

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Ma-
harani Sarnamoyi v. Maharaja Nripendra
Narain Bhoop Bahadoor and another, from
the High Court of Judicature at Fort William
in Bengal; delivered 11th March 1891.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The plaint in this suit for possession of land and mesne profits, in which Rani Anundmoyi Debi, now represented by the Respondents, was the Plaintiff, stated that at the time of the thak and survey of the Plaintiff's zemindari estate of mouzah Subharkuti Kantagarha in Pergunnah Panga, a dispute arose between the Plaintiff's predecessor and the Defendant, the present Appellant, as to the enclosure line of the mouzah drawn by the thak amin, and a summary order being made in the Defendant's favour she took possession of the greater portion of the land of the mouzah. Thereupon the Plaintiff's predecessor instituted suits, Nos. 24 and 25 of 1859 in the Court of the Principal Sudder Amin of Rungpore, to have the enclosure made by the thak amin maintained, and the summary order set aside, and for recovery of possession. That he obtained a decree of the High Court, and in execution of it got possession in accordance with

the thak map; that the Plaintiff's husband, her predecessor, died in the month of Magh 1276 (January—February 1870), and the Defendant from the commencement of 1281 (1874) dispossessed her of plots 1 and 2 of the land; that plot 3 was at different times diluviated by the Dhulla river and reformed, and while the Plaintiff was in possession of it, from the time of its reappearance after the year 1280 (1873-74), the Defendant took possession of it in the year 1285. The Defendant's written statement alleged, first, that neither the Plaintiff nor her husband was in possession of the disputed land within twelve years; that the Defendant was in possession of the disputed land during the lifetime of the Plaintiff's husband, and the suit was barred by the law of limitation. Next it alleged that the disputed land was not the land claimed in the suits Nos. 24 and 25 of 1859 and decreed to the Plaintiff, nor a reformation on its original site, or a contiguous accretion.

The Plaintiff's husband died in January 1870, she being then a minor. She attained majority on the 16th July 1881, and the suit was brought on the 14th July 1884, two days before the expiration of three years from her attaining majority, and was in time if the dispossession took place after the husband's death. The questions therefore were, 1, When was the Plaintiff dispossessed by the Defendant? 2, What were the boundaries of the land recovered in the suits 24 and 25 of 1859, and of which possession was given in execution? The decrees of the Principal Sudder Amin were that possession of the lands claimed and lying within the boundaries mentioned in the plaint and the present map be awarded to the Plaintiff, and that the Defendant be ejected from possession. The map referred to was one which had been prepared by the Principal Sudder Amin, Moulvi

Itrat Hossein, in the presence of both parties after inspecting the locality.

These decrees were affirmed on appeal by the District Judge of Rungpore, on the 30th April 1861. It was not until several years afterwards that application was made for execution of the decrees, the execution cases being Nos. 5 and 6 of 1866. During that interval the river Dhulla had changed its course, and there had been considerable diluviation and reformation of the land. The Civil Court Amin, Chunder Komul, appointed to deliver possession of the decreed land in the execution cases 5 and 6 of 1866, reported to the Court on the 9th May 1866, in the case No. 5 of 1866, that in the presence of the mokhtars of both parties, he prepared a map of the decreed land as pointed out by the decree holder's mokhtar, and compared the thak map of mouzah Sabharkuti, and had duly delivered possession of the decreed land to the decree holder, according to the map made by the Principal Sudder Amin, the boundaries given in the decree, and the thak map, and that the mokhtar of the judgment debtor signed the map of the decreed land without any objection. This execution case included the plots Nos. 1 and 2 in the present suit. In the case No. 6 of 1866 he reported on the 11th May 1866 that in the presence of both parties he first made a map of the decreed land—the plot No. 3 in this suit—pointed out as the land lying on the east and west banks of the flowing Dhulla river, and compared the thak map of Subharkuti Kantagarha; that the land pointed out on the east bank did not correspond with the map made by the Principal Sudder Amin and the boundaries given in the decree, in consequence of the river then flowing in a different part; and that he considered that the decreed land was the land lying on both the banks. He delivered possession of this, and the mokhtar of the

judgment debtor signed the map of the decreed land without any objection.

The formal possession thus given, which according to the provision in the Code of Civil Procedure was by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming by beat of drum or other mode the substance of the decree, was followed in December of the same year by suits for rent being brought in the Court of the Deputy Collector against tenants of the lands by Lukkipria Debi, the decree holder, as guardian of the Plaintiff's husband, who was then a minor. Two lists are in the Record, containing 19 suits in which decrees are said to have been made. The decision in one, No. 512, is in the Record, and it is said to govern 14 others, of which the numbers are stated. Rani Sarnamoyi, the Appellant, appears to have intervened in all the cases, as in the decision of the District Judge of Rungpore in an appeal by a tenant it is said that it will govern 13 appeals preferred by her, as the cases are admittedly analogous.

