Secretary of State for India Vs. Kalika Prosad Mookerjee and ors.

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Court : Kolkata

Decided On : Aug-05-1910

Reported in : 14Ind.Cas.609

Judge : Mookerjee and ;Carnduff, JJ.

Appellant : Secretary of State for India

Respondent : Kalika Prosad Mookerjee and ors.

Judgement :

1. The subject-matter of the litigations, which have culminated in these appeals, is an extensive tract of alluvial land which has been formed by the action of the river Ganges (variously described in these proceedings as Padma or Bhubaneswar), and covers an area of about twenty thousand bighas. The plaintiffs in the four suits commenced below claimed title to different shares in this tract of land, partly in zemindari right and partly as patnidars, dar-ijaradars and se-ijaradars. The four sets of claimants are known as the Saha Chowdhuries of Kanchanpur, the Acharaya Chowdhuries of Muktagacha, and the Mukerjees of Ula, who are themselves divided into two branches. It is not necessary, for our present purposes, to set out in detail the shares claimed by these persons respectively. It is sufficient to state that the plaintiffs, taken together as a body, claim to be entitled to the whole property. Their allegation is that parganas 'Patpashar and others ' constitute estate No. 115 on the revenue-rolls of the Collector of Dacca, and were recorded in the name of Mahadev Mukerji, the predecessor-in-interest of the plaintiffs; while chur Madhobdia, which formerly bore No. 160 on the revenue-rolls of the Collector of Dacca and now bears No. 4002 on the revenue-rolls of the Collector of Faridpur, is recorded as a kharijia taluk in the name of Kumar Bishwa Nath Roy, another predecessor-in-interest of the plaintiffs. The plaintiffs allege that at the time of the Permanent Settlement, when these two estates were created, the river Ganges flowed over and through the lands of the zemindari and the taluk; that from time to time the river has considerably altered its course, throwing up new churs and submerging old ones ; and that the varying conditions of the locality are, to some extent, indicated by the thah map prepared in 1857-8 and the survey map prepared in 1858-9. The plaintiffs further assert that, after the thah and survey measurements, the lands were again diluviat-ed by the river, and churs were formed, of which they were in possession till dispossessed by an illegal order of the Sub-Divisional Officer of Manickgunge on the 30th May 1890. The plaintiffs also assert that in 1891 a portion of the lands from which they were dispossessed, was released to them by order of Government, and other portions similarly in 1896 and 1901. But their grievance is that the area now in dispute has been retained by Government though they claim it as part of their permanently settled estates. In the fifth paragraph of their plaint, they set out their case expressly in the following terms:

That the lands in suit described in the schedule below are re-formation on the original sites of mouzas chur Hasni, Sadkabad, Talimabad, Hajinagar, Ujankandi, Mamudnagar, Tipakhola, Kharakandi, Kabirpur (known as Ajkabirpur), Munsurabad, Rostampur (known as Santoshpur), Natakola, Bramhan Kandi and other mouzas appertaining to the aforesaid Mahal No. 115, and mouza Harirampur and other mouzas appertaining to the said Mahal No. 4002.

2. It will be observed here that the mouzas included in the two estates are not exhaustively mentioned, and an element of vagueness is introduced by the use of the words 'other mouzas' in respect of both. It will further be noticed that the disputed lands are claimed as reformation on the original sites of the permanently settled estates of the plaintiffs. Later on in the plaint, however, alternative cases are put forward, namely, in the sixth paragraph a title by adverse possession is asserted, while in the seventh paragraph it is suggested that a portion only of the disputed lands may possibly be re-formation on the original site of the estates of the plaintiffs, and the remainder may be accretions to such estates, either of the reformed lands or of the lands which have never been washed away. In the eighth paragraph, it is alleged that the disputed area does not form part of any island chur to which title may be claimed by the Government. Upon these allegations, the plaintiffs ask for a declaration of their title to the disputed land, for recovery of possession, and for mesne prfits. The suits were defended substantially by the Secretary of State, and on his behalf all the material allegations in the plaints were challenged. It was denied that the site of the disputed area formed any part of the permanently settled estates Nos. 115 and 4002. It was denied also that the land in question was reformation on the site of these estates or partly reformation and partly accretion. It was, further, contended that the plaintiffs had not acquired title by adverse possession, and that, on the other hand, the suits were barred by limitation. In addition to these grounds, a substantive case was made on behalf of the Secretary of State in the twelfth paragraph of his written statement, namely, that the major portion of the disputed land was re-formation on the site of Bhati chur which was resumed in 1843-4 by the Government, of chur Teprakandi resumed in 1861-2, of Jafrabad resumed in 1879, of Arazi Bandobasti Bhadrasan, and also of Tarfer chur. It was further alleged that the predecessors-in-interest of the plaintiffs had admitted the right and title of Government to these estates, as they were, for many years, in possession of these lands under periodical Settlements from the Government. Upon these pleadings, fourteen issues were raised, of which we need mention only the following:

3. Sixth issue--Whether the lands in suit ever formed any portion of the permanently settled estates Nos. 115 and 4002 reformed on the site of the villages named in the fifth paragraph of the plaint, or are they accretions to the site of these villages?

4. Seventh issue.--Have the plaintiffs acquired any right by adverse possession in the lands claimed?

5. Fifth issue.--Is the suit barred by limitation?

6. Tenth, eleventh and twelfth issues.--Is any and what portion of the disputed land reformed on the old sites of the properties named in the twelfth paragraph of the written statement? Is it reformation and accretion to khas mahals, and resumed by Government in its sovereign right? Have the predecessors of the plaintiffs taken any settlement of any portion of the disputed land; if so, what would be its effect on these suits?

7. A detailed reference to the other issues is unnecessary, because they either are superfluous or raise questions which have not been argued before us; for example, no objection has been taken in this Court on the ground that the suits are not properly framed, or that they are not maintainable by reason of the omission of the plaintiffs to include the present claim in the litigation of 1388-9; nor has reference been made before us to an alleged arbitration-award mentioned in the plaints, as to which the Court below found that there was no valid reference to arbitration nor any formal award. The questions, therefore, which really require consideration are those of title and limitation. The title of the plaintiffs is based on the grounds of, first, reformation, or, secondly, re-formation in part and accretion as to the remainder, or, thirdly, adverse possession. Against the title alleged by the plaintiffs, we have the substantive case made on behalf of the Secretary of State, that the disputed lands constitute churs, or are re-formations on the site of churs, which have been in the occupation of the Government for more than sixty years. As regards the question of limitation, the sole point in controversy is whether the plaintiffs have been in possession within twelve years antecedent to the suit; and in this connection it may be observed that, according to the plaintiffs themselves, they were dispossessed on the 4th June 1890, and did not commence the present suits till the 29th May 1902; consequently, it is incumbent upon them to prove possession between the 29th May and the 4th June, 1890.

