

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Samunt Lukkhi Narain Jagadeb v. Maharaja Jodu Nath Deo and others, from the High Court of Judicature at Fort William in Bengal; delivered 9th December 1893.

Present:

LORD WATSON.

LORD HOBHOUSE.

LORD SHAND.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The deceased Maharaja Pudmalabh Deo was zemindar of two mouzahs, Argal and Dimirpal, in the district of Cuttack, which were separated by a mutual boundary running from north to south, Argal being on the west and Dimirpal on the east of the line. In the year 1868, his interest in Mouzah Argal was sold in execution of a decree, and was purchased by one Babu Kanhia Lal Pundit, who instituted the present suit. On the death of the Maharaja he was succeeded by his son Jodu Nath Deo, who is the Respondent in this appeal; and, on the death of Kanhia Lal, his interest in Mouzah Argal, and in this suit, passed to one Ram Gobind Jagadeb, and on his decease was acquired by the present Appellant.

The action was brought, in March 1877, before the Subordinate Judge of Cuttack, for a declaration that a strip of ground, about 80 acres in extent, lying on the eastern verge of Argal, formed part of that mouzah. The Maharaja

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Pudmalabh Deo, whilst he denied, in his written statement, that any portion of the land claimed belonged to Mouzah Argal, did not assert that Mouzah Dimirpal extended westwards, at any point, beyond the western boundary of the area in dispute.

After a great deal of preliminary litigation, issues were adjusted and sent to trial. The only one of them to which this appeal relates was in these terms, "Is the land in dispute part of the Plaintiff's estate Mouzah Argal?"

The area claimed by the Plaintiff consisted admittedly of waste land or jungle, and consequently no evidence of possession was adduced on either side. The Plaintiff produced and founded upon the government survey map of 1839; and a remit was made to an Amin of the Court to ascertain whether the disputed land, or any portion of it, fell within the outlines of Mouzah Argal as shown on the map. Before proceeding to carry out the remit the Amin represented to the Court that he could not do so with absolute accuracy, unless he had the transverse table upon which the map was based, and a theodolite. The Court not being in a position to furnish him with either, and neither of the parties offering to supply the want, directed the Amin to proceed with such materials as he had at his command. Acting under that direction the Amin fixed the starting point at the southern extremity of the boundary line, by taking the evidence of villagers, in presence of the parties or their agents, and used his own compass in laying down the line northwards.

The Amin thereafter made his report, accompanied by a map upon which the boundary was laid down, and the evidence which he had taken for his assistance. The boundary included in Mouzah Argal about 47 acres of the area claimed by the Plaintiff, and assigned the re-

mainder to Mouzah Dimirpal. The Defendant then examined the Amin as a witness, with the view of showing the inaccuracy of his report, and adduced no other evidence. The Subordinate Judge gave effect to the report, and decreed that the Plaintiff do recover possession of these 47 acres as shown in the map prepared by the Amin. Their Lordships think it impossible to affirm that, as the Respondent argued, there was no evidence before the Court upon which that finding,—which is a pure finding of fact,—could be rested. They assent to the observation made by the Judge that “scientific accuracy is hardly “to be expected in such cases, substantial justice “being all that is necessary for practical purposes.” It is of frequent occurrence, especially in cases where the disputed line of division runs between waste lands which have not been the subject of definite possession, that no satisfactory evidence is obtainable. That circumstance cannot relieve the Court of the duty of settling a line, upon the evidence which is laid before it. The ordinary rule regarding the onus incumbent on the Plaintiff has really no application to cases of that kind. The parties to the suit are in the position of counter-claimants; and it is the duty of the Defendant, as much as of the Plaintiff, to aid the Court in ascertaining the true boundary. Were any other rule recognised, the result might be that some boundaries would be incapable of judicial settlement.

The decree was brought under review of the District Court of Cuttack. The District Judge, with the view, apparently, of correcting any error which might have arisen from the Amin using his own compass, communicated with the survey officials of the Orissa Circle, which comprehends the land in dispute, and was informed by them

that the meridional lines on the survey maps were intended to show the true north, and that the meridional line indicated by a magnetic compass would, in that locality, show a deviation which "might be taken to be $2^{\circ} 50'$ east." Having received that information, the District Judge remitted to the same Amin to lay down, upon the map prepared by him, a new boundary line giving effect to the deviation. The Amin did as he was directed, with the somewhat startling result that the new line included in Mouzah Dirmipal, not only the whole of the disputed land with the exception of a small area, about two acres in extent, but, in addition, about 53 acres of land which, it had not been disputed, belonged to Mouzah Argal. Upon considering the case, in the light of the information obtained from the survey officials and of the Amin's report to him, the District Judge adhered to the boundary first laid down by the Amin, and affirmed the judgment of the Subordinate Court.

