

PETITION IN THE MATTER OF  
*Privy Council Appeals Nos. 49, 50, and 51 of 1914.*  
*Bengal Appeals Nos. 7, 8, 9, 10, and 11 of 1911.*

Haradas Acharjya Chowdhuri, since deceased (now represented by  
Saroj Kumar Acharjya Chowdhuri), and others - - - *Appellants*

*v.*

The Secretary of State for India in Council and others - - - *Respondents*

Lokenath Sahu Chowdhuri, since deceased (now represented by  
Ramrangini Chowdhurani), and others - - - - *Appellants*

*v.*

The Secretary of State for India in Council and others - - - *Respondents*

Bijoy Gopal Mukerji and others - - - - - *Appellants*

*v.*

The Secretary of State for India in Council and others - - - *Respondents*

Kalika Prashad Mukerji and another - - - - - *Appellants*

*v.*

The Secretary of State for India in Council and others - - - *Respondents*

*Consolidated Appeals*

AND

*Privy Council Appeal No. 85 of 1928.*  
*Bengal Appeal No. 36 of 1926.*

The Secretary of State for India in Council - - - - *Appellant*

*v.*

Saroj Kumar Acharjya Choudhury and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 2ND JUNE 1930.

---

*Present at the Hearing :*

LORD TOMLIN.

LORD THANKERTON.

LORD RUSSELL OF KILLOWEN.

SIR GEORGE LOWNDES.

[*Delivered by LORD THANKERTON.*]

This appeal relates to one of four suits, which were instituted by respective groups of plaintiffs in 1902 in the Court of the Subordinate Judge of Faridpur, against the present appellant and certain *pro forma* defendants, praying for a declaration of their title to, and for possession of, certain lands lying on a branch of the river Ganges, which had been submerged but which at the date of the suit had become dry land. The plaintiffs in each suit claimed a one-fourth share of the lands in suit, and the four suits thus covered the total interest in the lands, and may be conveniently treated as one for the purposes of identification of the lands in suit and decision of the title thereto.

The plaintiffs in these four suits were entitled to two adjoining estates in the district of Dacca, namely (1) the *zemindari* of Patpasha, No. 115 on the revenue rolls, and (2) the *taluk* of Char Mahabdia, formerly No. 160 and now No. 4002 on the revenue rolls of Faridpur. A permanent settlement of these estates had been obtained from the Government in 1793, and they had descended to the plaintiffs by inheritance. The plaintiffs claimed that the lands in suit lay within the outer boundaries of the combined estates, and were therefore reformations of lands to which they were entitled, but that in so far as they might prove to be land which had formed part of the river bed at the time of the permanent settlement they had acquired right to them by contiguous accretion. The suits were opposed by the present appellant, mainly on the ground that the lands in suit could not be identified as being reformations on the site of any lands within the estates settled in 1793 and that the plaintiffs had acquired no title by contiguous accretion.

On the 22nd July, 1907, the Subordinate Judge made a decree in each suit the relevant part of which is as follows :—

“ It is ordered and decreed that the suit be decreed with costs, that it be declared that some of the lands in claim are lands formed on their original sites within the Mehals bearing No. 115 on the Touzi of the Collectorate of the District of Dacca and No. 4002 on the Touzi of the Collectorate of the District Faridpur, and that some are contiguous accretions, to the said two Mehals. That is to say, regarding the whole of the lands in suit mentioned in the schedule to the plaint to be in existence at the time of the institution of the suit, the lands in the bed of the two channels, big and small, of the river Padma, in the map prepared by Mr. Rennell and shown in the map of the investigating Commissioner in this suit are declared to be contiguous accretions and the rest of the lands in suit are declared to be reformations *in situ* of the said two Mehals, and the plaintiffs' right alleged in the plaint to a 4-annas share of the said reformations *in situ* and the contiguous accretions be declared ; and the plaintiffs' claim for possession in respect of the said share be decreed. And it is further ordered that out of the lands in respect of which the decree is passed the plaintiffs will get Khas possession of a 4-annas share of the lands that are now in existence after diluvion since the institution of the suit and which are shown in red in the map prepared by Rai Dwarka Nath Sarkar Bahadur, the investigating Commissioner in this suit.”

The defendant appealed to the High Court of Judicature at Fort William in Bengal, which on the 5th August, 1910, made a

decree in each suit dismissing them on the ground that the lands in suit had not been identified with the permanently settled estates.

The plaintiffs appealed to His Majesty in Council against these decrees ; the appeals were consolidated and the judgment of their Lordships' Board thereon was delivered on the 2nd July, 1917 ; thereafter on the 17th July, 1917, an Order in Council was made, which gave effect to that judgment as follows :—

“ (1) That these appeals ought to be allowed and the four decrees of the High Court of Judicature at Fort William in Bengal all dated the 5th day of August, 1910, set aside with costs (2) that the four decrees of the Court of the Subordinate Judge of Faridpur all dated the 22nd day of July 1907 ought to be varied by excluding from the declaration in favour of the plaintiffs the land which formerly formed the bed of the southern channel of the river Padma according to ' Rennell's map ' as plotted on the map prepared by the Commissioner and filed in the case and that in other respects the decrees of the Court of the said Subordinate Judge ought to be restored with costs (3) that the said suits ought to be remitted to the Court of the said Subordinate Judge for such land to be identified by means of a map which ought to be annexed to such decrees, as the Court of the said Subordinate Judge may make in that behalf.”