All these questions have been elaborately discussed by the learned Subordinate Judge in his judgment. He has taken up, first, the question of limitation, and, in this connection, has minutely discussed the substantive case set up on behalf of the Secretary of State. He has come to the conclusion that the Government has not acquired title by adverse possession for the statutory period, and has, consequently, inferred that the claim of the plaintiffs is not barred by limitation. The Subordinate Judge has devoted about twothirds of his judgment to the consideration of the case of the defendant, and has examined the question of the title of the plaintiffs much less fully. Upon this part of the case, he has come to the conclusion that the plaintiffs have established their title. His finding is of a somewhat ambiguous character, and may be stated in his own words to be that 'in one view of the matter, the disputed land is partly a re-formation on the site of the plaintiffs' estates and partly an accretion thereto, and, in another view, is entirely an accretion to their estates.' He has founded this conclusion mainly upon a map published by Major Rennell in 1780 and certain papers produced from the Collectorate called Hakikath Chouhuddibandi papers. In so far as we are able to gather from his judgment on this part of the case, his conclusion is that the bed of the river Padma was not settled with the predecessors of the plaintiffs at the time of the Permanent Settlement; and that, consequently, the whole of the disputed land cannot be claimed by the plaintiffs as reformation on the site of their permanently settled estates. But the Subordinate Judge has held that the portion of the disputed land which now occupies the site of what was the bed of the river Padma in Rennell's time, may be treated as accretion to the remainder of the land; and that, from this point of view, the plaintiffs are entitled to possession of the whole of the disputed land. The Subordinate Judge has further found that the plaintiffs have not given any evidence to establish their allegation that they have acquired a good title by adverse possession to the disputed land, if it should be held that it was not their property as reformation on the site of their permanently settled estates and accretion thereto. Upon these findings on the question of title and limitation, the Subordinate Judge has decreed the suits. Against thesedecrees in favour of the plaintiffs, the present appeals have been preferred on behalf of the Secretary of State, and the judgment of the Sub-ordinate Judge has been minutely scrutinised and vigorously assailed on every point of any importance. It has been contended, in the first place, by the learned Counsel for the appellant that the Subordinate Judge has devoted the substantial portion of his judgment to a criticism of the case of the defendant and has practically allowed the plaintiffs to succeed, because the defendant has not estalished the substantive case set up by him. It has been argued, in the second place, that the question of title of the plaintiffs ought to have been first investigated, and the claim of the plaintiffs ought tohavebeen dismissed as entirely illusory. It has been pointed out in support of this argument that the plaintiff's, in order to succeed, must prove affirmatively that the site now occupied by the disputed lands was part of the estates settled with their predecessors at the time of the Permanent Settlement; that there is no tangible evidence in support of this allegation; that Rennel's map, upon which the decree of the Court below is really founded, is based upon surveys made a quarter of a century before the Permanent Settlement; that the map in question was not made for revenue purposes and can consequently be of no assistance in the determination of the question raised before the Court; that there is no evidence to show that the map was adopted as the basis of the Permanent Settlement; that the assumption made by the Subordinate Judge that the condition of the locality was the same at the time of the Permanent Settlement as it was at the time of the survey by Rennell, is wholly unfounded; and that, in fact, there are weighty reasons to support the contrary view. It has also been argued that the chouhuddibandi papers, upon which reliance is placed by the plaintiffs, do not afford reliable material for the determination of the size, situation and boundaries of the various mouzas comprised in the estates of the plaintiffs at the time of the Permanent Settlement; that the attempt made by the Commissioner and by the Subordinate Judge to locate the boundaries and to identify the disputed land with any part of the permanently settled estates, is based upon assumptions for which there is no foundation in fact; and that the imaginary map prepared by the Commissioner to indicate the relative situation of the different mouzas at the time of the Permanent Settlement cannot be adopted as a trustworthy guide to any conclusion upon the question of the title of the parties. It has further been contended that Rennell's map has not been correctly re-produced on the case map; and that here also the attempt of the Commissioner is based upon wholly unfounded and obviously erroneous assumptions. It has. finally been suggested that the plaintiffs are not entitled to succeed either on the ground of re-formation or

on the ground of partial reformation and partial accretion, as there is nothing to show that there was re-formation in respect of any definite part of the disputed land, nor is it established by any tangible evidence that there was accretion as regards the remainder to any land of the plaintiffs which might be imagined to have been re-formed on the site of their estates. Indeed, upon the question of title, the learned Counsel for the appellants has contended that the claim of the plaintiffs is of an entirely unsubstantial character, and that the decrees in their favour will not bear the test of criticism for a moment, as it practically enables them to obtain possession of a considerably larger quantity of land than what is shown, in the very papers produced by them, as in cluded within their permanently settled estates. In the third place, it has been contended by the learned Counsel for the appellant, with regard to the question of limitation, that the case has not been considered by the Sub-odinate Judge from the right point of view; that, as the plaintiffs came into Court upon the allegation of previous possession and dispossession, the onus was upon them to prove that they were in possession within twelve years antecedent to the suit; and that this burden they have failed to discharge. In so far as the substantive case put forward on behalf of the Secretary of State is concerned, it has been argued by the learned Counsel for the appellant that the view taken by the Subordinate Judge is wholly erroneous; and that an examination of the various maps prepared from time to time, and of the periodical Settlement proceedings, renders it fairly clear that the disputed land occupies the site of island churs which, upon their first formation, were taken possession of by the Government and settled with tenants. It has also been contended on this part of the case that the predecessors of the plaintiffs themselves took possession of these lands as tenants under the Government; and that this conduct on their part, even if it does not amount to estoppel, has a very material bearing upon the determination of the question whether these lands were really re-formations on the site of the estates of the plaintiffs. These are the principal points urged on behalf of the appellants; they have all been strenuously controverted on behalf of the plaintiffs-respondents. The case has been elaborately argued before us on both sides, and, since the close of the arguments, we have made a minute scrutiny of the voluminous papers on the record, and of the numerous maps produced on both sides. We shall now proceed to consider the various points in the order in which we have stated them.

