

## APPELLATE CIVIL.

*Before Jenkins C. J., and Holmwood J.*

LALU DOME

*v.*

BEJOY CHAND MAHATAP.\*

1915

Aug. 9.

*Simanadars—Chaukidari Chakran Land Act (Beng. VI of 1870) s. 1, whether applicable—Bengal District Gazetteer, reference to by High Court.*

The High Court is entitled to use the Bengal District Gazetteer as a book of reference.

The Chaukidari Chakran Land Act applies to *simanadars*, as the Gazetteer for Bankura shows that in thana Indas (where the lands in suit are situate) the *simanadars* perform those duties which are described in section 1 of the Act.

SECOND APPEAL by Lalu Dome and another, the plaintiffs.

The facts of this case are briefly as follow:—One Jadu Dome held certain lands in thana Indas in the Bankura District either as *simanadar* or *chaukidar*. These lands were resumed as *chaukidari chakran* lands and settled with Maharajadhiraj Bejoy Chand Mahatap Bahadur, the defendant No. 1. The sons of Jadu Dome then filed the present suit claiming, *first*, that as the lands were held as *simanadari* land the resumption proceedings were all bad in law and not binding on them; and, *secondly*, that in any case they were the persons with whom the lands on resumption should have been settled. The Munsif of Kotalpur

\* Appeal from Appellate Decree, No. 3144 of 1912, against the decree of L. Palit, District Judge of Bankura, dated Aug. 2, 1912, reversing the decree of Sita Nath Ghose, Munsif of Kotalpur, dated June 23, 1911.

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decreed the suit on 23rd June 1911, but the District Judge of Bankura on 2nd August 1912 allowed the appeal preferred by Moti Lal Raha, the defendant No. 2, observing, "Now the question as to whether the lands were *simanadari* or *chaukidari* does not appear to be of any importance. If they were *chaukidari chakran* land then admittedly they were resumed according to law. If, on the other hand, they were *simanadari* lands, then, as there is no special form prescribed by law for the resumption of *simanadari* lands and for dispensing with the services of the *simanadar*, the fact remains that Jadu Dome's services as *simanadar* were dispensed with and the lands were resumed, it making no difference that in so dispensing with his services and in resuming the lands he was called a *chaukidar*. If such dispensing with his services and such resumption of the lands were wrongful or illegal, then Jadu Dome himself might have had a cause of action for wrongful dismissal and his sons would acquire no right of action thereby." The plaintiffs thereupon preferred this appeal to the High Court.

*Babu Baidyanath Dutt and Babu Bhupendra K. Ghose*, for the appellants.

*Babu Basantu Kumar Bose, Babu Shorashi Charan Mitra, Babu Bipin Behari Ghose and Babu Satyendra Nath Roy*, for the respondents.

JENKINS C.J. AND HOLMWOOD J. Two points arise in this appeal. One is as to the location and identity of the parcels. On that there has been a finding of fact by the lower Appellate Court on an issue sent down which is conclusive against the present appellants and there is no ground on which we can interfere.

It is contended, however, that the land in suit is *simanadari* land and not *chaukidari chakran* land, and therefore it is said, Beng. Act VI of 1870 does not apply. The learned vakils who appear before us are agreed on this that if the Act does not apply then the appellants are entitled to succeed, and if the Act applies then the appellants must fail. Now, the words "*chaukidari chakran* lands" by the express provisions of the Act mean lands "which may have been assigned, otherwise than under a temporary settlement, for the maintenance of the officer who may have been bound to keep watch in any village and report crime to the police and in respect to which such officer may be at the time of the passing of this Act liable to render service to a zemindar." Whether this land was *simanadari* or *chaukidari chakran* was left undecided by the lower Appellate Court. This, we think, is to be regretted. But we have the authority of the Bengal District Gazetteer for Bankura that "in thanas Indas and Kotalpur, there are a body of men called *simanadars*, who perform the duties of *chaukidars*. They have grants of lands in lieu of wages; but in some instances these service lands have been resumed under Act VI of 1870." We are entitled to use this book of reference for the purpose of seeing what the duties of *simanadars* are. That is to say, whether their duties correspond with those of which description is given in section 1 of the *Chaukidari Chakran Land Act*. What is stated in the Gazetteer shows that in thana Indas which is the thana with which we are concerned in this case the *simanadars* perform those duties which are described in section 1 of the Act. If they perform those duties it does not matter in the slightest what they may be called. The definition requires that the duties should be of a particular character. That being so, we must hold that Act VI of 1870

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applies. It perhaps may seem a hard case on the appellants before us, but there is no escape from it. Certainly there is no escape from it in the suggestion of occupancy right. It is made for the first time in this Court.

We must, therefore, dismiss the appeal with costs.

G. S.

*Appeal dismissed.*

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### APPELLATE CIVIL.

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*Before Mookerjee and Newbould JJ.*

1915  
 Aug. 11.

NIKUNJA RANI CHOWDHURANI

v.

SECRETARY OF STATE FOR INDIA.\*

*Penalty—Court Fees Act (VII of 1870) s. 19 E—Scope of the section—Suit to recover penalty by Secretary of State, maintainability of—Decision of Revenue authority—Jurisdiction of Civil Court.*

Unless there is a statutory bar, a suit is maintainable by the Secretary of State for India in Council for recovery of a penalty lawfully imposed.

A Civil Court has no jurisdiction to review the decision of a Revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised. But the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute. If the action of the Revenue authority is *ultra vires*, if he has not followed the procedure prescribed by the statute which is the source of his authority, there is no enforceable claim which a Civil Court is bound to recognize.

*Manekji v. Secretary of State for India* (1) followed.

\* Appeal from Appellate Decree, No. 637 of 1912, against the decree of A. R. Edwards, Additional District Judge of Faridpur, dated Feb. 8, 1912, affirming the decree of Behari Lal Chatterjee, offg. Subordinate Judge of Faridpur, dated Aug. 9, 1910.

(1) (1896) Bom. P. J. 529.