Before this Board, the Respondent maintained that the Judge's disregard of the Amin's second report constituted a substantial error or defect in procedure, within the meaning of Section 584 (c) of the Civil Procedure Code. But he was unable to point out any defect in the conduct of the case: the only error upon which he relied in argument was one which, if it was committed at all, was committed by the Judge, and consisted in his drawing a wrong conclusion from the evidence. The decision of the District Judge, so far as it went, involved no principle of law, and was entirely within his competency. There can be no legal presumption that the line shown on the map of 1839 was laid down according to the true north or that it necessarily represents the real boundary between the mouzahs. Its accuracy in these particulars must

depend upon what was actually done by the persons who made the survey, and transferred the line to the map of 1839, and also upon the information by which they were guided. There can be no necessary presumption of fact, either that a line dividing jungle land was laid down with scientific exactitude, or that the precise boundary was a whit better known in 1839 than at the time when the Amin made his survey for the purposes of this case.

The Respondent presented an appeal to the High Court, and objections to its competency were heard before Tottenham and Norris J.J., who ordered the case to be taken up as a regular appeal and to be decided on the evidence. In delivering their reasons for that decision, they observed that “the District Judge’s judgment is very unsatisfactory as to the *ratio decidendi* that the Civil Court Amin fell into error. We are not satisfied that there was evidence before him which justified his finding.” And they added,—“We think that the proper course is to call up the case as a regular appeal before ourselves, and go through the evidence and come to the best decision we can.” It is clear that, in adopting that course, the learned Judges exceeded the statutory limits of their jurisdiction. They had no power to entertain the case except as an appeal from an appellate decree, and that only upon the grounds specified in Section 584 of the Civil Procedure Code, which deprives them of the right to review findings of fact by the First Appellate Judge, unless these are tainted with one or other of the errors or defects specified in its Sub-sections. Upon that point, it is sufficient to refer to the recent decisions of this Board, in *Mussumat Durga Choudhrai v. Jawahir Singh Choudhri* (17. Ind. Ap. 122), and *Ramratan Sukal v. Mussumat Nandu* (19. Ind. Ap. 1.).

The case was accordingly heard, as a regular appeal, before Norris and Beverley J.J., who set aside the judgments of the Courts below, gave effect to the line of boundary laid down by the Amin on remit from the District Judge, and found that the small excepted area of two acres was the only portion of the disputed land belonging to Mouzah Argal. For that area they gave decree in terms of the plaint.

The terms of the judgment delivered are certainly calculated to suggest that the learned Judges had applied their minds to the evidence in the case, and had come to an independent conclusion. They pass in review the whole proceedings which had taken place before the Subordinate and District Courts with a view to the elucidation of the boundary, and then go on to say, "We are of opinion that this re-tracing of the Amin ought to be accepted as correct." It appears however that their decision was not really intended to proceed upon a reversal of the District Judge's findings of fact. The case again came before the same learned Judges, on an application for review; and, on that occasion, they concurred in stating that their decision was due to their having formed the opinion "that the parties agreed to accept the District Engineer's statement, whether it was correct or not, as the basis upon which the measurement should be made." Seeing that no allegation had been made or proof tendered of any agreement to that effect, its existence must have been matter of legal inference from the record.

When thus explained, the ground upon which the case was disposed of by the High Court was sufficient to justify an appeal under Section 584. It appears to their Lordships that the District Judge must be held to have erred in law, within the meaning of that clause, if the record discloses

a judicial agreement by both parties to accept as conclusive a boundary laid down upon the Amin's map deviating the original line in accordance with the information given by the Government Engineer. The Respondent's Counsel had very little to say in support of such an agreement; and their Lordships have been unable to discover any trace of one in the record, or any circumstance which could bar the present Appellant from objecting to the effect of the information or of the remit which followed upon it. There is no more room for suggesting that the Appellant agreed to abide by the second remit, than for the suggestion that Pudmalabh Deo agreed to accept the first.

Their Lordships will therefore humbly advise Her Majesty to reverse the judgment appealed from, and to restore the judgment of the District Judge. The Respondent Jodu Nath Deo must pay the costs in the High Court and the costs of this appeal.
