

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the appeal of Anan-  
gamanjari Chowdhrani and others v. Tripura  
Soondari Chowdhrani and others, from the  
High Court of Judicature at Fort William,  
in Bengal; delivered March 11th, 1887.*

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Present :

LORD WATSON.

LORD FITZGERALD.

SIR BARNES PEACOCK.

IN this case the parties are the respective owners of two divided shares of mouzahs Nalchongi and Silpatta. The Plaintiffs are interested in the larger of those shares, extending to 13 annas 10 gundahs. The Defendants are proprietors of the smaller share, extending to two annas 10 gundahs. The area of land which is in dispute in this action is situated on the bank and close to the alveas of the Ichamutti River. It is subject to the action of the stream; and it appears that from time to time the soil on the surface of the area has been washed away, and new soil has been subsequently deposited capable of cultivation. The exact date when the surface was last denuded does not appear; but it seems to be admitted on all hands that for many years past a new deposit has been growing up, and that in point of fact such deposit, since some time after the year 1850, has become culturable. In the end of 1872, or the beginning of 1873, disputes arose between the Appellants and Respondents as to the right to the disputed ground. The Magistrate intervened in February 1873, and, after inquiry, he adjudged that the

Plaintiffs were in possession, and had a right to retain possession of it. The Defendants then instituted a possessory suit, and on the 13th of April 1873 they obtained a decree affirming their right to possess. That led to the institution of the present action, in which the Plaintiffs, who were ousted under the decree of April 1873, claimed the property of the disputed area as having been all along in their possession as part of their 13 annas 10 gundahs share of the two mouzahs in question. The Defendants resist the action on the ground that they had been in possession, and that the land in dispute was an integral part of their smaller share of these mouzahs—the two annas 10 gundahs share. Throughout these proceedings, at least since proof was closed, it is admitted on both sides that the area in dispute belongs to one or other of these two demarcated shares.

Issues were adjusted by the subordinate Judge. It is only necessary to deal with the 3rd of them; because it is conceded now that if the Plaintiffs shall be held to have a right to the land, as part of their 13 annas 10 gundahs share, they are not barred by limitation from prosecuting the present suit. The 3rd Issue adjusted was in these terms:—“Is the land in  
 “ claim a re-formation on the site of the  
 “ original diluviated land of the 13 annas 10  
 “ gundahs share of Kismat Nalchongi and  
 “ Silpatti, held by the Plaintiffs and proforma  
 “ Defendants, or of the two annas 10 gundahs  
 “ share held by the substantive Defendants?”  
 The subordinate Judge, after an elaborate review of the evidence before him, came to the conclusion, which is embodied in this finding,  
 “The allegation made by the Plaintiffs that  
 “ the land in claim is a re-formation on the  
 “ site of the original land of Nalchongi and  
 “ Silpatti covered by their 13 annas 10 gundahs

“ share, and that they have from before been “ in possession of it is found true.” In other words his finding amounts to an express affirmation of the first alternative branch of the 3rd Issue, which exhausts the issue.

Upon appeal by the Defendants to the district Judge, he came to the conclusion that the Judgment of the subordinate Judge ought to be maintained. He concurs to a great extent in the view taken by that Judge of the evidence, but he differs from him in his estimate of that evidence in many respects. The conclusion which he came to upon the part of the case which we are now dealing with was this, that the Plaintiffs “ held, occupied, and enjoyed the lands “ in suit by the title above set forth as part and “ parcel of the lands appertaining to the 13½ “ annas demarcation for much more than 12 “ years before ousted by the Defendants.” That was not a simple affirmation of the conclusion at which the subordinate Judge had arrived. It pointed to a very different kind of case from that to try which Issue No. 3 had been adjusted. It affirms a title, at least it is sufficient to affirm, a title by adverse possession, which is a title in derogation of the Defendant’s right, even assuming it to be proved that at an earlier period the land in dispute formed part of the smaller share, and not of the 13 annas 10 gundahs share belonging to the Plaintiffs. Accordingly when the case was carried by appeal before the High Court of Calcutta, the learned Judges came to the conclusion that the decree of the district Judge ought to be set aside, and the case remanded for re-trial. The High Court were of opinion that the district Judge had not disposed of Issue No. 3, that his finding No. 2 was not an answer to that Issue, but the affirmance of a title which would prevail over the title which would have arisen to the Defendants by the negation of the

first branch of Issue No. 3, and the affirmance of the second branch; and they were also of opinion, although their Lordships are not altogether disposed to concur with them in that respect, that the district Judge had not applied his judicial mind to the consideration of the somewhat intricate evidence before him.

