

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hemmuni Singh and others v. Cauty and others, from the High Court of Judicature at Fort William in Bengal; delivered 29th June 1889.*

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Present :

LORD WATSON.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The Appellants were the Plaintiffs in the suit, and the plaint stated that upon a partition between the members of a joint Hindu family of property, of which a chuckla known as Pathurghati formed part and the entire 16 annas of which chuckla was 1,040 bighas 1 cottah 2 dhoors, 503 bighas 7 cottahs 12 dhoors 12 rains of jungle land fell to the share of Babu Nundishore Singh, the father of the first and grandfather of the second and third Plaintiffs, and the remaining 536 bighas 13 cottahs 9 dhoors 8 rains of jungle land of the chuckla went to the share of Babu Haruckmun Singh, from whom the Defendants derive their title. That upon petitions of the Plaintiffs and Defendants for registration of names under Act VII. of 1876 (B.C.), an order for registration of names of the Plaintiffs in respect of the 503 bighas, &c., was made by the Deputy Collector, but on appeal the Collector reversed that order, and directed the names of the first and second Defendants to be recorded in regard to two thirds of the entire chuckla, and this

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order was confirmed by the Commissioner, and in accordance with it the name of the second Defendant was also registered in respect of one third. The plaint prayed for an order for registration of the Plaintiffs' names in respect of the 503 bighas, &c., out of the 1,040 bighas, &c., and for the registration of the Defendants' names only in respect of the remaining 536 bighas, &c., and for other relief giving boundaries of the 503 bighas. The written statements of the Defendants said that the boundaries given in the plaint did not comprise 503 bighas of land—that the entire area of chuckla Pathurgathi was not 1,040 bighas, and the boundaries given by the Plaintiffs were wrong. The Subordinate Judge of Bhagalpore made a decree that the names of the Plaintiffs should be registered in respect of that portion of the lands which is called Pathurgathi Phagu Sirdar, the boundary of which has been given in the plaint, and that the names of the Defendants in respect of that share should be expunged, and that portion of the order of the Mutation Department which is prejudicial to the interests of the Plaintiffs should be set aside.

Upon an appeal to the High Court, that Court considered that the partition was made as stated, but the real difficulty in the case consisted in the indefinite character of the boundaries given in the plaint upon which the Plaintiffs' case had been decreed; that those boundaries, so far as they understood them, were natural boundaries, but from the extensive area of the land in dispute it was not improbable that these natural boundaries indicated only a small portion of the boundary lines. They therefore thought it necessary that the boundaries given in the plaint should be ascertained and clearly indicated in a map before a final order was made. The District Judge was accordingly re-

requested to direct a competent Amin to prepare a map, after proper inquiry, showing the boundary as stated in the plaint, and having ascertained these boundaries the Amin should proceed to measure the area falling within them, and should then submit his report for the orders of the High Court. The district Judge accordingly, by an order dated the 10th of June 1882, commanded a Civil Court Amin to make the local investigation and the map thus required.

The Amin made his report, dated 12th August 1882. In that he states that the servants of the Plaintiffs and Defendants had pointed out the land which they said was in the possession of their masters, and it was measured, but the lands as pointed out when added together did not tally with the amount of land specified in the partition, and was deficient by 256 bighas 2 cottahs 14 dhoors. He then says that in order to ascertain why the amount of land had decreased as well as to know the boundary limit of chuckla Pathurghati he summoned several persons, but they only stated that the lands appertaining to mouzah Babhungaon named in the plaint as on the west of the 503 bighas claimed were on the western limit of chuckla Pathurghati. After this he called for a survey map made in 1847 which had been filed on behalf of the Plaintiffs, and using this and taking a point on the east side where Pathurghati joined two mouzabs, Doparkha and Burakurwa, which was pointed out and admitted by the agents of both parties and the servant of the proprietor of those mouzahs, he fixed the boundary of Babhungaon farther to the west than the point which had been pointed out to him by the agents of the Plaintiffs as on the western limits of Pathurgati, so as to include the 256 bighas which were deficient. This was done in the absence of any representative of the proprietor of

Babhungaon. The Amin appears to have thought he was bound to fix the boundaries of Pathurghati so as to give an area which exactly tallied with that in the partition. But it was not his duty to do this, and the Defendants had denied that the entire area of the chuckla was 1,040 bighas.

The case came again before the High Court on the 3rd April 1883, the Respondents (the Plaintiffs) having filed objections, in which they said that as the partition did not take place with reference to the survey map, the Amin was wrong in calling for the survey map and in finding on the strength of it that the chuckla extended more on the west contrary to the allegations of both parties. But the Court adopted the boundaries found by the Amin, and decided to give to the Defendants the full amount of 536 bighas to which they said they were under the partition entitled, leaving the remainder to the Plaintiffs, and also that the Defendants were to have the portion which lies to the extreme east, and they were to obtain the services of some competent person to delineate on the map submitted to the Court by the Amin the boundaries between the 536 bighas and the lands belonging to the Plaintiffs. This was done, and the case with the map of the surveyor again came before the Court on the 6th June 1883, when it was objected on behalf of the Plaintiffs that the balance remaining in their possession was considerably less than 503 bighas, but the Court said they had then no concern with that matter, it was considered before the decree was settled, and ordered that the map should form part of the decree, and that out of the lands in suit the Plaintiffs should receive any land outside the boundary shown by the line marked by the surveyor and the other boundaries described in the order of 3rd April, and the Defendants should

get 536 bighas lying within those boundaries. The result is that the Defendants would obtain possession of 536 bighas, and the Plaintiffs might have to engage in a suit with the proprietors of Babhungaon before they could obtain possession of the whole of the 503 bighas. This is not a just division, and their Lordships are of opinion that in this suit the boundaries of the land to be divided should be taken to be those pointed out by the servants of the parties, and that the proper decree will be that the land within those boundaries, and which are within the line marked green on the copy of the map of the Amin to be annexed to the Order of Her Majesty in Council, shall be divided by a competent surveyor, by a line beginning on the northern boundary at a point in a straight line with the north-west corner of the tank, and going thence to the southern boundary as nearly in a direct line as will conveniently divide the whole area in the proportion of 503 to 536, and that the Plaintiffs shall obtain possession of the land lying on the western and the Defendants of the land lying on the eastern side of such line, and that the suit should be remitted to the High Court that the line shall be so marked, and the decree of the High Court be varied accordingly. Their Lordships will thus humbly advise Her Majesty. The parties will bear their own costs of this appeal.

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