

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Gopal Roy and others v. Gordon Stuart and Company and others, from the High Court of Judicature at Fort William in Bengal; delivered 26th January 1872.

Present:

SIR JAMES W. COLVILLE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THE property in question in this suit is a large tract of jungle land lying to the north of the Great Trunk Road in Zillah Bheerbhoom. There have been several claimants to portions of this land, besides the present Appellants and the present Respondents, and some of them were originally parties to this suit. Therefore, in order to see how the Appellants and Respondents stand to each other, it may be desirable shortly to consider the proceedings which led to the suit.

There was a dispute as early as 1828 between the Chatterjees, whose title is now vested in the principal Respondents the Bengal Coal Company, and one Ram Narain Mitter, through whom the Appellants derive their title concerning the right to this land, but at that time the dispute appears to have been limited to some 1,600 beegahs of land. The Government authorities attached this land, and their possession seems afterwards to have extended itself in some way or another to the whole of that which was claimed in this suit, being 5,600 beegahs. When the Trunk Road was made in 1841 there was another dispute between the parties as to who were

entitled to compensation for the small portion of jungle which was taken on each side of the road, and, so far as any recognition of title went, the Appellants seem to have been preferred on that occasion. They received some small sum which was awarded for compensation under an Ikrar, binding them, in case the opposite party or any other party should prove a title to it and come against the Government for it, to repay it.

Then came the proceedings which immediately led to this litigation, proceedings which were connected with the Government survey in 1857. There was then the ordinary dispute between the Chatterjees or the Bengal Coal Company as then representing the Chatterjees on the one side, and the Roys, the Appellants, on the other, and the several other parties who claimed parts of the forest as annexed to their undisputed mouzahs, and also the Government claiming to hold, by some title or another, or by virtue of that occupation which had begun in 1828, a large portion of the land. Mr. Deputy Collector Ross appears then to have gone upon the land, to have made local inquiries, and on the 18th June 1857 to have made an award giving the land or the greater portion of the land to the Bengal Coal Company as representing the Chatterjees. The opposite party appealed to the collector, who, acting upon his view that the principal document produced by the Chatterjees or the Bengal Coal Company was spurious, and that it did not correspond with an earlier document which was admitted to be the foundation of the Chatterjees' title, set aside that decision of Mr. Ross. There was an appeal from his decision to the Commissioner, and an appeal from the Commissioner to the Sudder Board of Revenue, but the result was that those authorities upheld the collector's order. Another deputy collector was directed to make a further apportionment and award of the land among the parties, and the result was that this last officer, on the 16th July 1858, awarded 625 beegahs of

the waste land in dispute to the Appellants, and the remaining 4,975 beegahs to the Government.

The result of these Revenue proceedings was to put the parties to whom those lands were awarded actually or constructively in possession, but to leave to the opposite party the power of impeaching the Revenue awards, and of recovering possession of the lands by a regular suit if instituted within three years of the date of the award, and accordingly this suit was so brought for that purpose.

The Government appear to have now dropped out of the litigation. The Zillah Judge, who was the Judge of first instance, dismissed the Respondents' suit wholly on the ground that they had failed to prove their title, and he also held that the suit as against the Government would have been barred by the Statute of Limitation, inasmuch as they had been in possession of this land since the time they took possession of it in 1828, certainly for more than 12 years. There was an appeal from that decision to the High Court, and on that occasion it seems to have been almost admitted before the High Court that the Government had not really any title to the land. The High Court, moreover, held that the decision as to the Statute of Limitation was erroneous, inasmuch as the possession of Government had been founded on the attachment of 1828, which was in the nature of taking possession in trust and for the benefit of the party who should succeed in establishing a title to the land. Government appears to have acquiesced in that view, and certainly has not appealed from the decree which gave the land which had been awarded to them by the Revenue authorities to the Bengal Coal Company, the Plaintiffs in this suit, and the Respondents on this appeal. The other parties who were also made parties to the suit, and who claimed portions of the land which were the subject of the award of the Revenue authorities, seem also now to have abandoned their respective claims, and the litigation is therefore reduced to a question between the Appellants

and the Respondents, the Bengal Coal Company. Nor can the Appellants, if they were to succeed on this appeal, do more than obtain the dismissal of the Respondents' suit, and thus obtain an affirmance of their right to hold the 625 beegahs of land. They cannot in this suit assert a title to the larger portion of the land, which the Respondents have recovered from Government.

It is obvious from what I have already stated that the question is simply one of boundary. The Appellants claim title under Government, which held khas a large portion of forest land situate in this district and apparently never included in the decennial settlement. Out of this land, no doubt, that estate which is admittedly in the possession of and belongs to the Appellants has been carved. On the other hand, the Chatterjees derive title from a Mokururee grant from the Rajah of Burdwan, and it must be held that the land so granted to them was part of the settled estate of the Rajah of Burdwan. It has appeared to their Lordships, in the course of this discussion, that a more easy, at least a more satisfactory, mode of deciding this dispute might have been found in the ascertainment (if that be possible) of the real boundaries between the settled mehals of the Rajah of Burdwan, and the forest lands which remained after the perpetual settlement in the hands of the Government, because it is clear that, on the one hand, the Chatterjees claim nothing except what they got from the Rajah of Burdwan, and, on the other hand, that the Appellants claim nothing except what they derived from the Government. That, however, has not been the course which the parties have thought fit to take. They have, however, adduced a good deal of the evidence generally given in boundary cases; the issue being—what are the boundaries of the estate of Gopeenathpore, which is the Mokururee of the Chatterjees, and has now passed to the Bengal Coal Company, and what the true boundary of the estate of

Gopeenathpore, which is in the undoubted possession of the Appellants ?

