the respondent, or, at least, without sufficient notice, by a different survey party who, finding that the chur had extended to the south, included it as a part of the previously existing chur without a knowledge of the record that had been made in the season 1852-53. The non-production of the *thakbust* map and *thak*-statement makes such a theory highly probable. In *Jagadindra Nath Roy v. Secretary of State for India* (1), Lord Lindley, in delivering the judgment of the Judicial Committee, said: "Maps and surveys made in India for revenue purposes are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they were made. They are not conclusive and may be shown to be wrong, but, in the absence of evidence to the contrary, they may be properly judicially received in evidence as correct when made." In that particular case their Lordships, while admitting the value of the survey map filed by the appellant, agreed with the Courts in India and declined to give effect to it against the Government, because it was, in their opinion, merely a piece of

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(1) (1902) I. L. R. 30 Calc. 291; L. R. 30 I. A. 44.

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valuable evidence capable of being rebutted by other evidence on the record. The finding of the Court that had finally to deal with facts had been adverse to the appellant. *Jagadindra Nath Roy v. Secretary of State for India*(1) is not an authority for the proposition either that a survey map is insufficient evidence to establish title or that it is conclusive evidence of title. It is cogent evidence and may alone be the foundation of a decree declaring title, if the evidence afforded by it is not rebutted. It is for the Court dealing with facts to ascertain its probative force in each particular case.

Again, one of the matters, which may, and generally ought to be, taken into consideration, especially whenever there is, as in this case, a conflict between survey maps, is the amount of publicity with which the survey in each case was made and the entries were recorded, and the opportunity which the party denying its evidentiary value had in pointing out the correct boundaries of any particular village or estate. In *Syama Sunderi Dassya v. Jogobundhu Sootar* (2), the Court held that a *thakbus* survey map and maps prepared on a revenue survey were very good evidence in cases of boundary dispute, if, upon the face of the proceedings and the maps, it appears that the parties were present and practically admitted the boundaries. The weight to be attached to these documents must, therefore, be in direct ratio to the opportunities, which existed, of objecting to the demarcations made by the survey officers. If objections were made and disallowed, the maps would be the best evidence in cases of boundary disputes. If objection was made to one part of a boundary line, and not to another, an acquiescence in the latter must be presumed, and it would also afford cogent evidence of an admission of the correctness of the boundary or of the statement as to that part.

The question of the evidentiary value of statements and of the conduct of zemindars or their agents in the preparation of *thaklust* maps has been discussed in several cases, and it has been uniformly held that the statements of zemindars or their agents contained in *thakbust* maps may amount to admissions that the

(1) (1902) I. L. R. 30 Calc. 291;

(2) (1888) I. L. R. 16 Calc. 186.

L. R. 30 I. A. 44.



land belonged to one village or the other. Such admissions must be greatly relied on in subsequent cases, as they were made at a time when there was no dispute regarding boundaries. This was the view taken by Jackson J. in *The Collector of Rajshahye v. Doorga Soonduree Debia*(1). In *Gunga Narain Chowdhry v. Radhika Mohun Roy*(2) the question as to the effect of the presence of the parties or their agents at an enquiry before an Amin, and the recognition of boundaries as laid down, was discussed, and it was held that such a recognition had great evidentiary value in subsequent disputes between the parties. In *Nobo Coomar Dass v. Gobind Chunder Roy*(3), Field J. reviewed the law and practice concerning revenue-surveys and came to the conclusion that the presence at the preparation of, and the signing by the parties or their agents of, a *thakbust* map might fairly be taken to be an admission by the parties of the boundary lines between adjoining villages. The same view, also, was taken by the same learned Judge in *Joytara Dasse v. Mahomed Mobaruck*(4), and by Maclean C. J. and Geidt J. in *Abdul Hamid Mian v. Kiran Chandra Roy*(5).

We are, therefore, of opinion that the evidentiary value of the *thakbust* map and the survey maps produced on behalf of the plaintiff is greater than that of the survey maps produced on behalf of the defendants. The line drawn as the boundary line between Patiladaha and Jafarsahi in the case map must, therefore, be taken to have been correctly laid as it appears in the survey map which was made in the season 1852-53. The lower Court has given very good reasons for holding that the land to the south of this line must be taken, to the extent of three-fourths of the river-bed, to appertain to the district of Mymensingh and to the plaintiff's village Manikdiar, and that the land to the north of that line must be considered to be the land of parganah Patiladaha belonging to the defendant. It is not necessary for us to enter in detail into the reasons given by the lower Court. We accept those reasons and come to the same conclusion. The argument addressed to us by Mr. Caspersz, that the survey map

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(1) (1865) 2 W. R. 210.

(3) (1881) 9 C. L. R. 305.

(2) (1873) 21 W. R. 115.

(4) (1882) I. L. R. 8 Calc. 975.

(5) (1903) 7 C. W. N. 849.

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of 1855-56 goes against the theory that the boundary line as laid in 1852-53 was correct, has no force, and it is clear to us that the later survey cannot prevail, for the reasons we have given, over the earlier survey made in 1852-53.

In the result, this appeal must fail. It is accordingly dismissed with costs.

*Appeal dismissed.*

S. C. G.