8. The fundamental question in the case is obviously that of the title of the plaintiffs. As we have already stated, the plaintiffs claim the disputed property as reformation on the site of two estates permanently settled with their predecessors-in-interest, known as estate No. 115 of the revenue-rolls of the Collector of Dacca and estate No. 4002 of the revenue-rolls of the Collector of Paridpur The Permanent Settlement took place, as is well-known, in 1793, and it was based upon the Decennial Settlement, which had been made in 1789. The plaintiffs, therefore, ought to establish what lands were included within their estates at the time of the Settlement of 1789. It may be stated here, at the outset, that no papers whatever have been produced in connection with either the Decennial or the Permanent Settlement. In the Court below, the plaintiffs did not take any steps for the production of these papers till the trial had concluded and judgment had been reserved. No explanation has been suggested for this extraordinary omission. The case remained pending in the Court below from the 29th May 1902, till the 5th July 1907. The hearing occupied nearly three months from the 11th April 1907, till the 5th July 1907, and it was not till the latter date that the plaintiffs applied for the production of papers in connection with the Permanent Settlement of their estate. The Subordinate Judge rejected this application, and, in our opinion, vary properly. In this Court, the conduct of the plaintiffs in this respect was severely criticised on behalf of the appellant, and we suggested that the Collector might be asked to produce all papers in connection with the Permanent Settlement of the estates. A search appears to have been made in the Collectorate, and a mass of papars was produced before us, but, though they related to these estates, they had no connection with the Decennial or the Permanent Settlement thereof. We are informed that the papers relating to the Permanent Settlement cannot be traced in the Collectorate, and that apparently no information is available as to whether the papers are in existence, and, if in existence, in which department of the Government they may be found. The position, therefore, is that the papers relating to the Decennial and the Permanent Settlements are not forthcoming, and primary evidence as to the extent of these estates at the time of those Settlements is not available. The plaintiffs, however, as we have said, found their case upon the map of Major Rennell and certain papers called chouhuddibandi papers. The map of Major Rennell has been re-produced by the Commissioner on the case-map, and he has also prepared what

he calls an andaji or imaginary map on the basis of the chouhuddibandis. On these materials, the Commissioner and the Subordinate Judge have come to the conclusion that the plaintiffs have established their case, although they were not able to arrive at a precise conclusion as to how much or which portion of the disputed land is re formation on the site of the estates of the plaintiffs, and how much is accretion thereto. We shall now proceed to consider the evidentiary value of Rennell's map and the chouhuddibandis, which thus form the whole foundation of the claim of the plaintiffs.

9. In so far as Rennell's map is concerned, it is well-known that the survey upon which it was based, was made by Rennell and his co-adjutors daring the years 1764 to 1773. As has been repeatedly pointed out by this Court, this survey was made for the purpose of showing the courses of rivers and the different land-routes passing through the country. There is no indication whatever that the survey was made for revenue purposes, and this is manifest from an examination of this and the other maps prepared by Rennell, none of which profess to show the boundaries of the different mouzas, though the villages are, in many places, named. This is borne out by the cases of Kali Kissen Tagore v. Secretary of State A.C.D. No. 105 of 1896 (unreported), decided by Mr. Justice Ameer Ali and Mr. Justice Pratt on the 21st Jane 1898; Watson v. Sree Sumdari A.O.D. No. 52 of 1899 (unreported), decided by Sir Francis Maclean, C.J., and Mr. Justice Banerjee on the 30th May 1901; Administrator-General v. Secretary of State A.O.D. No. 335 of 1901 (unreported) decided by Mr. Justice Brett and Mr. Justice Woodroffe on the 9th June 1904, and Sarat Chandra Singh v. Kshitis Chandra Roy 12 C.L.J. 210 : 7 Ind. Cas. 140. In these cases, the Court declined to accept Rennell's maps as any safe guide in determining the boundaries of estates, and it may be observed that although the decision in the second case was partially modified by their Lordships of the Judicial Committee Rani Hemanta Kumari v. Sree Sundari 3 C.L.J. 560 : 1 M.L.T. 175 their Lordships treated the map as indicating merely that the land in dispute in that suit was dry land in 1780, and that there were many villages to the north of what was then the river-bed. The examination of different editions of the map produced before us, further shows that it does not afford any safe basis for an inference as to the precise position or boundaries of the different mouzas; for instance, the name of the pargana Patpashar is written, in one edition of the map, across the river, and, in another edition, on one side of the river. Prom this circumstance, it has been contended, on the one hand, that Patpashar, in the time of Rennell, extended on both sides of the river, and, on the other hand, it has been argued that it existed on one side of the river only. Neither inference, it is obvious, can safely be drawn from the location of the name on the map. Apart from the consideration that the boundaries of the different mouzas are not depicted in Rennell's map, there is another circumstance which makes the map valueless for the purposes of the plaintiffs. Although it was published in 1780, it was based on surveys made from 1764 to 1773, as has been stated already, and is shown by Rennell's Journal, which has been recovered and recently printed by the Asiatic Society of Bengal. The map, therefore, is based on surveys made from twenty to twenty-five years before the Decennial Settlement. The question, therefore, naturally arises, whether the condition of the locality, at the time of Decennial Settlement, may be assumed to have remained practically unchanged during this period of time. In the case before us, it is manifest that no such assumption can safely be made. The Padma is wellknown as one of the most erratic rivers in that part of the country, and the variable character of its course is amply manifested in the history of this very chur, so far as it is known to us. The learned Subordinate Judge has stated in his judgment that, during the five years that the suit remained pending in his Court, a large part of the disputed land was diluviated by the action of the river, and the plaintiffs could recover possession only of the small portion depicted red in the case-map. These extraordinary changes in the course of this river are, by no means, of recent occurrence, as is conclusively proved by an examination of the history of the churs known as Bhati-churs, Teprakandi, Jaffrabad, Bhadrasan and Trafer. For this purpose, it is sufficient to examine the maps U 10, Z 95-97, Z 99-100, 34, 33, U 9, Z 104. 5, 31 and X (which refer to the Bhati-chur), Exhibits U, U 12, U 8, R, C, D, E, P, G, H, A 5 and Q (which relate to Teprakandi) and Exhibit XI (which refers to Jaffrabad). Even a cursory examination and comparsion of the successive maps relating to any one chur will make it manifest, how, in the course of a few years, the river changes its bed, sweeps out the old churs, sometimes wholly, sometimes partially, often alters their configuration, and leads to the formation of churs in new places of different sizes and shapes. Thereis, no doubt, in some instances, a general resemblance in shape, but it is beyond the possibility of dispute that ever since 1857, when the history of the