These rent suits relate to plots 1 and 2. As to plot 3 it appears that in 1868 Rani Sarnamoyi brought a suit against Rani Lukkipria for recovery of possession of that plot on an allegation that the Defendant had taken possession of it under execution of decree. The suit was dismissed. It proves by the admission of Rani Sarnamoyi that in 1868 the Plaintiff Rani Anundmoyi Debi was in possession of that plot. Many witnesses were called on both sides. Those for the Plaintiff deposed that the zemindar of Panga, meaning the Plaintiff and her predecessor, used to receive rent from the tenants of the first and second plots since the Amin Chunder Komul gave possession in 1273 to 1280 F.; that the zemindar of Panga was also in possession of the third plot for five or six years after 1273, when the land

was again washed away by the river Dhulla; that the land reformed again in 1280 F., and tenants were put upon it as in new churs, and in June A.D. 1874 the tenants of the three plots were forcibly dispossessed by the people of the Defendant. On the other hand the Defendant's witnesses deposed as to plots 1 and 2 that they had been paying rent to the Baharband zemindar, the Defendant, and saw other tenants of those plots pay rent to her from a time before the execution of the decrees, and as to plot 3 that the Baharbund zemindar had been in possession by receiving rent from such of them as held tenures within that plot for 20 or 22 years, and that the land had never been diluviated. The documentary evidence before noticed corroborates the Plaintiff's witnesses, and clearly shows that the Defendant's witnesses were not telling the truth. The Defendant produced no documentary evidence of any value, or any evidence of the time of the dispossession, and the Subordinate Judge found that the Plaintiff was dispossessed of the first and second plots in July 1874, and of the third plot about four years later, and therefore that the suit was not barred by the law of limitation. Their Lordships think that the evidence for the Plaintiff of the time of dispossession may be accepted as true, and that at least it was proved that it was after the death of the Plaintiff's husband, in which case the suit was brought within time. The High Court, in their judgment on appeal, took no notice of the question of limitation, and decided in the Plaintiff's favour on the second question. The objection was taken in the grounds of appeal, and their Lordships can only infer, from the judgment being for the Plaintiff, that if it was argued before the High Court they agreed with the Subordinate Judge. Their Lordships, however,

do not look upon this as a concurrent finding, and have examined the evidence.

The second question has now to be determined. In 1865 the present Appellant brought a suit, No. 31 of 1865, against Lukkipria as guardian of the Plaintiff's husband, and one Ishan Chunder Chowdhry, for possession of 1,100 bighas of land, and Lukkipria brought a suit, No. 37 of 1865, against Ishan Chunder for possession of 250 bighas. The 1,100 bighas apparently included some part of the land which was the subject of the suits 24 and 25 of 1859, and by the decree in No. 31 of 1865 Rani Sarnamoyi, the Plaintiff therein, recovered part of the land which she claimed. The Amin, Chunder Komul, also made a report in these suits, dated like the others the 9th May 1866, which ends by apportioning the land in dispute in the several cases among the parties.

The present suit was brought to recover possession of the land which had been recovered in the suits Nos. 24 and 25 of 1859, and, except the time of dispossession, the only question now in the case is what are the boundaries of that land. There were two other suits brought also by Anundmoyi Debi against other Defendants, and before the hearing the Civil Court Amin was ordered to report upon the boundaries of the disputed lands, and to prepare a map of the locality. The Amin, on the 7th April 1885, made a full report, accompanied by a map, in which two boundaries of mouzah Subharkuti Kantagarha were laid down, one marked by a dark red line, and called in the index the thak line, "on the basis of the map of the "decreed land and the line of the land "decreed in cases Nos. 24 and 25 of 1859," and the other marked by a light red line, and called the thak line, "on the basis of the survey

chunda of Koerpore." The difference in them was mainly caused by a difference in the point which was the basis of the demarcation. It appears from a paragraph in the report (p. 551, l. 27) that the Amin considered the dark red line to be the true boundary of the land decreed in the suits 24 and 25 of 1859. He says, with respect to land between the two red lines, that the land marked *D D* and *D 1* and *D 2* is a contiguous accretion to the Plaintiff's estate of Hemerkuti, and decreed to her in case No. 31 of 1865; that the whole of the plot marked *J 1*, *J 1* is the decreed land of the Defendant Maharani Sarnamoyi in the case No. 31; and that the entire land marked *J, J* is the decreed land of the said Defendant in case No. 8 of 1838. Both parties objected to the map and report. The Subordinate Judge, in his judgment on this branch of the case, appears to have thought both lines to be incorrect, but the light red the least so, and that it substantially agreed with the boundaries of Subhurkuti, which are found from the decrees of Moulvi Itrat Hossein. He gave the Plaintiff a decree for the three plots, and laid down the boundaries of them, saying that in doing so he was guided more by the decrees than the map. The boundaries laid down agree generally with the light red line. The Defendant appealed to the High Court, and the Plaintiff filed objections to the decree. The High Court in their judgment said that the main contention of the Defendant was that the Lower Court was wrong in rejecting the outline of mouzah Subharkuti, as traced by the Amin in light red, and that the suit should have been decided on the basis of that outline; and for the reasons they stated they were not satisfied as to the correctness of the point on which the demarcation shown by the light red line was based. They were of opinion that the Lower

Court should have accepted the dark red line, as practically correct, and decided the case with reference to it. They therefore discharged the decree of the Lower Court, and made a decree awarding to the Plaintiff so much of the disputed lands coloured yellow on the map as fall within the thak boundary of the mouzah as shown by the dark red line.

On the argument before their Lordships it was said by both the learned Counsel for the Appellant that the dark red line is the right one, except in plot No. 3, part of which, lying to the north it was said had been rightly excluded by the Subordinate Judge from his decree. Their Lordships have not seen any ground for this exception. In their opinion the dark red line was properly taken as the boundary of the three plots. They will therefore humbly advise Her Majesty to affirm the decree of the High Court, and dismiss the appeal. The costs will be paid by the Appellant.
