

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sardar Jagjot Singh v. Rani Brij Nath Kunwar, from the Court of the Judicial Commissioner of Oudh; delivered 2nd March 1900.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Robertson.*]

So far as the essential facts are concerned, the case of the Appellant is clearly disclosed in the plaint. He claims a certain piece of land, measuring 2,058 bighas and his theory is that this land has become his by alluvion. Yet, while the exigencies of pleading make him describe it as "new alluviated land," it is in this same plaint said to be "land of the Defendant's" [Respondent's] "village." The 2,058 bighas have indeed a perfectly definite history, which in their Lordships' judgment entirely excludes the Appellant's claim.

The Appellant is proprietor of a village called Murwa; and the Respondent is proprietor of a village called Randa. In 1866, which is the commencement of both parties' rights, the river Ghogra was flowing in a course which intersected Randa, and the portion of Randa which was on the eastern bank lay between the river and Murwa. This description which was true in 1866 is also true now. It is the fact however

that, in the interval between 1866 and 1891 the river had first departed from and then substantially resumed the course in which it now runs, so far as concerns those two properties. The Appellant's case is entirely founded on this intervening but now obsolete history.

It appears then that, about the year 1885, the river began to work its way eastward, with the result that it came to have on the western bank of its new course not only all of Randa that had formerly been on its east bank but also some part of Murwa. It is said, and it may be assumed, that, while this situation of things lasted, the disjoined part of Murwa was taken possession of by the Respondent. But the Ghogra did not long adhere to this course and soon began to recede to the west; and by 1891 it once more had to its east not only the whole of Murwa but (intervening between it and Murwa) the 2,058 bighas now in dispute, which the Appellant in his plaint admits to be historically part of Randa. For a time, during the wanderings of the river, this land seems to have been submerged; and the Appellant says that it emerged "in an altered form, not capable of being identified." This disguise has fortunately not misled the Appellant himself, or prevented his recognising the 2,058 bighas as Randa land.

These being the facts, it is manifest that the case does not fall within the well-known chapter of law which treats of the formation of new land, through the gradual and imperceptible washing up of particles by a river or the sea. Nor have we even to deal with the more complicated case in which a piece of land is first disintegrated by water action and thereafter reintegrated or reformed by water action. The only note of similarity to alluvion to which the Appellant could point was that the process of change was so far gradual; but this means

merely that the river took several years to change its course. Now the mere fact that a change in a river's course has placed land belonging to A in contiguity to the lands of B could never deprive A of the lands and transfer them to B. And the proposition maintained by the Appellant is by several steps nearer than this to paradox; for he contends that if after temporary aberrations a river at last leaves the land of A *in statu quo ante* it must be held to be an accession to B, his next neighbour. It is superfluous to say that neither the statute law of India nor the general principles of jurisprudence lend the slightest support to such unreasonable conclusions.

The 11th Regulation of 1825, by the first sub-section of Section IV., declares land gained by gradual accession to be an increment of the land to which it is thus annexed; and by the 5th sub-section in all other cases, not specifically provided for in the Regulation, where land is gained by alluvion or by dereliction of a river or the sea, the Court is to be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or if not by general principles of equity or justice. It is perfectly plain that neither the specific provision of the first sub-section nor the general principles of equity and justice lend the slightest support to the pretension of the Appellant, which is to land that would be gained not from the river but from a neighbour.

So far as local usage is concerned, it is enough to say that no case of such usage is presented on record. What seems really to underlie the Appellant's claim is a crude idea that because the Respondent once had possession of that part of Murwa which for the time was transferred to the west side of the river, therefore the Appellant ought now to have in property the 2,058 bighas

belonging to Randa. No attempt was made to formulate this as a legal proposition.

Their Lordships are of opinion that the judgment of the Judicial Commissioner concurred in by the Assistant Judicial Commissioner was right; and they will humbly advise Her Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the Appeal.

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