years before the institution of the suit. I do not think that it is necessary to find anything further.

The result is this appeal must fail and is dismissed with costs.

MALLIK J. I agree.

G.S. *Appeal dismissed.*

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SATI PRASAD GARGA v. GOBINDA CHANDRA SHEE.

CUMING J.

PRIVY COUNCIL.

KRISHNA PRAMADA DASI

v.

DHIRENDRA NATH GHOSH.

P. C.*

1928

Oct. 23, 25, 26; Dec. 3.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

*Sale for arrears of revenue—Permanently settled estate—Adverse possession as to part of estate—Rights of purchaser—Estoppel—Party to partition claiming land decreed to another party—Evidence—*Thak *statements—Bengal Land Revenue Sales Act (XI of 1859), s. 37—Transfer of Property Act (IV of 1882), s. 43.*

The executors of a deceased Hindu sued the widow of his brother for possession of land which the decree in a partition suit of 1899 had allotted to her, other family properties being thereby allotted to the brother since deceased. In 1908, he purchased a permanently settled estate at a sale under Act XI of 1859 for arrears of revenue. The evidence showed that the land in suit had formed part of that estate at the permanent settlement, though by adverse possession it had become the property of the joint family, and had been so partitioned.

Held that, as there had been no separate assessment of the land in suit, it remained liable to be sold under section 37 of the Land Revenue Sales Act, 1859, for arrears of revenue on the whole estate, and that the fact that it had been allotted to the widow by the partition decree did not estop the executors from claiming it by virtue of the purchase; it was not shown that, at the time of the partition, the brother since deceased had made any representation to the widow so as to bring section 43 of the Transfer of Property Act, 1882, into operation.

Surja Kanta Acharjya v. *Sarat Chandra Roy Chowdhuri* (1) followed.

Muhammad Wali Khan v. *Muhammad Mohi-ud-din Khan* (2) distinguished.

Held, further, that in determining whether the land in suit had formed part of the permanently settled estate at the permanent settlement *thak* statements were admissible and of evidentiary value.

Jagdeo Narain Singh v. *Baldeo Singh* (3) explained.

Judgment of the High Court affirmed.

**Present:* Viscount Dunedin, Lord Shaw, Lord Blanesburgh and Sir John Wallis.

(1) (1914) 18 C. W. N. 1281.
(2) (1919) 24 C. W. N. 321.
(3) (1922) I. L. R. 2 Pat. 38, 46-7; L. R. 49 I. A. 399, 401.

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Appeal (No. 117 of 1927) by special leave from a decree of the High Court (November 13, 1925) affirming a decree of the Additional District Judge of Faridpur (February 12, 1923).

The suit was brought by the respondents, as legal representatives of Upendra Nath Ghosh, against the appellant, the widow of his brother, for possession of certain lands which had been allotted to the appellant by the decree in a partition suit of 1899 to which Upendra and his deceased brother were parties. The respondents' claim was by virtue of a purchase by Upendra in 1908 of a permanently-settled estate at a sale for arrears of revenue; they alleged that the lands in suit formed part of that estate and passed to the purchaser.

The Bengal Land Revenue Sales Act (XI of 1859), section 37 provides as follows: "The purchaser of "an entire estate in the permanently-settled districts "of Bengal, Bihar and Orissa, sold under this Act for "the recovery of arrears due on account of the same "shall acquire the estate free from all encumbrances "which may have been imposed upon it after the time "of settlement; ....."

The trial Judge decreed the suit, and his decision was affirmed on appeal by the High Court (Walmsley and Chakravarti JJ.).

Sir George Lowndes K. C. and *E. B. Raikes*, for the appellant.

Dunne K. C. and *Wallach*, for the respondents.

The arguments were mainly upon the facts. In addition to cases referred to in the judgment, reference was made to *Jagadindra Nath Roy* v. *Secretary of State for India* (1), as to the value of *thak* surveys as evidence.

The judgment of their Lordships was delivered by

SIR JOHN WALLIS. The facts of this case are somewhat unusual. The plaintiffs, as executors of the late Upendra Nath Ghosh, sue the defendant, Srimati

(1) (1902) I. L. R. 30 Calc. 291; L. R. 30 I. A. 44.

Krishna Pramada Dasi, his brother's widow, to recover certain lands which they claim formed part of a permanently settled estate described as *touji* 1240, which the deceased Upendra purchased at a revenue sale of this *touji* for arrears of land revenue in the year 1908.

In 1899, there had been a partition suit in the family of Upendra and of the defendant's deceased husband, and by the partition decree the immovable properties in schedule VI of the decree were allotted to Upendra and the immovable properties in schedule VIII were allotted to the present defendant as her husband's widow. It is common ground that the lands allotted to the widow included the lands claimed by the plaintiffs in this suit. The plaintiff's case is that at the time of permanent settlement they formed part of what is now *touji* 1240, and that even assuming, which he does not deny, that the owners of 1240 had lost their title to these lands by adverse possession and under the law of limitation that they had become the property of his own family and had been partitioned as such, they still remained liable for the rent or land revenue fixed on estate 1240 and were liable to be sold for failure to pay the land revenue fixed on this estate under section 37 of the Land Revenue Sales Act, 1859. The new owners might, if they had so desired, have had the portion of estate 1240 which had passed to them by adverse possession separately assessed to land revenue, but, as they had omitted to do so, it continued to form part of the security for the whole land revenue of estate 1240 and to be liable to be sold under the section already cited. In their Lordships' opinion this was clearly so, and has been so held by this Board in *Surja Kanta Acharjya* v. *Sarat Chandra Roy Chowdhuri* (1).