disputed land begins as depicted in the various maps, constant changes have been the rule rather than the exception. It is, therefore, an unwarrantable assumption to make that the course of the river remained constant during the twenty-five years which elapsed between 1764 and 1789. Rennell's map, therefore, based as it is on the surveys of 1764-73, even if it accurately located the different mouzas, cannot be safely treated as indicating their existence or actual position at the time of the Decennial Settlement of 1789. The outstanding features of the case, therefore, are, first, that Rennell's map does not show the exact positions of the mouzas on the site of which the plaintiffs allege that the disputed land has reformed; and, secondly, that there is no evidence to support the suggestion that the position of the river, in relation to the surrounding land, was in 1789 identical with what it was in 1764; on the other hand, there is ample indication, if any inference can be drawn from the subsequent history of the river, that its course could not have remained unchanged during a period of nearly twenty-five years. These, however, are not the only circumstances which make Rennell's map practically valueless for the purposes of the plaintiffs. There are other elements of equal importance to be taken into consideration. The starting point adopted by Rennell is not known. The Commissioner, upon this part of the case, makes a number of hypothetical assumptions for which there is no foundation in fact. He assumes that the longitude adopted by Rennell as the longitude of the starting point, is that of the dome of the La Martiniere Institution in Calcutta, which, the Subordinate Judge states, is, at present, a survey station. The Subordinate Judge forgets that the La Martiniere building, as stated in books dealing with the history of Calcutta, was not in existence till 1835. In fact, General Martin, from whose estate the institution was established, was born in 1735 and died in 1800, and it was only after his death that the litigation over his estate, which, in one stage, is reported in the first Volume of Moore's Indian Appeals, pages 175 and 185, began; it is obviously a bold assumption to make that Rennell took, as his starting point, the dome of the building of the La Martiniere Institution, which did not come into existence till seventy years after Rennell commenced his survey. It has been suggested in this Court by the learned Counsel for the respondents, who keenly appreciated the difficulty of supporting the view of the Subordinate Judge, that. Major Rennell might have taken, as his starting point, the site of Fort William. If this suggestion were adopted, the calculations of the Commissioner would be completely vitiated; but there is no foundation for it, because Fort William was not finished till 1773. It is possible that Rennell may have taken, as his starting point, the old Fort which stood more than a mile towards the north of the site now occupied, by the present fort. The Commissioner has, therefore, obviously based his calculation upon an assumption for which there is no foundation in fact. We may observe here that as the map of the Commissioner is drawn to a scale of 8 inches to a mile, whereas Rennell's map is drawn to a scale of 5 miles to an inch, every linear element would be increased forty times in the case-map; consequently, a very slight mistake, either in Rennell's map or in the work of re-producing it on the case-map, would be considerably magnified. For instance, the Commissioner has assumed the initial longitude to be the longitude of the La Martiniere dome, which he takes to be 88 degrees 2 inch. The learned Counsel for the Secretary of State has asserted that this ought to be 88 degrees 28 feet. But a mistake of 4 feet in the longitude would mean a mistake of, approximately, 4 2/3 miles. The result would be that the site of the disputed land would be deflected to this extent on the case-map. It does, therefore, make a substantial difference in the re-production of Rennell's map, whether we assume, as the Commissioner has erroneously done, that the initial longitude was that of the La Martiniere dome or the present Fort William, as has been suggested by the respondents in this Court, or the old Fort William in existence, in Rennell's time. If there has been an error even of one minute in the assumption of the initial longitude, it would indicate an error of one mile: that is, the site of the disputed land would be altered by eight inches on the case-map. After careful consideration of the evidence given by the Commissioner, we are of opinion that his theory is wholly untrustworthy. We may observe, further, that the remark, made in paragraph 49 of his report, regarding the longitude of Faridpur is equally groundless. He discovers a coincidence between the Faridpur mentioned in Rennell's map and the Faridpur Great Trigonometrical Survey Sub-station as it exists at present. The Faridpur Kachery, however, was not built till 1811, that is, more than forty years after the time of Rennell's survey, and at that time the name, as we find from the old papers, was Jalalpore. This attempt at identification by the Commissioner and the Subordinate Judge is, therefore, manifestly baseless. There is further one observation in paragraph 43 of the Commissioner's report which

indicates amply the impossibility of drawing any reliable conclusion, in so far as the actual boundaries of mouzas, or even their situation, are concerned, from Major Rennell's map. The Commissioner observes that the map is drawn to a very small scale, that village-sites appear on it in conventional signs, and are represented by mere dots, and that their shapes and sizes are not shown at all. In the face of these observations, it is difficult to appreciate how the Commissioner proceeded to speculate as to the location of the mourns which are alleged by the plaintiffs to have been comprised in their estates at the time of the Permanent Settlement. As the Commissioner furthermore observes, the part of the country, at and about the land in dispute, has been subject to many diluvions and re-formations, and the land-marks, which might have been in existence in Rennell's time, have now either disappearedor been variously disfigured. In our opinion, it is an impossible task to determine from Rennell's map, with any approach to accuracy, the positions of the mouzas claimed by the plaintiffs as included in their estates at the time of the Permanent Settlement. In fact, when the plaintiffs seek to make that map the foundation of their claim, they attempt to use it for a purpose for which it was never intended. As we have already stated, the survey was undertaken by Rennell and his associates to determine the principal routes upon land and the water-ways of the Province, and not for revenue purposes. No attempt was made to ascertain and depict the boundaries of the mouzas, which, in many instances, are not named at all, and, where they are named, are indicated, sometimes by dots, and at other times even less definitely. We find the names of the villages and the parganas written on the map, not precisely in the same places in different editions. It is not practicable, therefore, to determine from Rennell's map, with any approach to accuracy, the position, boundaries and size of any particular mouza. In addition to this circumstance, there is nothing to show that the map was adopted as the basis of the Permanent Settlement. The revenue, at the time of that Settlement, was determined with reference to the assets of the lands settled, and it is more than likely that the lands were taken in the condition in which they were at the time of the Decennial Settlement: for instance, if what is depicted as solid land in Rennell's map was covered by the river at the time or the Decennial Settlement, it is improbable that the bed of the river, which could produce no income to the zemindar, was included in the Settlement with him. This the Subordinate Judge has appreciated, because he has overruled the contention of the plaintiffs that the river-bed was settled with their predecessors at the time of the Permauent Settlement. But this view obviously places an almost insuperable difficulty in the way of the plaintiffs who rely upon Rennell's map to determine the land settled with them. As we have already explained, there is no foundation for the assumption that the general features of the country, with reference to the river Padma in that locality, remained unaltered for some twenty-five years from 1764 to 1789 ; indeed, there are weighty reasons in support of the contrary view. The mere fact, therefore, that a particular tract in Rennell's map bears the name of one or more of the mouzas subsequently settled with the plaintiffs at the time of the Decennial Settlement, would not by itslf indicate that the mouzas were in the same place as in Rennell's time, much less would it indicate that the mouzas had the same sizes and boundaries. The conclusion appears to us to be irresistible that Rennell's map, however useful it may be to show the course of the river in 1764-73 and to indicate generally the relative position of parganas, mouzas and towns on both sides of the river at that period, cannot be accepted as a safe guide to determine accurately the position of the river and of the places on both sides thereof in 1789; much less can it be used to determine the exact position or size or boundaries of different mouzas included in any particular estate at the time of either the Decennial or the Permanent Settlement.

