

Samar Dasadh Vs. Juggul Kishore Singh

Samar Dasadh Vs. Juggul Kishore Singh

SooperKanoon Citation : sooperkanoon.com/867594

Court : Kolkata

Decided On : Dec-09-1895

Reported in : (1896)ILR23Cal366

Judge : Banerjee and ;Rampini, JJ.

Appellant : Samar Dasadh

Respondent : Juggul Kishore Singh

Judgement :

Banerjee and Rampini, JJ.

1. The only question raised in this case is whether the Lower Appellate Court was right in rejecting certain documents as being either irrelevant or not proved. The documents were: First, a copy of a plaint, Exhibit II; second, a road-cess return, Exhibit III; third, a peon's report, Exhibit VIII and, fourth, certain teiskhana papers, Exhibit I.

2. In regard to the first three, the contention on behalf of the appellant was not really pressed, and we are of opinion that the Lower Appellate Court was quite right in rejecting two of them as irrelevant, namely, Exhibits II and III, and the third as not proved, namely, Exhibit VIII.

3. It was, however, strongly urged before us that Exhibit I, consisting of the teiskhana papers, was admissible in evidence under Section 35 of the Indian Evidence Act.

4. Now, to render a document admissible under that section, three conditions must be satisfied : First of all, the entry that is relied upon must be one in any public or other official book, register, or record; secondly, it must be an entry stating a fact in issue or a relevant fact; and, thirdly, it must be made by a public servant in the discharge of his official duty, or any other person in performance of a duty specially enjoined by the law. We may take it that the second and third conditions are satisfied, the entry as pointed out to us being one of a relevant fact, and it having been made by a certain person called the patwari in the performance of a duty especially enjoined by Section 16 of Regulation XII of 1817. But then there remains the question whether the entry is in any public or other official book, register, or record, that is to say, whether the teiskhana papers can be regarded as forming any public or other official record. These expressions have not been defined in the Evidence Act. If a public book, register, or record be taken to be of the same nature as a public document as defined in Section 74, clearly these papers do not answer the description, for they do not form the acts, or records of the acts, of the Sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial, or executive; nor are they public records kept in British India of private documents. Can they be said to form any public or other official book, register, or record

5. After having carefully considered the point, we think we must answer the question in the negative. These papers are kept by the patwari under the provisions of Section 16 of Regulation XII of 1817. The patwari is an officer nominated and remunerated by the zemindar of the village in respect of which he is appointed, though the appointment rests with the Collector; and he is removeable from office by the zemindar with the sanction of the Collector. That is the position of the person who keeps these registers. Then, as to the nature of the register kept, it would appear from the form prescribed by the Board of Revenue under Section 16 of the Regulation, a form with its twenty-three headings or columns, whence the name teiskhana is derived, that the information that is

contained in these papers is what would find a place in the zemindari accounts themselves; and though the regulation requires that copies of these papers should be sent by the patwari to the canungoe, and by this last-mentioned officer to the Collector, that fact does not alter their nature in any way or make them a public or other official book, register, or record within the meaning of Section 35. They are, as we understand them, zemindari papers kept by an officer nominated and paid by the zemindar, though the Collector is vested with control in the matter of the appointment and removal of that officer with a view to enable the Collector to keep himself informed of the internal management of zemindaris within his jurisdiction. And then, if we look at the provisions of the Regulation as to how a pahoari and his accounts are to be dealt with by the Collector and his subordinates, it would appear clear that it was no part of the intention of the Legislature to make these teiskhana papers public records. The provisions we refer to are those contained in Sections 22, 23, 24 and 25, by which the Collector is empowered to summon a patwari whenever there may be occasion for his attendance on any matter connected with the duties of his office, and to examine him on oath and to require him to produce all accounts relating to the lands, produce, rents, collections and charges of the village or villages, &c.; further, they authorize the Collector to require the attendance of patwaris on officers deputed to examine village accounts; and they in like manner authorize Courts of Justice to summon patwaris to attend and produce their accounts. These provisions are, in our opinion, incompatible with the view that these documents were intended to be of the same nature as other public records kept by the Collector; and they go to show that it was never intended to repose in these accounts the same confidence that is reposed in public documents, a confidence which writers on the law of evidence describe as being rather extraordinary in degree, and the basis of which is said to be principally the circumstance that they have been made by authorized and accredited agents appointed for the purpose, and partly also the publicity of the subject-matter to which they relate (see Taylor on Evidence, Section 1429; Best on Evidence, 8th edition, Section 219). The agents here are every now and then required to pledge their oaths as to the accuracy of these papers, and are made liable to punishment if they give false evidence; and as for the matter of publicity of the entries, it is enough to say that some of these entries, especially those relied

upon in this case, are far from being of a public nature, and such as would prevent any falsehood finding a place in the register. Some of these entries being in the nature of the areas of fields in the occupation of different raiyats of the mehal, one fails to see how they can be regarded as being matters of public interest. Regard therefore being had to the nature of the papers, to the position of the persons by whom they are prepared, and to the way in which the papers are required to be treated by the authorities under the Regulation itself, we do not think it would be safe to hold that these are papers of the description contemplated by Section 35 of the Evidence Act.

6. The view we take is quite in accordance with the dictum of the Chief Justice, concurred in by Mr. Justice Beverley, as expressed in the case of *Bajinath Singh v. Sukhu Mahton* I.L.R. 18 Cal. 534. It is quite true that their Lordships were not called upon to pronounce an opinion upon the question of these papers being admissible in evidence under Section 35 of the Evidence Act, the question raised before them being whether the learned Munsif and the learned Subordinate Judge had committed an error of law in not giving proper effect to certain registers known as the *teiskhana* registers; but treating the expression of opinion of those learned Judges as a dictum, we express our full concurrence in the opinion expressed in that case.

7. We may add that the view we take also finds support in the observations of Lord Denman, C.J., in the case of *Merrick v. Wakley* 8 A. and E. 170, in which it was held that a register of attendance, &c., kept by the medical officer of a Poor-law Union and laid before a Board of Guardians weekly for inspection, in obedience to rules made by the Commissioners under Statute 4 and 5, W. 4, C. 76, Section 15, is not receivable in evidence for the party making it, as a public official book, notwithstanding that the entries were made by him in accordance with certain statutory rules. The reason of the decision is stated in these words: 'But in these cases the entries are made by an officer in discharge of a public duty; they are accredited by those who have to act upon the statements; and they are made for the benefit of third persons. Here, it is true, the book is kept by a public officer; but no credit is given him in respect of the entries; they are merely a check upon himself. If we held this book admissible, we should make the entries of any public

accountant evidence on a similar occasion.' So here, there is nothing to show that the book is accredited by those who have to act upon the statements; on the contrary, the Regulation provides that whenever a Collector thinks it necessary he may summon a patwari and examine him on oath as to the truth of his accounts; and we may also add that if we were to hold that these books are admissible in evidence, in that case it would follow that if any law were to direct zemindars to keep their jama-wasil-baki papers in a certain form and to submit copies of them to the Collector that would make the Jama-wasil-baki papers public documents or official registers within the meaning of Section 35 of the Indian Evidence Act.

8. We are of opinion, therefore, that the Court below was quite right in holding that these teiskhana papers were inadmissible in evidence; and, that being so, the appeal fails, and must be dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com