Supreme Court of India
Samsuddin Rahman & Ors vs Bihari Das & Ors on 9 July, 1996
Equivalent citations: JT 1996 (6), 517 1996 SCALE (5)299
Author: M Punchhi
Bench: Punchhi, M.M.

PETITIONER:
SAMSUDDIN RAHMAN & ORS.

Vs.

RESPONDENT:
BIHARI DAS & ORS.

DATE OF JUDGMENT: 09/07/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MANOHAR SUJATA V. (J)

CITATION:
JT 1996 (6) 517 1996 SCALE (5)299

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Punchhi.J, Special leave granted.

The appellants herein were the plaintiffs in a suit filed in the Court of the Assistant District Judge, Cachar, Silchar against the defendants-respondents praying for a decree for declaration of title in respect of the suit land measuring about 60 Bighas, on the basis that it was in their possession and, in the alternative, for possession, if not found in possession. On the other hand, the suit land was claimed by the defendants-respondents to be theirs and in their possession, affirmed by the grant of an annual Patta in their favour by the Deputy Commissioner of the area concerned. The trial court, while concluding the matter, was about to decree the suit, buf refrained from doing so, as in the plaint, no specific claim had been raised by the plaintiffs-appellants to get quashed the grant of the annual Patta, given by the Deputy Commissioner in favour of the defendants-respondents. On appeal by the plaintiffs- appellants to the District Judge, Cachar, Silchur, the hurdle put by the trial court was cast aside and the suit was decreed on the basis that once title stood proved in favour of the plaintiffs-appellants, the factual grant of annual Patta in favour of the defendants-respondents

had no value or sanctity and hence the same could be ignored. The High Court, however, upset the decision of the District Judge, at the instance of the defendants-respondents, dismissing the suit of the plaintiffs-appellants altogethers taking the view that the evidence led by the plaintiffs-appellants was deficient to the point of being no evidence at all in the eye of law. It is within this narrow compass that the controversy in the instant appeal stands focused.

The case of the plaintiffs-appellants, in brief, was that they were the owners of a parcel of land covered by a Patta, particulars of which stand fully described in the judgments of the courts below. Alongside that parcel of land, a river named Barak used to flow on the Southern and Eastern sides. It was claimed that gradually the river receded, making slow and imperceptible gains as accretions to the land-holding of the appellants, which gain is solidified in the form of the suit land. The appellants on that basis claimed that the suit land had become part and parcel of their original holding and that they had been in possession thereof till the Deputy Commissioner on grant of annual Patta to the contesting respondents, has cast a shadow on their titles which led to proceedings under Section 145 Cr.P.C., necessitating the plaintiffs-appellants to approach the Civil Court for appropriate relief. Besides what has been said before, the contesting defendants-respondents had also countered that the land originally belonged to them and as it had re-emerged on the other side of the river, since it changed its course, it was theirs, and with them under an annual Patta.

It is the conceded position between the contestants that The Assam Land and Revenue Regulation, 1886, as amended up to date, is attracted to provide solution to the dispute. Such was the positive stands of the parties before the District Judge. It was also the admitted position that no statutory law was applicable in the State of Assam with regard the right to any land gained by alluvion or dereliction of a river to any estate. A Division Bench of the Assam High Court in Boroji Munipurini v. The State of Assam and Ors. (AIR 1958 Assam 34) had elaborately to go into the question as to whether any such law was available in the context and working of the aforementioned Regulation, and came to the view that in the State of Assam the principles of English Law on the subject were applicable as principles of justice, equity and good conscience and those principles by themselves had the force of law. Some of the observations made therein which brought the aforesaid result are as follows:

> "It is therefore clear that it is an universal law, recognised by all that a land which has gradually and imperceptibly come out of the river bed and added to the land of a riparian owner becomes part of tme land belonging to him and is to be considered as his property. This, in some cases, is based on the specific provisions of the Bengal Regulation or other enactments, in some on custom, and in some cases on the principles of justice, equity and good conscience. ....."The law in force" has not been defined anywhere in the regulation [The Assam Land and Revenue Regulation] and we see no reason to confine it to the statutory law. If the law in force is that the accreted land becomes part of the land to which it has accreted, even though that may be based on the principles of justice, equity and good conscience, the land becomes an increment by accretion to the tenure to which it has accreted."

