LETTERS PATENT APPEAL.

Before Mookerjee and Cuming JJ.

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March 1.

PROTAP CHANDRA JANA.

v.

THE SECRETARY OF STATE FOR INDIA.*

Record of Rights—Bengal Tenancy Act (VIII of 1885) s. 104 J.—Effect of an entry in the finally published record-of-rights—The rent shown in that entry if conclusive—Public Demands Recovery Act (Beng. III of 1913) s. 4.

In the finally published record-of-rights of lands which had been surveyed under Part II, Chapter X, of the Bengal Tenancy Act there was an entry to the effect that the rent payable by the tenant was Rs. 25-7 a year. The final publication was in 1910 and the rent stated in the record-of-rights was accepted the next year. It was subsequently discovered that the rent of the tenancy was much higher than Rs. 25-7 which entry was a mistake. In May 1915 Government realised the sum of Rs. 54-15-3 by the issue of a certificate under section 4 of the Public Demands Recovery Act, 1913. In December 1915 a supplementary certificate was issued for Rs. 220-6-3 which the tenant paid under protest only when the land was brought to sale in execution of the certificate.

He subsequently brought this suit to have it declared that the rent of the tenancy was Rs. 25-7, as entered in the record-of-rights and for recovery of the money paid under protest.

Held (reversing the decision of Mr. Justice Shams-ul-Huda), that the entry in the finally published record-of-rights was conclusive as regards rent under section 104 J of the Bengal Tenancy Act.

Baikuntha v. *Prasanna* (1), *Prafulla* v. *Palku* (2), and other cases followed.

Held, further, that the revenue authorities not having availed themselves of the normal procedure of rectifying the mistake could not be permitted to re-open the matter in a different forum by way of defence to an action instituted by the tenant.

* Letters Patent Appeal, No. 7 of 1921, in Appeal from Appellate Decree No. 1727 of 1920.

(1) (1918) 23. C. W. N. 516. (2) (1919) 23. C. W. N. 860.

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It was also *held*, that the issue of a supplemental certificate was *ultra vires*, as the principle involved in O. II, r. 2, of the Civil Procedure Code was applicable to the revenue authorities issuing a certificate.

Madho Prakash v. *Murli Monohar* (1), *Adhirani Narayan* v. *Raghu Mahapatra* (2), relied on.

Held, also, that ss. 35 and 37 of the Public Demands Recovery Act were no bar to the present suit.

Reajuddin v. *Shahanatulla* (3), *Dhiraj Chandra* v. *Hari Dasi* (4), referred to.

APPEAL by Protap Chandra Jana, the plaintiff. It came up for hearing before Mr. Justice Shams-ul-Huda sitting singly. His Lordship dismissed the appeal and affirmed the decree of the Subordinate Judge.

The judgment of Shams-ul-Huda J. was as follows:

SHAMS-UL-HUDA J. This appeal arises out of a suit brought against the Secretary of State by the plaintiff-appellant who is a tenant in a Government Khas Mehal for a declaration that certain certificates issued against him at the instance of the Secretary of State under the Public Demands Recovery Act were *ultra vires* and for refund of the amount recovered under those certificates. The plaintiff states that he holds a *jama* under the defendant the Secretary of State in Council on a rental of Rs. 25-7. That this rent was settled under Chapter X, Part II, of the Bengal Tenancy Act and in the record-of-rights finally published this rent was entered as the rent of the plaintiff's *jama*. That the Secretary of State accepted rent amicably from the plaintiff at that rate for the year 1318 and that he also recovered rent at the same rate of the years 1319-1322. That subsequently by issue of other certificates the defendant recovered an additional amount of Rs. 229 odd for the years 1319-1322 and a sum of Rs. 35 odd for the year 1323. This was done because the defendant claimed that the rent was Rs. 56-8 per annum for the first five years of the settlement and Rs. 85 thereafter and not Rs. 25-7 as alleged by the plaintiff; that it was by a mistake that the rent was recovered at a lower rate and the supplementary certificates were issued to recover the difference between the amount due and the amount already recovered.