On remand the case was heard and disposed of before the successor of the district Judge who had first disposed of the case. He, in the main, agrees with the subordinate Judge in his estimate of the evidence, and he affirms the Judgement of the subordinate Judge. The conclusion which he came to on the evidence is very concisely expressed in these words:—"On the whole then " I come to the conclusion that the subordinate " Judge's decision is correct, and that the Plain- " tiffs have proved that the lands claimed by " them belong to their  $13\frac{1}{2}$  annas share of " mouzahs Bil Nalchongi and Bil Silpatta."

Again the Defendants appealed to the High Court, and the cause there was heard and determined before two fresh Judges, who came to the conclusion that the decree of the Lower Appellate Court ought to be reversed, and the suit dismissed, and accordingly they gave effect to that opinion in their Judgement.

The grounds upon which the learned Judges of the High Court came to that conclusion are very distinctly expressed in their Judgement. They are two-fold; and, in the opinion of their Lordships, neither of these grounds is sufficient to sustain the Judgement which was pronounced. They came, in the first place, to the conclusion that Mr. Peterson, who last disposed of the case, had fallen into the same error as his predecessor, and, instead of dealing with the identity of this disputed parcel with one or other of the two shares of the mouzahs in question, had disposed of the case on the footing that the Plaintiffs had

enjoyed prescriptive possession which vested them with a good title as against the Defendants. The learned Judges say :—" The Judgement now " before us contains a finding by the Court that, " prior to the ouster by the Appellants, the " Plaintiffs had a sufficiently long and con- " tinuous possession of the Chur lands to confer " upon them a title to it." Their Lordships are of opinion that the learned Judges erred in sup- posing that the Judgement of Mr. Peterson contains any finding to that effect.

Then, having come to the conclusion, that Mr. Peterson had erred in the same way as his predecessor, and had not dealt with the proper issue in the case, they proceed to consider whether they ought to remand the cause for the purpose of having that 3rd Issue tried. They came to the conclusion that it was unnecessary to do so for these reasons, " As there is no evidence in the " case as to the date or site of the re-formation, " and the Court below has no materials upon " which it could come to a finding on the 3rd " Issue, it would be useless to send this case " down again to the lower Court." They came to a conclusion the very reverse of that at which their predecessors, who remanded the case, arrived; they were of opinion that there was evidence in the case bearing upon the subject-matter of the 3rd Issue, which ought to be disposed of by the Judge in the Court below. The High Court, on this last occasion, came to the opposite conclusion—that there was no evidence whatever which was fit for the con- sideration of the Judge, or had any bearing on that Issue.

It must be borne in mind that the decree appealed from to the High Court on this occa- sion being a decree after remand, on a second or special appeal, the learned Judges had not, and accordingly they did not profess to have, jurisdic-

tion to deal with it on its merits. But it was, in the opinion of their Lordships, within their jurisdiction to dismiss the case, if they were satisfied that there was, as an English lawyer would express it, no evidence to go to the jury, because that would not raise a question of fact such as arises upon the Issue itself, but a question of law for the consideration of the Judge.

Their Lordships are very clearly of opinion that the reasons assigned by the learned Judges cannot be sustained. They are of opinion, with the Judges who made the remand, not only that there was an issue proper to be tried, but that there was evidence in support of that issue, or bearing upon that issue which was proper to be considered and disposed of by the district Judge. The theory upon which the learned Judges who last disposed of the case proceeded, so far as one can gather from their observations, appears to have been this: that evidence of possession is not receivable as evidence of the identity of a piece of ground; that, in other words, evidence of possession is not material or good evidence in a question of parcel or no parcel. Perhaps they do not go quite so far as that, but they certainly go the length of indicating their opinion that evidence of subsequent possession is not good evidence upon the question of parcel or no parcel at a previous date. To countenance that proposition would be to introduce an entirely new rule into the law, and their Lordships do not think that a Judgment resting upon such a ground can be upheld. When the state of possession for a long period of years has been satisfactorily proved, in the absence of evidence to the contrary, *presumitur retro*. In the present case there is evidence tending to prove possession by the Plaintiffs for a considerable period antecedent to February 1873. Whether it is sufficient to establish the Plaintiff's

possession, and whether if established that possession is sufficient to warrant the inference of fact derived from it, are questions upon the merits of the case. The evidence has been disposed of by the Judge below as a Court of appeal, after careful consideration, and upon the merits his Judgement was final in the High Court, which was sitting upon a second appeal, and is final and binding upon this Board.

Their Lordships will accordingly humbly advise Her Majesty that the last Judgement of the High Court ought to be reversed, the Judgement of Mr. Peterson, the district Judge, affirmed, and the appeal dismissed with costs in the High Court. The Respondents must pay to the Appellants the costs of this appeal.