And more than once has this principle been reiterated in the report while taking stock of the English Law culled out from the reported decisions of English Courts on the subject. We would not load this judgment with copious references therefrom. We would rather content ourselves by stating that we agree with the state of law as thus evolved in the State of Assam that the English principles on the subject as principles of justice, equity and good conscience the State and, by themselves, are the law governing the rights between the parties on such principles of alluvion and diluvion.

The High Court does not dispute either the state of law as such or its applicability to the controversy. It has taken note of the Explanation to Regulation 3(b) defining the word "estate", explaining that any land gained by alluvion or by dereliction of a river to any estate as here defined, which under the laws in force is considered an increment to the tenure to which the land has accreted, shall be deemed to be part of that estate. In Regulation 34(c) it stands provided that when a settlement has been accepted and the revenue payable fixed, nothing more shall be payable from the date it is entered. Exception is kept in the case of gain by alluvion or by dereliction of a river, or loss by diluvion, during the currency of the settlement, in which case increments shall be assessed and reduction granted by the Deputy Commissioner according to such limitations as to the extent of gain or loss and such other conditions as may be prescribed.

The High Court, taking stock of the case-law available on the subject, paid attention to the fact that if the accretion was caused gradually and imperceptibly by alluvion or by dereliction of the river then the plaintiffs- appellants were entitled to succeed. But, if the addition had come suddenly and in a single season, it would not be so. It strangely termed such question to be a mixed question of fact and laws whereas it could be nothing else than a question of fact. The High Court commented that the pleadings in the plaint were deficient inasmuch as definite period had not been mentioned during which alluvion had taken place but, in the same breath, observed that oral evidence had been led by the plaintiffs-appellants, to the effect that there had been gradual and imperceptible accretion within a time-span of 15/16 years. Then again the High Court commented that no specific issue on the aspect of gradual and imperceptible accretion had been framed and, in the next breath, said that the parties all the same knew their respective cases and had led their evidence. The High Court then went on to find fault in the plaintiffs appellants' oral evidence regarding gradual and imperceptible accretion as, according to it, it had not been disclosed by the witnesses as by what means of knowledge or with the aid of which demonstrable facts or by the aid of which material-on-record could they vouch safe that the gain was gradual and imperceptible. On that basis, the plaintiffs-appellants were blamed to have failed to prove that the suit land was an accretion, gradual and imperceptible. On this basis alone the appellants were non suited.

To us the reasoning of the High Court appears entirely erroneous in the presence of the bar erected under Section 100 of the Cr.P.C. forbidding the High Court to interfere in a finding of fact in second appeal. In Boroji's case [supra], there appears a quotation from the Halsbury's Laws of England to say that the whole doctrine of accretion is based upon the theory that from day to day, week to week and month to months a man cannot see where his old line of boundary was, and that which cannot be perceived in its progress is taken to be as if it never existed at all. Such being the ordinary human perception, we fail to appreciate what did the High Court expect of the plaintiffs' witnesses to say about their means of knowledge, or to their objectivity, or demonstration of facts, or any document

on this aspect being available, and on that basis terming such evidence merely as any expression of opinion and strangely no legal evidence Significantly, the trial court as well as the first appellate court had recorded a clear finding of fact that the plaintiffs-appellants had proved on the basis of the oral evidence that it had taken 15-16 years for the accretion to be visible and demonstrable, requiring steps to be taken by the State of Assam, one of the defendants- respondents to straighten matters under the provisions of Section 34(c) of the Regulation. The High Court was thus in grave error in upsetting the judgment and decree of the lower appellate court and in this manner denying relief to the plaintiffs-appellants, as granted by that court. Therefore, without hesitation, we upturn the orders of the High Court, restoring the judgment and decree of the District Judge, Cachar, dated 19-2-1979, with costs.