It appears that under the finally published record under section 104J the rent was entered at the original rate of Rs. 25-7 but the case for

(1) (1883) I. L. R. 5 All. 406.
(2) (1885) I. L. R. 12 Calc. 50.
(3) (1920) 60 I. C. 759.
(4) (1914) I. L. R. 42. Calc. 765; L. R. 42. I. A. 58.

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Secretary of State is that the original rent Rs. 25-7 was enhanced by the Settlement Officer in the manner indicated above and that it was only the result of a clerical mistake that the rent so settled was omitted in the copies of the record in the office of the Khas Mehal Manager and it was on account of this mistake that the rent was first realised at the original rate. There can be no doubt that the rent actually settled was at the higher rates alleged by the Secretary of State, but it was never incorporated in the record-of-rights published. It is contended by the learned Vakil for the appellant that the record-of-rights not having been as yet corrected by any officer competent to do so it is not open to the Secretary of State to recover rent at the higher rate. The learned Vakil relies on the provision of section 104J and contends that the entry in the record was conclusive ; that the Khas Mehal Tahsildar was not competent to correct the record and that the only person who could correct it was the Settlement Officer and that no correction has been made. That even if the Khas Mehal Tahsildar did amend the record at all which the plaintiff denies, such amendment was of no legal effect and should not have been made without notice to the plaintiff.

The first Court decreed the plaintiff's suit but on appeal the decree was reversed. Hence this appeal by the plaintiff.

It is next argued that the supplementary certificate was without jurisdiction as there is no provision for the issue of a supplementary certificate in the Public Demands Recovery Act.

In support of the contention that an entry in the finally published record under section 104J is conclusive the learned Vakil relies on two cases reported in 23 C. W. Notes pp. 860 and 516. If the entry in the finally published record in this case had come properly within the provisions of section 104J this contention of the appellant might have prevailed but it seems to me that that section only applies to cases where the rent settled is entered in a record-of-rights finally published and not to a case like this where the rent settled is not entered in the finally published record, but a rent different from that settled is entered in the record. This contention must therefore fail.

If therefore, the rent finally entered is not conclusive and binding, the question whether the clerical error was or was not properly corrected is of little or no importance.

As regards the authority to issue a fresh certificate for the unrealised balance I can see no reasons for holding that such a certificate is not legal. The amount unrealised by mistake is included in the definition of a public demand and a certificate for realising this amount was in my opinion authorised by the Public Demands Recovery Act.

There is no provision in the Public Demands Recovery Act corresponding to O. II, r. 2, of the Civil Procedure Code, and therefore there is nothing

in the law to prevent the recovery by the issue of a certificate of any money that was left unrealised from the plaintiff on account of a mistake committed by the Khas Mehal Manager.

In my opinion the appeal fails and must be dismissed but without costs.

The Rule No. S 139 of 1920 is also discharged but without costs.

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The plaintiff then appealed under clause 15 of the Letters Patent which came up for hearing before Mookerjee and Cuming JJ.

Mr. S. C. Maiti and *Babu Apurba Charan Mukherjee*, for the appellant.

Babu Dwarka Nath Chakravarti and *Babu Surendra Nath Guha*, for the respondent.

Cur. Adv. vult.

MOOKERJEE J. This is an appeal under clause 15 of the Letters Patent from the judgment of Mr. Justice Huda in a suit for a declaration that a certificate issued under the Public Demands Recovery Act, 1913, was *ultra vires*, for refund of the amount recovered thereunder, and for a permanent injunction to restrain the Secretary of State for India from the issue of similar certificates in future. The Court of first instance decreed the suit. On appeal the Subordinate Judge dismissed the suit. On second appeal to this Court, Mr. Justice Huda confirmed this decision. We are now invited to hold that the suit had been rightly decreed by the trial Court, as the proceedings of the revenue authorities were without jurisdiction.