10. The second piece of evidence, upon which the plaintiffs rely in order to establish that the disputed land is re-formation on the site of some of the mouzas included in their estates at the time of the Decennial and Permanent Settlements, is what has been described as the chouhuddibandi papers. Two sets of these were produced in the Court below. One set, marked as Exhibit (1), related to estate No. 115 and appears to have been filed in 1799; the other set, marked as Exhibit (5), related to the taluk in the name of Kumar Bishwa Nath Roy, which now forms estate No. 4002. The copy of the latter produced in the Court below bears no date. In this Court it was stated that these papers were extracts from the complete originals which were in the Collectorate. Consequently, at the request of the parties, we have called for these papers. These have been produced on behalf of the Government, and we have now before us, the Hakikath chouiiuddibandi of pargana Patpashar, including taluk No. 115, and apparently also chur Hai Madhabdia of Ramnagore, which now

constitutes estate No. 4002. An examination of the original papers shows that the chouhud-dibandi papres of the latter estate, as produced in the Court below by the plaintiffs, were incomplete. In fact, there is a complete set in which the boundaries of the mouzas as well as their rentals are given ; and another set, apparently an abstract, in which the boundaries are omitted. The plaintiffs pro. duced a certified copy of an extract from the abstract. Before that was received in evidence, the original was called for in due course, and what was produced as the original from the Collectorate was the complete copy (which was marked as an Exhibit). No comparison was apparently made in the Court below between the certified copy produced and the original brought from the Collectorate : a comparison would have shown, in fact, that the certified copy was not a copy of the original produced. However, in this Court the original of the complete paper, as also of the abstract, has been produced. The whole of these papers have been printed and placed before us, and we now proceed to consider their evidentiary value. These papers, as we have already stated, fall into two groups, namely, the chouhuddibandi papers of estate No. 115, and those of chur Madhabdia and other churs forming taluk Bishwa Nath Roy, which now constitutes estate No. 4002. These papers were filed in the Collectorate during the Bengali years 1204 6, that is, from 1797 to 1799. No explanation is available as to the circumstances under, and the purpose for, which these papers were filed by the proprietors. They contain the names of the villages comprised in the estates; the boundaries of each village; the area; the quantity of lakheraj land ; the quantity of cultivated and waste land; the gross assets; the collection charges; and the net balance of income. It has been suggested before us that they might have been filed by the proprietors in connection with the preparation of the quinquennial registers mentioned in Regulation XLVIII of 1793. As a matter of fact, the history of these papers is absolutely unknown ; that they do not constitute the quinquennial registers themselves, is clear on the face of them; in fact, they are described merely as the chouiiuddibandi papers, that is, papers in which the boundaries are given, There was some discussion at the bar as to their admissibility, and it was suggested by the learned Counsel for the plaintiffs-respondents that, if they were connected with the quinquennial papers, they might be admissible on the same principle as the latter: see Shoshi Bhooshun v. Girish Chunder 20 C. 940. It was also suggested that they might be admissible on the same principle as that on which a Wajib-ul-arz is admitted: Garuradhwaja Prasad v. Superundhwaja Prasad 23 A. 37 : 27 I.A. 238. On the other hand, it has been contended upon the authority of the decisions in Oodoy Monee v. Bishonath 7 W.R. 14; Kamal Kumari v. Kiran Chandra 2 C.W.N. 229; Gabind Chunder v. Paddomonee 17 W.R. 400 and Anandhari v. Secretary of State 3 C.L.J. 316 that, although the registers themselves might have basn used as evidenoe, the returns are not admissible in evidence. We are not prepared to hold that the papers are not admissible in evidence They are statements of boundaries of land included in certain estates, and were filed apparently under the signatures of the then proprietors. They were, so far as we can make out, declarations, by the then proprietors of the boundaries and quantity of the land of which they had obtained possessum under the Settlement. The returns also give details of the land claimed as rentfree of the waste land, of the gross assets, of the collection charges and of the balance out of which the Government revenue was payable. No doubt, the quinquennial registens, if they had been produced, would have been more valuable as indicating the extent to which the assertions of the pro-prietors were acted upon by the Revenue Authorities, but this omission to produce the registers affects merely the value, and not the admissibility, of the cliouhuddibandi papers. The principal question in the case, therefore, is the evidentiary value of these papers: how far, if at all, they enable the plaintiffs to determine the situations of the various mouzas included in their estates at the time of the Settlement. In the Court below, the Commissioner prepared an imaginary map from the cliouhuddibandi papers--we say an imaginary map, because, as we shall presently show, the effort, however ingenious it may seem, is based upon no solid foundation at all. Let us first take the cliouhuddibandi papers as produced in the Court below in respect of estate No. 115: we have the various mouzas named and their boundaries given. The Commissioner assumes that the estate formed one compact block, and then proceeds to make an imaginary sketch of the possible relative situation of the different mouzas. The assumption is groundless; because, even Rennell's map shows that pargana Patpashar was not a compact block; there was at least one isolated portion towards the south of the river surrounded on all sides by the lands of other parganas, In fact, as is well known, the lands of different parganas are very often mixed up, and unless there is positive evidence to the effect that all the mouzas of any particular estate

constitute a compact block, it is not safe to assume that they do so. Apart from this circumstance, however, the attempt to locate the mouzas of estate No. 115 from the boundaries given in the chouhuddibandi papers is an impossible task. Take, for instance, one of these, which is very frequently mentioned in the proceedings before us, namely, Kismut Chur Hasni. The boundaries are given as follows:

West--On the east of Gadadhar Dangi and Aliabad in Nij pargana.

East--On the west of Ambrapur, Kalakata.

North--On the south of Sadkabad and Kasimnagar in Nij pargana.

South--On the north of Darpa Narainpur and Sultanpur.

11. To enable one to depict, with any approach to precision, Chur Hasni on a map which will enable us to identify it with any part of the disputed land, it is clear that the positions of the mouzas named in the boundaries should be accurately known. We have, however, no reliable information upon this point; in other words, the Chur Hasni, which we are required to locate, is expressed in unknown quantities which there is no means of determining. Besides, there is an element of vagueness in these boundaries which makes them useless for all practical purposes. This is well illustrated by the boundaries given of Kismut Tepakola and Kismut Bhojandangi, The southern boundaries of both these monzas is stated to be north of Dhole Samudra; the western boundary is given as the eastern boundary of Gopaipore. Now Dhole Samudra is depicted on Rennell's map. If it is assumed that this Dhole Samudra occupied the same position in 1789 as in 1764, it is not possible to locate Tepakola and Bhojandangi with any approach to accuracy from the descriptions of the boundaries given above. But, even if some idea could be formed as to the relative situtation of one or more of these mouzas, it is impossible to determine their sizes and exact positions. The areas, no doubt, are given in the papers, but the lengths of the different sides are unknown, as also their directions; it is not even known that the different boundaries were straight lines, in fact, it would be a matter for surprise if all these numerous mouzas had straight lines for their boundaries. The imaginary map which was prepared in the Court below and which admittedly is open to criticism, does not profess to represent the sizes of the different mouzas. An attempt was made in this Court by the learned Counsel for the respondents to prepare an imaginary map; but the effort, as may be anticipated, was equally unsuccessfull. Let us take next the chouhuddibandi papers of estate No. 4002. In the attested copy, which was produced in the Court below, the boundaries and areas are not given. In the complete copy which has been produced in this Court from the Collectorate, areas are given, as also the gross rental, the collection charges and the balance out of which the Government revenue was payable. We have also details as to how much of the land was rent-free, how much cultivated, and how much waste. The information given, however, is wholly insufficient to locate the churs or mouzas comprised in the estate. To take one illustration, the boundaries of mouza Ganga Prasad Ramkrishnapore are as follows:

West-- Kamalpore and Bankunda.