After the remission of the suits to India, three of them were compromised and no question arises with regard to them.

As the result of the judgment of their Lordships' Board there is no doubt that the plaintiffs identified the lands in suit as within the outer boundaries of their combined estates, as settled in 1793, that the small or southern channel of the river traversed the lands in suit at the date of the permanent settlement in 1793, that the site of the bed of the southern channel at that date must be held to be located sufficiently by Major Rennell's map, the survey for which was made by him in 1764, and that the bed of the southern channel so located falls to be excluded from the lands in suit for which the plaintiffs are entitled to decree.

The parties are in conflict as to the meaning and effect of the judgment of their Lordships' Board and of the Order in Council as regards the big or northern channel of the river referred to in the decree of the Court of the Subordinate Judge.

In compliance with the directions of the Order in Council, the Subordinate Judge appointed a pleader as Commissioner to prepare a map in accordance with those directions. The Commissioner prepared two maps, on the first of which he showed as the disputed land the area shown in red on the map prepared by the original Commissioner for the purposes of the trial and referred to in the decree of the Court of the Subordinate Judge of 1907, and on the second of which he showed an additional area to the north, marked A., B., C., D., which, along with the area marked red, showed the lands claimed in accordance with the boundaries given in the plaints. Both these maps showed the bed of the southern channel according to Rennell's map as plotted by the original Commissioner on the red area. The present appellant objected to the second map and contended that the area A., B., C., D.,

formed the site of the northern channel of the river according to Rennell's map and fell to be excluded from the decree, on a proper construction of the Order in Council. It may be explained that, in conformity with the errant nature of this river, the area A., B., C., D., had been dry land at the date of the institution of the suit, but had again become submerged before 1906 when the original Commissioner made his Survey and this caused its exclusion from the red area. By 1919 it had once more become dry land.

The appellant's objection was repelled by the Subordinate Judge and on the 20th June, 1919, he made a decree as follows :—

“ In accordance with the direction of their Lordships of the Privy Council and of the judgment of this Court passed on the 20th June, of 1919, it is ordered that this decree be varied by excluding from the declaration in favour of the plaintiffs the land which formerly formed the bed of the southern channel of the river Padma according to Rennell's map as plotted on the map prepared by the Commissioner Rai Dwarka Nath Sarkar Bahadur and filed in the case and in other respects the decree of the Subordinate Judge, dated the 22nd July, 1907, be restored with costs. The second map of the pleader Commissioner submitted with his report, dated the 4th February, 1919, to be annexed to the decree. The map prepared by Commissioner Rai Dwarka Nath Sarkar Bahadur should also be annexed to the decree. There should be declaration of title in favour of the plaintiffs with respect to the land as it existed at the date of the institution of the suit, *i.e.*, with respect to the land A.B.C.D. in the second map of Pleader Commissioner as well as the land to its south, *i.e.*, the land depicted red in the map with the exception of the strip of land which formerly formed the bed of the southern channel of the river Padma according to Rennell's map as plotted on the map prepared by the Commissioner Rai Dwarka Nath Sarkar Bahadur and as identified by means of the second map of the Pleader Commissioner. Plaintiffs of this suit shall recover possession of 4 annas share of the portion depicted red in the map with the exception of the strip of land which formerly formed the bed of the southern channel of the Padma at the time of Rennell's map.”

The Subordinate Judge proceeded on the ground that the area A., B., C., D., was included within the lands in suit and that, while the bed of the southern channel was expressly excluded therefrom by the Order in Council, there was no such exclusion of the bed of the northern channel.

On appeal, the High Court of Judicature at Fort William in Bengal, on the 1st March, 1926, dismissed the appeal, and the present appeal has been taken against that decree.

The appellant has now also presented a petition, praying that the Order in Council dated the 17th July, 1917, should be rectified so as to exclude from the declaration in favour of the then appellants the land which formerly formed the bed of the northern channel of the river Padma according to Rennell's map and that, if necessary, a specified passage in the judgment of their Lordships' Board should be varied in accordance with such rectification.

At the outset of the hearing it was conceded on behalf of the appellant that he could not succeed in his appeal on the present form of the Order in Council, and that its rectification was essential to the prosecution of his appeal.

As laid down in *Lajwanti v. Safa Chand* (1925) 52 Ind. App. 211, at p. 213,

“It is the duty of their Lordships to see that the order which His Majesty makes in Council faithfully represents the advice which in the judgment they have said they would humbly tender to him.”