This being so, the substantial questions in this suit are, did the suit lands form part of estate No. 1240; and, if they did, did the fact that in a partition suit these lands had been allotted to the defendant as the

(1) (1914) 18 C. W. N. 1281.

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widow of Upendra's brother, Upendra himself receiving other properties as his share of the family property, estop his executors from enforcing against the defendant any title which he acquired to them as purchaser of estate 1240 at a revenue sale?

It was held by both the lower courts that the suit lands did form part of estate 1240 and that the plaintiffs as executors of the deceased Upendra were not estopped from suing for them.

The first question depends upon the proper inferences to be drawn from the revenue records which have been exhibited, consisting of registers, *thaks* or maps, and *thak* statements recorded when the *thaks* were made. The learned Judges of the High Court, Walmsley J., a member of the Indian Civil Service, and Chakravarti J., from their familiarity with the revenue system of Bengal, were necessarily in a better position than their Lordships are to draw the proper inferences from these records, and their Lordships would be very unwilling to interfere with their finding, affirming as it does the finding of the lower court, unless it were clearly made out that it was vitiated by some error of law.

It was argued that both the lower courts erred in acting on the *thak* statements, which were drawn up when the *thaks* or maps were made, and reference was made to a judgment this Board delivered by Mr. Ameer Ali in *Jagdeo Narain Singh* v. *Baldeo Singh* (2), in which it was observed that such statements had no evidentiary value. In their Lordships' opinion, it was not intended in that case to lay down that these statements could never have any evidentiary value, still less that they were inadmissible in evidence, but only that they were of no evidentiary value when, as in that case, they dealt with matter altogether outside the scope of the survey.

At the hearing of the appeal, the findings of the lower courts were only questioned with reference to the lands included in the first or *ka* schedule to the plaint. It is in their Lordships' opinion unnecessary

(2) (1922) I. L. R. 2 Pat. 38, 46-47; L. R. 49 I. A. 399, 407.

to review the evidence on which the courts below have arrived at a concurrent finding. The lands in dispute were known as Jenidhaha which was apparently the name of a village or hamlet. There was a good deal of evidence as to the way it had been dealt from the time of the permanent settlement, but it is sufficient to say that Jenidhaha is entered both in the defendant's estate, *touji* 659*l*, and in *touji* 1240, which was purchased by Upendra, in the general register of revenue-paying lands in estates borne on the revenue roll of the district of Faridpur, maintained under sections 6 and 7 of Bengal Act VII of 1876.

In their Lordships' opinion, these entries, which were based on the earlier revenue records, raise the inference that Jenidhaha was included both in estate 1240 and in the estate from which the defendant's estate 659*l* was separated when these estates were settled and the revenue fixed upon them. From these and other facts the lower courts have drawn the inference that at the time of the permanent settlement of these estates they each had a share in Jenidhaha, and that consequently it was included in the *toujis* of both estates, and that, in the absence of any evidence to the contrary, it must be presumed that each estate was entitled to a half share in Jenidhaha.

From this conclusion their Lordships see no reason to differ, especially as it appears to have been not uncommon to include the same *mouza* in two estates when each of them had an interest. It was contended before their Lordships that there were two Jenidhahas, one of which was included in each estate in it, but in their Lordships' opinion this is not in accordance with the evidence and would not appear to have been the case put forward in the courts below.

As regards the question of estoppel, the judgment of the Board in *Muhammad Wali Khan* v. *Muhammad Mohi-ud-din Khan* (1) was cited, but, in their Lordships' opinion, that case is clearly distinguishable. In

(1) (1919) 24 C. W. N. 321.

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that case two brothers, who were Mahomedans, referred it to arbitrators to divide the estate of their deceased father between them, ignoring the fact that their father's widow was entitled to a share in his estate. One of the brothers predeceased the widow, and the surviving brother, who was the heir to his mother's property, then sought to recover from his deceased brother's family half the share to which she should have succeeded on her husband's death. This, however, was not the footing on which the two brothers had gone to arbitration, and it was held by the Board that he could "not be allowed to come back and take as heir to his mother what was by his own act not allotted to her, but was divided between herself and his brother." That case has no resemblance to the present, in which lands belonging to the family were allotted to the defendant without regard to the fact that some of them were liable to be sold at a revenue sale for revenue due on another estate, a fact which was probably unknown to any member of the family. It really made no difference to the defendant whether they were purchased at the revenue sale by the plaintiffs or by a stranger.

Section 43 of the Transfer of Property Act was also referred to, but it has been held by the Subordinate Judge that it is not shown that Upendra made any representation to the defendant, and, therefore, there is no room for the operation of the section. This question of estoppel does not appear to have been pressed in the High Court, as it is not referred to in the judgment.

In their Lordships' opinion this appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

Solicitors for appellant: *Watkins & Hunter.*

Solicitors for respondents: *W. W. Box & Co.*

A. M. T.