

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Rani Sarat Sundari Debya and another v.  
Soorjya Kant Acharjya and another, from  
the High Court of Judicature at Fort  
William in Bengal; delivered 10th March  
1876.*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

IN this case the Respondents were Plaintiffs, and they sought to recover from the Appellants, who were Defendants, possession of certain chur land thrown up by the river Jamoona, which we may take to be accurately described upon the Ameen's map, and to be that which has been throughout the proceedings called "C." The title which the Plaintiffs sought to establish was that this land had, in consequence of the recession of the river Jamoona, and by gradual accretion, become part of the village of Juggutpoora, which forms part of his zemindary.

The former history of the land appears to be this. Some time before 1851 or 1852, a certain chur, which the Defendants say was upon the same site as the existing "C," was thrown up by the river. We may call this the original "C." Of the anterior history of the site there is not much evidence; but it is certainly probable that the river, which seems to be of a peculiarly unruly character, had formerly diluviated the lands of the Defendants, and that the original "C" was a re-formation upon what had previously been

their land. But, however that may be, it is perfectly clear that in the Thakbust proceedings of 1852 or 1853 this original "C" was treated as the land of the Defendants, and was designated Mouzah Soosooa. It further appears that these proceedings did not take place behind the back of those whom the present Plaintiffs represent, but that there was an application and a proceeding before the Collector for the rectification of the boundary of this Mouzah Soosooa as at first demarcated. That proceeding is set forth at page 68 of the record; and looking at it and at the map, their Lordships conceive that at that angle in the Thakbust map of Mouzah Soosooa which lies between Nos. 35 and 37, the Thakbust officers had originally included a certain small chur in the Mouzah, and that upon an application to the Collector, both parties being present before him, the boundary was rectified by giving that small chur to Juggutpoora, and making the coloured river as it now stands form the eastern boundary of Mouzah Soosooa, from No. 35 to No. 49.

Now, can it be doubted that if this original "C" had never been submerged again, the Defendants would have had a perfectly good title to it as against the Plaintiff, and probably as against all the world? It however appears that the river after travelling to the east, travelled back again to the west, diluviating the original "C," and then dividing at one point into two channels, threw up the churs which are marked in the map as "A" and "B;" that some little time afterwards the existing "C" appeared; that the Defendants took possession of it, and have ever since been in possession. This must have taken place some time between 1861 and 1865; for in the latter year the Defendants claimed "A" and "B," treating them as an accretion to "C," but failed in that suit. There

was at that time, as clearly appears from the final judgment of the High Court, a definite channel, though not the main channel of the river, between ' C ' and ' A ' and ' B , ' which formed the eastern boundary of ' C ' and the western boundary of ' B . ' The result of that suit was that ' A ' and ' B ' fell to Juggutpoora ; and nothing more was done till the year 1870, the Defendants remaining in possession of ' C . '

One point taken by Mr. Bompas is that the Defendants never acquired a permanent title to the original ' C ; ' or, at all events, that when that chur was again washed away by the river, it fell into the domain of the Crown or State ; and therefore that the Defendants cannot claim the existing ' C ' as a re-formation on their land ; but that the title to it must be determined by the law of gradual accretion. Their Lordships cannot accede to this argument. They conceive that if the existing ' C ' can be identified as a re-formation on the site of the original ' C ' that was demarcated as Mouzah Soosooa in 1852, the general law must prevail. It is well known that as to that general law there has been some doubt and confusion in the Courts of India ; and that notwithstanding the decision of this Board in the case of *Mussumut Imam Bandi v. Hurgovind Ghose*, 4th Moore's I. A., the Indian decisions have been conflicting upon this point,—the right principle having been laid down by a full bench of the High Court presided over by Sir Barnes Peacock, although subsequently disaffirmed by another full bench of the same Court. Until the law was finally set right by this Committee it cannot be said to have been well settled in the Courts of India ; and there are traces of this uncertainty and confusion in the earlier proceedings set out in the present record. It is now, however, admitted, that the case of *Lopes*

v. *Muddun Mohun Thakoor*, 13th Moore's I. A., p. 472, and the subsequent decisions of this Board must govern the present question, so that even if the present Defendants were Plaintiffs in the cause, and could make out that the land claimed was a re-formation upon land which had belonged to them, they would be entitled to recover it from a party in possession.

*A fortiori* they are entitled to defend their possession against a party who sets up against them the law of gradual accretion.

The case seems to have been very well tried in the Court of First Instance, and the facts come out much more clearly than in these chur cases they generally do. The Ameen who made the local investigation came to the conclusion, upon grounds which appear to their Lordships to be satisfactory, that this new "C" was a re-formation upon the site of the original "C;" and the Zillah Court, acting upon that, dismissed the suit, making a decree in favour of the Defendants. The cause then went to the High Court, and that Court, throwing some discredit on the report of the Ameen, came to the conclusion, that by gradual and imperceptible accretion, and by virtue of the law relating to such accretion, "C" had become an adjunct to Juggutpoora. To their Lordships it appears that nothing which is said in the judgment of the High Court substantially affects the credit due to the report of the Ameen; and they think that in cases of this kind it is always desirable, if possible, to give effect to the local investigation made by an experienced officer upon a view of the place. One material finding of the Ameen is this: he was asked to say "whether it was true that when the chur, now the land in dispute, formed, there were deep and flowing sotas of the river Jamoona both on the east and west of it;" and he finds that

“ while there was deep water flowing on the east  
“ and west of the disputed land, the disputed  
“ land began to form, as has been mentioned  
“ above.”

In the teeth of this finding it is difficult, if not impossible, to say that the existing “C” was an accretion, in the proper sense of the term, to “B.” And on the other hand, the investigation of the Ameen, and the measurements which he made, seem clearly to establish that the greater portion of the land in question has re-formed upon a site capable of being identified as the site of the Mouzah Soosooa, which was the subject of the Thakbust proceedings in 1852.

In these circumstances their Lordships think that the judgment of the Lower Court was the right judgment, and they must humbly advise Her Majesty to reverse the judgment of the High Court, and in lieu thereof to make an order dismissing the appeal to the High Court, with costs in that Court, and affirming the judgment of the Zillah Court. The Appellants must also have the costs of this Appeal.