South--Doorgapore.

East--Madhabdia and river Bhubanesswar.

North--Badiachar, Sota of Kasimnagar and river Bhubanesswar.

12. Neither of the learned Counsel on either side was able to indicate how this property can be located. The area is stated to be ninety bighas, out of which twenty-five are stated to be rent-free; but clearly, this is not sufficient for our purpose. Apart from this difficulty, some of the boundaries are hardly definite enough to indicate what was intended by the writer. For instance, in the description of this very property given in the attested copy produced in the Court below, the northern boundary is stated as 'Barmar chur in Kasimnagar par river Bhubanesswar.' There was considerable discussion at the bar as to the meaning of this description, The learned Counsel for the appellant argued that this merely means that the boundary was the river, the

portion of the river being indicated by mention of the chur called Badia chur or Barmar chur. This is the view which has been adopted by the Subordinate Judge in the Court below. On behalf of the respondents, on the other hand, it was argued that the chur itself was the boundary, which might indicate that a portion of the river-bed itself was included in the Settlement. We are inclined to adopt the former interpretation which has been accepted by the Subordinate Judge; but, whichever view is adopted, it is clear that the description is not specific enough to enable us to locate the property. We need mention one other illustration only, namely, the description of the boundaries of mouza Ramkantapore, where it is stated that the southern boundary is the river 'par Bagerhat, par Hajinagar and Hajigunge, with Bhadrasan on the straight south-east corner.' The materials on the record are wholly insufficient to make this description intelligible for any practical purposes. No attempt appears to have been made in the Court below to construct even an imaginary map of the properties comprised in estate No. 4002. None certainly was made in this Court, and our own efforts to construct a map from the new materials placed before us have been entirely unsuccessful. We are, therefore, constrained to adopt the conclusion that in the case of estate No. 4002, the chouhuddibandi papers are wholly insufficient to enable us to locate the mouzas with any approach to precision. In fact, the difficulty here is greater than in the case of estate No. 115, because the mouzas included obviously do not form a compact group. The boundaries, indeed, indicate, as also do the names themselves, that some of these mouzas were churs separated from each other by the flowing river. It was suggested by the learned Counsel for the respondents that some of these might probably be one or more of the churs shown in Rennell's map in that portion of the river which has Patpashar on opposite banks. This, however, is a bare suggestion, and, although we have taken considerable trouble in our endeavour to construct a map, we have not been able to identify any of these properties. We may add that some stress was laid on the circumstance that, these chouhuddibandi papers were successfully used by the plaintiffs in 1889, when they instituted suits against the Secretary of State for recovery of other lands. This, however, is not quite an accurate statement of what took place in the litigations of 1889. It is clear from the judgment of the Subordinate Judge of Faridpore, delivered on the 30th September 1890, Exhibit (17), that, although on that occasion the plaintiffs relied upon one of Rennell's maps and the chouhuddibandi papers, they succeeded in respect of such lands only as were identified with the site of their estates, as depicted on the thak and survey maps; in fact, on previous occasions, the Government has consistently released, in favour of the plaintiffs or their predecessors, such alluvial formations as were proved to be reformations on the site of their estates as depicted in the thak and survey maps, though, as pointed out by their Lordships of the Judicial Committee in Jagadindranath v. Secretary of State 30 C. 291 : 5 Bom. L.R. 7 : 7 C.W.N. 193 : 80 I.A. 44 and by this Court in Anandahari v. Secretary of State 3 C.L.J. 316 it cannot be presumed, as a matter of law, that the state of things described in the thak and Survey maps existed at the time of the Permanent Settlement. The claim of the plaintiffs on the present occasion, however, is of an entirely different character. They now invite the Court to ignore the thak and survey maps. Their theory is that mouzas, which were included in their estates at the time of the Permanent Settlement, had disappeared at the time of the thak and survey maps, and that the lands, now in dispute, are re-formations on the sites of these lost mouzas. For this purpose, they adopt, as the foundation of their claim, Rennell's map and the chouhuddibandi papers of 1797-99. Their claim, in our opinion, is wholly illusory. As set forth in the plaint, it is of the vaguest description. They do not give an exhaustive list of the lost mouzas, but name some only, and then use the comprehensive words 'and others.' The effort they have made to identify any portion of the disputed land with the supposed sites of the lost mouzas, has proved an impossible task; and it is a matter for surprise that the Subordinate Judge should have adopted the uncritical methods of the Commissioner and made decrees in favour of the plaintiffs for which there is not the remotest foundation. The justice of this conclusion is amply supported by the significant circumstance that, if the plaintiffs were to succeed, they would recover possession of a quantity of land very much in excess of what is indicated in the chouhuddibandi papers as included within their estates at the time of the Permanent Settlement. In so far as we have been able to make the calculations, the area of the lost mouzas, as given in the chouhuddibandi papers, would be approximately five thousand bighas, whereas the lands, which have been released in favour of the plaintiffs or their predecessors in 1854, 1880, 1881, 1867 and 1889, as representing the lost mouzas, amount to 22,893 bighas. It has been suggested before us that at the time of

the Permanent Settlement the bigha was taken to be one of 112 cubits, whereas, according to recent measurements, it is one of 80 cubits. If this be accepted as correct, the bigha of 1793 would be approximately twice the bigha of modern times. This would merely indicate that the area of the so-called lost mouzas might have been 10,000 bighas according to modern measurement. But the plaintiffs had previously recovered considerably more than twice that area, and they now claim again another twenty thousand bighas. Comment upon this aspect of the case is superfluous. After anxious consideration and minute scrutiny of all the available information on the record, we have come to the conclusion that there is not the remotest foundation for the claim cf the plaintiffs, and that they have wholly failed to establish their alleged title by reformation on the sites of lost mouzas or partial re-formation on such sites and accretion to the reformed lands. In fact the whole of the evidence indicates that no question of accretion could possibly arise. The changes have been so sudden and so violent, almost from year to year, that, even if the plaintiffs had established that any portion of the disputed lands was re-formation on the sites of their permanently settled estates, they could not possibly have succeeded as to the remainder on the ground of accretion thereto. It is needless, however, to examine this aspect of the case, because we hold that no part of the disputed land has been shown to occupy the site of any portion of the estates of the plaintiffs. Finally, the Subordinate Judge points out that the plaintiffs have given no evidence to prove that they have acquired a good title by adverse possession. Consequently, from every possible point of view, the question of title must be decided against them.