It has frequently been said at this board, that of all the questions which are brought here from India, there is no question of fact which is so improper to be brought for final decision by this tribunal as a question of boundary, since the decision of that question, particularly where the boundary line is to be run through a forest or a tract of waste land, must depend so much upon local investigation and local inquiry, and on that sort of knowledge which only officers in India, who are conversant with such disputes, can acquire. Accordingly their Lordships will never interfere with the finding of an Indian Court upon a question of boundary unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case upon which they can put their hands and make the grounds for an order reversing or varying the decree. This case, no doubt, has been argued very much on that assumption. The long argument of Mr. Leith has turned mainly upon the miscarriage, or rather the alleged miscarriage, of the High Court in dealing with a particular document, viz., the copy of the confirmatory sunnud, which has been so much impeached.

I will at once go to the consideration of that document. With reference to the general question of the admissibility of copies, and the mode in which the courts in India deal with them, their Lordships are desirous that I should make some observations. It has been repeatedly ruled here that these questions are not to be dealt with by the strict rules that would prevail at a *nisi prius* trial in England, where the question is whether the document ought to be submitted at all to the jury. The way in which evidence is brought in in India almost precludes that. On the other hand, their Lordships are undoubtedly of opinion that when a copy has been in any way received, and it becomes the function of the Judge to consider what weight and value should

be given to it, it is the duty of the Judge, in order to test its authenticity, to satisfy himself that there is some reason for producing a copy instead of the original, that there should be some account given in ordinary cases of the original, and some sufficient reason assigned why the original is not produced, and the parties rely upon the copy. In all cases the whole of the circumstances should be looked at in order that the Judge may come to a definite conclusion as to the genuineness of the document in question and the weight and value which he will attach to it. There is, no doubt, a considerable difference between cases where documents come in as mere links or as part only of the evidence in the case, and those in which the suit, as in the case cited by Mr. Leith from 3rd Moore's Indian Appeals, is actually brought upon the instrument of which a copy is tendered, and the whole cause of action depends on the proof of the original instrument. In the latter case strict proof may properly be required.

Dealing with the present document, their Lordships are not prepared to say that the High Court has miscarried, in so far as it has come to a conclusion that this document is genuine. It is a very ancient document. It cannot for one moment be contended in the High Court, that it was fabricated for the purposes of this suit. No doubt what we have actually on the record is a copy of a copy, but it is a certified copy of a document which is shown, though a copy, to have been produced in the earlier suits. The degree of credit which it has acquired in those suits, and the effect which has been given to it in those suits, may be more open to question, and there is no doubt great weight in many of the observations of Mr. Leith, that those decisions did not positively affirm the genuineness of the document or proceed wholly on the document so as in effect to involve the decision of its genuineness. On the other hand, it is to be observed that it was produced in one of those suits against the Rajah

of Burdwan, that it was not impeached then as other than a genuine document, and it is impossible to say that it did not, by being then produced, acquire some degree of credit.

The effect of the document as against Mr. Leith's clients is of course another question. If the document is treated as a genuine instrument it does not at all follow that of itself it would prove the title of the Respondents against the Appellants, because it is a mere statement by the Rajah of Burdwan that those are the boundaries of what he professes to grant, and one can conceive cases in which, if there had been a conflict between the Rajah of Burdwan and the Government as to the boundaries of his zemindary, this assertion of a right to grant all the land comprised within the boundaries specified would be no evidence against the Government that his zemindary extended so far; it is at most a proof of an early assertion on the part of the Rajah of Burdwan that the land which he purported to grant in Mokururee to the Chatterjees did extend so far. Their Lordships conceive that the reason why this has been treated as the turning point of the case is that the supposed spuriousness of the document and its assumed inconsistency with the earlier documents were the grounds upon which Mr. Lawford, the collector, reversed the finding of Mr. Ross, the deputy collector, a decision which led to the final adjudication of the Revenue authorities, which is impeached by this suit. In their Lordships' opinion this decision of Mr. Lawford cannot be supported. For the reasons already given their Lordships think that the document is not spurious. Nor can it be properly said to be inconsistent with the earlier document. It contains something which the earlier document did not contain, but it contains nothing which is inconsistent with the earlier document. It gives boundaries which the other did not give, but it does not give boundaries which differ in any degree from any which the earlier document gave either expressly or by implication.

It is, however, to be observed that the decision of the High Court does not rest upon that document wholly, or indeed further than this, that if the document be genuine, it gets rid of that reversal of Mr. Ross's order, and throws the parties back into the position in which Mr. Ross's award would have left them. The judgment of the High Court proceeds upon³ the whole of the evidence in the cause, which appears to their Lordships to be amply sufficient to support the finding of the Court. There is, first, Mr. Ross's own finding, the result of his local investigation on the spot. It is confirmed to a certain degree by the other local investigation which takes place by the Ameen, and their Lordships cannot but remark that unless there be very good grounds for dissenting and differing from those reports made upon local investigations, the courts even in India, and *à fortiori* the courts in England, in dealing with boundary questions, ought to give great weight to them and to be guided by them. Supposing then that the onus of proof in this case was much heavier on the Plaintiff than it really was, there was ample ground for saying that he had proved enough to throw the Defendants upon proof of their title; and looking at the petition which limits the amount of their holding to the 1,800 odd beegahs, and to the other circumstances remarked upon by the High Court, their Lordships find it impossible to come to the conclusion that the High Court was not amply warranted in the finding to which it came and in reversing the decision of the Zillah Judge, which appears to their Lordships to rest upon very unsatisfactory grounds, and to treat the case as if the whole question turned upon the sunnud.

Their Lordships, therefore, must humbly advise Her Majesty that the judgment of the High Court be affirmed, and this appeal dismissed, with costs.