The facts material for the determination of the question in controversy may be briefly outlined. The plaintiff holds a tenancy under the Secretary of State for India within a temporarily settled area. The land was surveyed and the rent was settled under Part II of Chapter X of the Bengal Tenancy Act, and the

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record-of-rights, which was finally published on the 31st May 1910, contained an entry to the effect that the rent payable by the defendant was Rs. 25-7 a year. Rent appears to have been realised at this rate for the year following the publication of the record. On the 31st May 1915, a certificate was made under section 4 of the Public Demands Recovery Act, 1913, for a sum of Rs. 54-15-3. The certificate set out the details which showed that, calculated at the rate of Rs. 25-7 per annum, the amount in arrears for the Bengali years 1320, 1321 and 1322 amounted to Rs. 54-15-3. Subsequently, on the 4th December 1915, another certificate was made for Rs. 220-6-3. This certificate also set out details which showed that, calculated at the rate of Rs. 85 a year, a sum of Rs. 220-6-3 was due in respect of the years 1319, 1320, 1321 and 1322, after deduction of the amount covered by the previous certificate and amicably paid. The revenue authorities proceeded to sell the tenure in execution of the second certificate, with the result that the plaintiff was compelled to deposit the amount claimed and thereby to avert the sale. On the 23rd February 1918, the plaintiff commenced this litigation on the allegation that the issue of the supplementary certificate and the institution of proceedings for enforcement thereof were without jurisdiction. On behalf of the Secretary of State, the suit was defended on the ground that the entry in the record-of-rights was erroneous, that rent had been settled at Rs. 85 a year in a dispute case on the 27th March 1909, and that this was overlooked when the record was finally prepared and published. Two questions thereupon emerged for consideration, namely, first, whether it was competent to the Secretary of State to raise the question of the accuracy of the entry in the record of-rights, and secondly, if the question of

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correctness of the entry was open for consideration, whether it was competent to the revenue authorities to make a supplemental certificate for the period covered by the first certificate. The Courts below have expressed divergent opinions upon these points.

As regards the first question, the plaintiff maintains that section 104J of the Bengal Tenancy Act raises an irrebuttable presumption in favour of the entry in the record-of-rights. This section provides that, subject to the provision of section 104H, all rents settled under sections 104 to 104F and entered in a record-of-rights finally published under section 104A or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of the Bengal Tenancy Act. The effect of this provision is that when a settlement of rent has been made under Part II of Chapter X, no evidence is admissible to prove that rent is payable at a rate different from that entered in the rent-roll. Section 103B which finds a place in Part I does not operate to modify the effect of section 104J which finds a place in Part II. The substance of the matter is that the entry in the record-of-rights is conclusive, unless altered by means of a suit instituted under section 104H, sub-section (2), within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a revenue authority under section 104G, then within six months from the date of the disposal of such appeal. The expression "deemed to have been correctly settled" would be meaningless, if the entry raised only a rebuttable presumption. The view we take is in accord with that adopted in *Ambika Charan v. Joy Chandra* (1), *Prasanno* v. *Rachimuddin* (2),

(1) (1908) 13 C. W. N. 210. (2) (1912) 17 C. W. N. 153.