13. In the view we take, it is not necessary to discuss any other question in these appeals; because, if the plaintiffs have not established their title, it is not necessary to consider whether the suits are barred by limitation, still less to consider the substantive case set up on behalf of the Secretary of State. But, in view of the value of the subject-matter of these litigations, it is desirable to indicate briefly our opinion upon these matters. In so far as the question of limitation is concerned, the Subordinate Judge has divided the lands into two portions namely, one portion, described in the third paragraph of the plaint, from which the plaintiffs were dispossessed on the 4th June 1890, and the other portion, described in the fourth paragraph, which came into existence subsequent to that date. In so far as the lands of the first class are concerned, as the plaintiffs came into Court upon the allegation that they were dispossessed on the 4th June 1890, and the suits were, not commenced till the 29th May 1902, the burden lies upon them to establish that they were in possession between the 29th May 1890, and 4th June 1890. See the decision of the Judicial Committee in Mohima Chunderv. Mohesh Chunder 16 C. 473 : 16 I.A. 23. The determination of this question depends principally upon oral evidence. The plaintiffs seek to establish that immediately upon the appearance of the disputed land, they settled tenants thereon, and that these tenants continued in occupation till the adverse decision in the criminal case given on the 30th May 1890. On behalf of the defendant, it is alleged, on the other hand, that tenants were settled on the disputed land by the Collector of Faridpore towards the end of 1888 or the beginning of 1889. The oral evidence on each side is full of contradictions; but the Sub-orbinate Judge has refused to accept the oral evidence adduced on the side of the Secretary of State, because it is not supported by the proceedings of the Deputy Collector, Babu Bangsidhar Banerji, dated the 30th May 1890. He has also adverted to the contradictory statements made by Amar Chandra Bhattacharya, who measured the chur in 1889. In our opinion, the evidence on both sides is so unsatisfactory upon this point that no reliance can be placed thereon. The truth appears to be that, upon the first appearance of the chur, the land was sandy and unfit for cultivation, and there was a scramble on both sides for possession as soon as the land became habitable. The plaintiffs apparently took possession of different bits of land, which they settled with their tenants, and the Government also took steps for a survey and settlement of the chur. It is impossible to hold that either party had complete possession at the time over the whole of the disputed land. In this view, if the plaintiffs had succeeded in establishing their title, the legitimate inference would have been, that in the eye of law, the possession was with the rightful owners; and this would certainly be so in regard to all the lands except such small portions as might have been occupied by the tenants of the defendant: Runjeet Ram Panday v. Gobardhun Ram Panday 20 W.R. 25. Prom this point of view, if the title of the plaintiffs had been established, it would have been impossible to dismiss their suit as barred by limitation. In so far as the second class of lands which came into existence after the 4th June 1890, is concerned, the matter stands on a

somewhat different footing. Prima facie, the claim cf the plaintiffs in respect of such lands, would not be barred by limitation, if it were established that such lands had reformed on the site of part of their permanently settled estates. But then it was urged in the Court below, on behalf of the Secretary of State, and the argument has been repeated in this Court, that the lands so re-formed, after the 4th June 1890, were re-formations on the sites of churs which had previously been in the possession of Government for more than twelve years, and had consequently become the property of the State. This argument, it will be observed, raises really not a question of limitation, but rather a question of title by adverse possession on behalf of the Secretary of State; in other words, the contention is that, even if it be proved that the plaintiffs or their predecessors were owners of these sites because they were comprised within the ambit of their permanently settled estates, they have lost title thereto, inasmuch as, upon the formation of churs thereon many years ago, the Government occupied them, and continued to hold adverse possession thereof for the statutory period, so that when the churs temporarily disappeared and subsequently re-appeared as part of the disputed land after 4th June 1890, the Government could rightfully claim title thereto. This, in fact, is the substantive case advanced on behalf of the Secretary of State. The churs, in question, are, first, Bhati-chur, which includes chur araji bandabasti Bhadrasan and Tarfer chur; secondly, chur Jafrabad; thirdly, Tepra-kandi; aud, fourthly, chur Natakola. The history of the formation and development of these churs has been traced in the judgment of the Subordinate Judge, and that narration, as re-produced from the Settlement papers, is fairly accurate, though we are unable to accept the view of the Subordinate Judge as to the admissibility of some of the maps, notably those marked as Exhibits Z96 and Z97, which relate to the eastern portion of Bhadrasan. The Subordinate Judge treated the documents produced before him as copies of copies, and consequently inadmissible. There was considerable discussion at the bar, here, upon this question, which, however, upon examination turns out to be of no importance. It appears that the originals of these maps are in existence, and they have been produced before us. In course of time, they appear to have become rather worn out, and the Collector, in order to avoid further damage, had copies prepared from which all applicants for certified copies of the originals, were supplied with copies. In one sense, therefore, the copies, which were produced in the Court below, were made from a copy of the original. But, as the originals themselves have been produced before us, and, as upon comparison we have satisfied ourselves that the copies on the record, as also the copies prepared by the Collector, accord with the originals, there is no room for controversy that they are admissible. In fact, as the originals themselves have been produced before us, no question of admissibility can possibly arise. Let us now take the history of this particular chur known as Bhati chur, which extends from 1843, when the chur first became fit for habitation, to 1886 when it was washed away. The history of the different Settlements is narrated in the robokary of the Deputy Collector, dated the 15th March 1880, which recites all the previous Settlements. It is clear that the area of this chur has varied considerably from time to time. In 1845, its area was 10,661 bighas. In 1854 it had increased to 25,677 bighas. There was then a downward tendency due to diluvion, and in 1856 the area had been reduced to 17,106 bighas. The diluvion seems to have steadily continued, because we find that in one of the later Settlements the area was 10,530 bighas, and in 1874 it had fallen to 5,819 bighas. One thing is clear upon these papers, namely, that, from 1843 down to 1886, the Government dealt with the property as their own, and made periodical Settlements from time to time, some of which were made in favour of the predecessors of the present plaintiffs. We find it stated in the robkari, to which we have referred (Exhibit W. 4), that a portion of the land was in 1849 released in favour of Baman Das Mukerji and others, predecessors-in-interest of the present plaintiffs, and the remainder was, in 1850, settled with the Mukerjis for a term of three years, from the 1st May 1851 to the 31st July 1854. On the occasion of subsequent Settlements, small quantities of land were released in favour of the Mukerjis, and the remainder was accepted, in Settlement, either by the Mukerjis alone or by them jointly with other persons. The significance of this circumstance is obvious; if it is assumed, for a moment, that a portion of the land now in dispute stands on the site of the Bhati chur, a matter to which we shall presently refer, it is clear, that, as the Mukerjis repeatedly accepted Settlements from the Government after they had obtained the release of other lands, though their conduct may not amount to estoppel, it furnishes strong evidence on the side of the Secretary of State that their present case is wholly unfounded, As we have just stated, in 1850, in 1854, and in subsequent years, there were disputes between