The appellant based his crave for rectification mainly on the following passages towards the end of the judgment of their Lordships' Board, viz. :—

“Their Lordships therefore find themselves unable to agree with the judgment of the High Court, but they are also unable to accept the reasoning of the Subordinate Judge which led him to decree the bed of the river as having by accretion become part of the two estates. There is in their opinion no evidence to support this conclusion, and, in the absence of evidence, no circumstance to justify such an assumption.

“Subject, therefore, to the declaration that the bed of the river as shown on the map made by the Commissioner is the property of the Government, their Lordships think that the appellants have established their title to all the rest of the disputed land.

“From this it follows that the decrees of the Subordinate Judge need only be varied by excluding from the declaration in favour of the plaintiffs the strip of land which formerly formed the bed of the southern channel of the river Padma according to Rennell's map, as plotted on the map prepared by the Commissioner and filed in the case. Their Lordships have not before them the material that will enable them to make this alteration, and the case must therefore be remitted to the Subordinate Judge that this may be done. It is necessary that this land should be identified by means of a map, which must form part of the Subordinate Judge's decrees.”

The appellant maintained that the first two of these paragraphs applied to both the northern and southern channels of the river, both beds of which had been decreed to the plaintiffs as contiguous accretions by the Subordinate Judge, and that the omission of the northern channel in the third paragraph was an error, inconsistent with the two previous paragraphs, and with the whole tenor of the judgment, and that if necessary it should be varied by the insertion of the northern channel along with the southern channel.

The respondents maintained that the southern channel was in quite a different position from the northern one in respect that the descriptions of boundaries in the Hakikat Chowhuddibandi Papers of 1799, by means of which the missing *mouzahs* were located, established the fact, and therefore compelled the admission on their part, that the southern channel in 1793 traversed the lands in dispute, and that no such fact was established, or any such admission made, as regards the northern channel. They further submitted that their Lordships' judgment merely adopted Rennell's survey made in 1764 as sufficiently locating the course of the southern channel in 1793, which admittedly then traversed the lands in dispute, rather than let that difficulty defeat the whole of the plaintiffs' claim.

In their Lordships' opinion the appellant has failed to establish that the Order in Council does not correctly represent the advice humbly tendered to His Majesty in the judgment of their Lordships' Board, or that any part of the judgment ought to be

varied. Major Rennell's survey of 1764 afforded the only evidence on which the appellant could rely as showing that the northern channel traversed the lands in dispute in 1793, and in regard to it the following passages appear in the judgment, viz. :—

“ The map itself does not purport to give the boundaries of different *mouzahs*, nor indeed to define their position with any exactness. It appears that it was prepared rather for the purpose of showing the roads and the waterways than of locating villages, and consequently the description and definition of the different places is only necessary in relation to the rivers and the roads.” . . . “ Now it is true that there is nothing to show that the river had at the date of these papers (1799) remained steadily in the course where it was shown to flow in Rennell's map, and having regard to its known characteristics there is every reason to think that its channel had not remained constant.” . . . “ Rennell's map is undoubtedly, both owing to its difference in scale, to the different purpose of its preparation, and to the difficulty of assigning fixed points from which the survey was made, a map which it is hard to incorporate into the survey of 1859. And, again, the variability of the river renders reliance upon it difficult. As has been already said, their Lordships are not, however, prepared to dispossess the appellants because of this difficulty. It may be that any assumption that can now be made cannot be exact, but some assumption is necessary.”

These passages appear rather to confirm the respondents' contention. The first two reasons stated by the present respondents in their case as appellants to this Board were “ (1) Because the appellants have proved the land in question to be the land of their permanently settled *mouzahs* on the south bank of the river Ganges ” and “ (2) Because if the southern channel of the Ganges was not included in the said *mouzahs* it has become an accretion to them ”

It may also be noted that the present appellant's third argument as recorded in the judgment is as follows :—

“ Thirdly he contends that the fact that the river Padma, which intersected the estate, is undoubtedly a river varying in position throws upon the appellants the burden of showing what was the exact boundary of that river in 1793 in order to establish the limits of bed, which in 1799 were excluded from the plaintiffs' estates.”

It is difficult to see how this contention, which was rejected, could apply to the northern channel. Their Lordships' view is strengthened by the fact that the draft Order in Council, which used the words “ bed of the river Padma ” without mention of the southern channel, was submitted to the parties, when the plaintiffs asked for its amendment into its present form, and the amendment was only given effect after the agreement of the present appellant had been obtained.

Their Lordships are therefore of opinion that the petition should be refused with costs and, in view of the admission already noted, that the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

1850

In the Privy Council.

---

HARADAS ACHARJYA CHOWDHURI, SINCE  
DECEASED, AND OTHERS

v.

THE SECRETARY OF STATE FOR INDIA IN  
COUNCIL AND OTHERS  
and connected Appeals  
(*Consolidated*)

AND

THE SECRETARY OF STATE FOR INDIA IN  
COUNCIL

v.

SAROJ KUMAR ACHARJYA CHOUDHURY AND  
OTHERS.

---

DELIVERED BY LORD THANKERTON.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1930.