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Baikuntha Nath v. *Prasanna Kumar* (1), *Rajani Kanta Ghose* v. *Secretary of State for India* (2), *Prafulla* v. *Palku* (3). In the case before us, the time for the institution of a suit under section 104 H, sub-section (*2*), expired on the 30th November 1910. On the other hand, the time for an appeal to the Superior Revenue Authority expired on the 31st July 1910, and the period prescribed for possible revision by the Board of Revenue terminated on the 31st May 1912. The revenue authorities have not availed themselves of the normal procedure; they cannot now be permitted to reopen the matter and reagitate the question in a different forum by way of defence to an action which the tenant has been obliged to institute by reason of the seizure of his properties by summary process. The record-of-rights finally published on the 31st May 1910, has never been amended, and the time prescribed for amendment has elapsed. It appears that in 1915, after the issue of the first certificate, some revenue officer discovered the inconsistency between the decision of the Settlement Officer in the dispute case dated the 27th March 1909, and the entry in the record-of-rights finally published on the 31st May 1910. He then proceeded to correct the copy of the record-of-rights which was in his custody, and this was made the basis for the issue of the supplemental certificate. The procedure was manifestly unauthorised. The original record has never been and can no longer be amended in accordance with law. There was thus no foundation for the issue of the supplemental certificate, and the entry in the record-of-rights must be deemed conclusive between the Secretary of State and the tenant.

(1) (1918) 23, C. W. N. 516. (2) (1918) I. L. R. 46 Calc. 90.
(3) (1919) 23 C. W. N. 860.

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As regards the second question, the plaintiff maintains that even if it be assumed that the revenue authorities are at liberty to establish now the inaccuracy of the entry in the record-of-rights, it is not open to them to issue a supplemental certificate for the period covered by the certificate previously issued. We are of opinion that this contention is of considerable force. Section 4 of the Public Demands Recovery Act, 1913, provides that when the certificate officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate, in the prescribed form and stating that the demand is due, and shall cause the certificate to be filed in his office. It is plain that the certificate so filed is intended to cover the entire demand due at the time. The "public demand", mentioned in section 4 and defined in section 3, clause 6 read with clause 7 of Schedule 1, includes a demand payable to the Collector by a person holding any interest in land, when such demand is a condition of the use and enjoyment of the land. We are of opinion that section 4 should not be so interpreted as to authorise the issue of more than one certificate in the prescribed form (Appendix form 1) with regard to a single demand broken up into fragments. Such an interpretation would violate the cardinal rule for the avoidance of multiplicity of proceedings. That rule is recognised by the Legislature in Order II, rule 2, of the Civil Procedure Code, 1908, which requires that every suit shall include the whole of the claim which a plaintiff is entitled to make in respect of the cause of action, with the necessary corollary that where the plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, he cannot afterwards sue in respect of the portion so omitted or relinquished. This principle has been held applicable to proceedings

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in Revenue Courts for recovery of arrears of rent; see *Madho Prokas* v. *Murli Manohar* (1) and *Adhirani Narayan Kumari* v. *Raghu Mahapatra* (2). As pointed out by the Judicial Committee in *Buzloor Rahim* v. *Shamsoonnessa* (3), the doctrine applies to cases not merely of deliberate relinquishment, but also of accidental or involuntary omission. From this standpoint, the issue of the supplemental certificate was entirely unauthorised.

As a last resort, it has been urged that section 37 read with section 35 of the Public Demands Recovery Act which specifies the grounds for cancellation or modification of a certificate by the Civil Court bars the present suit. There is plainly no foundation for this contention. The action of the revenue authorities was wholly unauthorised, constituting a colourable exercise and consequently a flagrant abuse of the provisions of the Statute. In such circumstances, section 37 does not oust the jurisdiction of the Civil Court to make a declaration, to issue an injunction or otherwise to grant adequate relief: *Reajuddin* v. *Shahanutulla* (4), *Dhiraj Chandra* v. *Haridas* (5).

The result is that this appeal is allowed, the judgment of Mr. Justice Huda in affirmance of that of the Subordinate Judge is set aside, and the decree of the primary Court is restored with costs throughout.

CUMING J. concurred.

Appeal allowed.

S. M. M.

(1) (1883) I. L. R. 5 All. 406.
(2) (1885) I. L. R. 12 Calc. 50.
(3) (1867) 11 Moo. I. A. 551, 605.
(4) (1920) 60 I. C. 759.
(5) (1914) I. L. R. 42 Calc. 765; L. R. 42 I. A. 58.