them and Government as to the title to Bhati chur. Goverment released portions as re-formations on the sites of their estates, but successfully asserted their title to the remainder; and the Mukerjis acquiesced in such assertion and accepted Settlements of the lands from Government. This, in our opinion, would be the strongest possible evidence against the claim of the plaintiffs. The question, therefore, arises whether any portion of Bhati chur, so dealt with by Government from 1843 to 1886, is identifiable with the site on which the disputed land now lies. A desperate effort was made by the plaintiffs in the Court below to exclude the maps, marked as Exhibits Z96 and Z97, which proved such identity. As we have already stated, they were excluded on the ground that they were copies of copies; the originals, however, were produced before the Subordinate Judge, and have been again produced before us. There can be no question, therefore, that the right course to take is to treat the originals as admitted in evidence, and the certified copies as used only for purposes of convenience. We feel no doubt whatever that a good portion of the disputed land is identifiable with Bhati chur. Here, however, a difficulty arises. The area of Bhati chur, as we have already stated, varied largely from year to year, and a considerable portion of it was always sandy and unfit for cultivation; but we have no materials on the record to enable us to identify what portion was actually under cultivation from time to time. In fact, we have no reliable materials to show which portion was washed away as the area of the chur became reduced by diluvion. Although, therefore, we are in a position to hold that the disputed land does, in part, occupy the site of Bhati chur, which wasin the possession of Government from 1843 to 1886 and was held in Settlement by the predecessors of the plaintiffs from time to time, we are not in a position to identify, with any approach to accuracy, the particular portion of Bhatichur which, upon re-appearance, became the disputed land. To put the matter in another way, when Bhati chur disappeared in 1886 and re-appeared as part of the disputed land about 1888, it was not possible to say what was the precise size and position of the chur at the time of disappearance so as to render possible identification with any definite part of the disputed land. Under these circumstances, the fact of the possession by the predecessors of the plaintiffs, as Settlement holders under Government from time to time, may rightly be used as strong evidence against the title now asserted by them; but the evidence is not precise enough to justify a conclusion that even if the plaintiffs really had title, such title in any specific portion was extinguished by adverse possession. No doubt, as pointed out by their Lordships of the Judicial Committee in the case of Secretary of State v. Krishnamoni Gupta 29 C. 518 : 6 C.W.N. 17 : 4 Bom. L.R. 537 : 29 I.A. 104 if the Secretary of State asserted title to the chur and held occupation through Settlement holders for the satutory period, Government would acquire a good title by adverse possession. But, although such possession, in the present case, extended from 1843 to 1886, the area varied considerably from time to time, and it is not practicable to identify what precise portion of the disputed land falls within Bhati-chur as held by Government. We are, however, not inclined to accept the contention of the plaintiffs-respondents that as a large portion of the land was sandy, Government had practically no such possession as would be sufficient to extinguish the title of the true owners. No doubt, as ruled by their Lordships of the Judicial Committee in Radha Moni Devi v. The Colleector of Khulna 27 C. 943 : 27 I.A. 136 : 4 C.W.N. 597 in order to prove title to lands by adverse possession, the possession must be adequate, in continuity, in publicity and in extent so as to indicate that it is possession adverse to the competitors. It may also be treated as settled that, as ruled by this Court in the cases of Mohini Mohan Roy v. Promoda Nath Roy 24 C. 256 : 1 C.W.N. 304; Ananda Hari Basak v. Secretary of State 3 C.L.J. 316 and Jogendra Nath Rai v. Baladeo Das 35 C. 961 : 12 C.W.N. 127 : 6 C.L.J. 735 no presumption of possession can be made in favour of the adverse possessor, and his possession must be restricted to the land of which he has actual occupation. In the case before us, however, the Government undoubtedly took such possession of the entire chur as was possible at the time and had the lands surveyed and settled with ijaradars, amongst whom were the predecessors of the plaintiffs. In other words Government took such possession as was possible and transferred it to their lessees. In our opinion, this possession was sufficient to extinguish the title of the true owner, if it was established that the lands belonged, not to Government,but to the owner of a permanently settled estate. The conclusion, therefore, at which we arrive, is that, if the plaintiffs were assumed to be owners of the site upon which Bhati-chur stood from 1843 to 1886, their title was extinguished by the adverse possession of Government: but we have found it impracticable to ascertain, with any approach to accuracy, which portion of the disputed land was so in the possession of Government for the statutory period. It is not

necessary for us to examine, in detail, the history of the other churs, in respect of which similar remarks apply. As regards chur Jafrabad, we find that it was resumed by Government (Exhibit X 2), on the 18th April 1879; but the chur had a very brief existence. In fact, all attempts to settle lands with the tenants completely failed, as they were sandy, partly covered with water, and quite unfit for cultivation. No question of adverse possession, therefore, on the part of Government could possibly arise in respect of this chur. As regards chur Teprakandi, we have maps of 1874 and 1885 (Exhibit R. and Exhibit A.), and there are other maps prepared in 1879 and 1880, but their accuracy is open to criticism. In the case of this chur also, we have not sufficient materials to justify the conclusion that, if the plaintiffs had title thereto, it was lost by the adverse possession of the Government continued for the statutory period. The first Settlement of it appears to have been made in 1861, when its area was 3,463 bighas; two years later, it had increased in area to 11,350 bighas. In another two years, it had been reduced to 10,706 bighas. In 1868 it had increased again to over 14,000 bighas, and the growth seems to have continued up to 1869. The subsequent history of the chur is not continuous, because we have the papers of only two Settlements in 1874 and 1879. At the former Settlement, the area was over 20,000 bighas, while no figures are available for the Settlement of 1879. The chur seems to have disappeared about the year 1886. There is evidence to show that the tenants of Government were continuously in possession from 1874 to 1886, which would cover a period of twelve years. The evidence, however, which is mainly oral, does not show which portion of the lands was occupied by the tenants who undertook cultivation, and it is, in our opinion, not sufficient to show that, if the plaintiffs had any title, it was extinguished by adverse possession. Our conclusion, therefore, is that the circumstance of the possession by Government of the various churs to the Settlement proceedings of which we have made reference, is strong evidence to show that the title, now put forward by the plaintiffs, is unfounded; but that evidence of possession is not precise enough to show that the title of the plaintiffs, if they had established such title, was extinguished by adverse possession in respect of any portion fairly identifiable with any precise portion of the disputed lands. This, however, is immaterial, because we have held that the claim of the plaintiffs is wholly illusory. The title they have put forward, is not supported by the materials they have placed before the Court, and there is ample reason to believe that the lands, previously released in their favour from time to time by Government, are considerably in excess of the area of the mouzas which, they allege, were lost and have subsequently re-appeared.

14. The result, therefore, is that these appeals must be allowed, the decrees of the Subordinate Judge discharged, and the suits dismissed with costs throughout.