

and possessed by the plaintiffs; that the brahmutter right to the lands alleged by the defendants and their possession thereunder were false.

The defendants in their written statement alleged, that, previous to the resumption of Parganna Barodakhat by the Government, the then owner of the property, Mahomed Ibrahim Khan, had, so far back as the year 1763, by a sanad conferred certain lands, including the lands in dispute (at that time covered with water), upon one Ram Shama Bhuttacharji, the defendants' maternal grandfather, as his brahmutter lakiraj lands; that the latter had, in turn, in the year 1765, made a gift of the lands to Krishna Chunder Bhuttacharji, the father of the first two defendants; that, on the death of the former, the defendants had entered into possession of the property; that some of these lands having become fit for cultivation had, for the last twenty to twenty-five years, been so cultivated, either by the defendants themselves, or through tenants; that the suit is barred by limitation. In support of their contention, the defendants put in evidence the brahmutter sanad alluded to in the proceedings.

The Court of first instance held, that the brahmutter potta was genuine, it being more than thirty years old, and produced from proper custody; and it being further satisfied that the defendants had held possession of the lands in dispute, and had cultivated them either themselves or through tenants for twenty years, dismissed the plaintiffs' suit.

The lower Appellate Court found that the lands had only been in a cultivable state for the past five or six years, and therefore reversed the finding of the Munsif that the defendants had been in possession of the lands in suit for upwards of twenty years. For the reasons which will be found quoted in the judgment of the High Court, the lower Appellate Court was, however, of opinion, that the brahmutter potta was a genuine document, and thereupon affirmed the decision of the Court below. The plaintiffs appealed to the High Court.

Mr. *Branson* and Baboo *Bussunt Oommar Bose* for the appellants.

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GUDADHUR  
PAUL  
CROWDERY  
v.  
BRYRUS  
CHUNDER  
BHUTTA-  
CHARJI.

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Baboo *Nullit Chunder Sen* for the respondents.

GUDADHUR  
PAUL  
CHOWDERY  
v.  
BHURUB  
CHUNDER  
BHUTTA-  
CHARRI.

The judgment of the Court (JACKSON and TOTTENHAM, JJ.) was delivered by

JACKSON, J. (who, after stating the facts of the case, proceeded as follows):—The grant was of great antiquity, and could not be regularly proved. It was therefore necessary to consider very carefully whether it came from proper custody, whether it had on any occasion seen the light before, and whether the previous circumstances were consistent with the fact of their having such grant; and upon the estimate of the evidence in this point of view, the Judge's judgment appears to us to be open to objection. The District Judge does not admit the reasons given by the Munsif for believing in the genuineness of this grant, and it is impossible to conceive that he could have approved of them. They appear, indeed, to be puerile. The defendants felt the necessity of showing that this document had seen the light before, and it was therefore stated that it had been produced on some former occasion in the office of the Collector of Tipperah. On that the Judge says:—"It is, however, quite clear that it was filed in the Court of the Collector of Tipperah, and the legal presumption is in favor of its having been filed for a proper purpose. A certified copy was taken of it, and it is absurd to require the defendants to prove with what object it was filed, the legal presumption being in their favor." We are quite unable to acquiesce in this view of the legal presumption. The presumption spoken of probably is, that which applies to proceedings of Courts, and even if we assume that the presumption applies equally to the proceedings of a Collector's office, it has no application whatever to the conduct of a person who puts in a document in that office and causes a certified copy of it to be taken. It ought to appear, in order to serve the defendants' purpose, that this grant had been filed in the Collector's office in order to the adjudication of some question of which the Collector had cognizance, and that had come under the cognizance of the Collector. Then, as to the conduct of the respondents, the Judge, in considering how far that was consistent, merely as evidence, with the possession

of the grant, deals with it as if it had the effect of an estoppel, and finding that it did not work as an estoppel, he does not take any further notice of it. These appear to us to be serious errors in the decision, and considering that the Judge altogether disagreed with the finding of the Munsif as to the question of possession by cultivation for a period of thirty years or, at least, more than twelve years, it seems to us evident that the Judge had not correctly appreciated the importance of the inquiry on this point to the plaintiffs. We think, therefore, that the judgment of the lower Appellate Court should be set aside, and the case must go back to the lower Appellate Court for a proper trial, after careful consideration of the observations that I have made. The costs of this appeal will follow the result.

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GUDABHUR  
PAUL  
CHOWDHRY  
&  
BHYRUB  
CHUNDER  
BHUTTA-  
CHARJI.

*Appeal allowed and case remanded.*

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Maclagan.*

HURMUZI BEGUM AND OTHERS (DEFENDANTS) v. HIRDAYNARAIN  
AND OTHERS (PLAINTIFFS).\*

1880

*March 4.*

*Malikana, Suit for—Limitation Act (XV of 1877), sched. ii, art. 132.*

Malikana is an annual recurring charge on immovable property, and may be sued for within twelve years from the time when the money sued for becomes due.

THE plaintiff, the purchaser of a seven-anna share of the malikana rights in a certain mouza, on the 23rd February 1878 sued the defendants, the purchasers of the remaining nine annas share of the malikana, to recover from them the malikana due on his seven annas share for the years 1281 to 1284 F. S. (1873 to 1877), (the malikana of the whole sixteen annas, as far as could be collected from the plaint, having been collected by the defendants.) The defendants pleaded limitation, contending that

\* Appeal from Appellate Decrees Nos. 43 and 70 of 1879, and appeal from Orders Nos. 6 and 7 of 1879, against the decree of Baboo Bolae Chand, Officiating Second Subordinate Judge of Bhagalpore, dated the 14th of September 1878, affirming the decree of G. C. Lewis, Esq., Munsif of Monghyr, dated the 22nd May 1878.