

count. Were it otherwise, it would be competent to a plaintiff in such a case to defer the operation of the Act of Limitation indefinitely by making a fresh arrangement with the lender of the money, to which arrangement the defendant is no party, and of which he has no notice. This view of the law accords with the decision of this Court in the case of *Ramkrishno Roy v. Muddun Gopal Roy* (1).

With regard to the other point, although property in the hands of the managing members of a joint Hindu family may in most cases be presumed to be the property of the family and not of the individual manager, it does not follow that a debt contracted by the manager in his own name is presumably contracted on behalf of the family. The condition of a Hindu family is *prima facie* joint, and consequently the property is *prima facie* joint in the hands of whoever among the members of the family happens to manage and possess it, but there is nothing to prevent the individual manager contracting a debt upon his own account.

The decision of the Court below is reversed, and the suit dismissed with all costs.

Appeal allowed.

Before Mr. Justice Mitter and Mr. Justice Tottenham.

BEPIN BEHARI SINGH (PLAINTIFF) *v.* THE GOVERNMENT
(DEFENDANT).*

1879
May 29.

Suit to recover Arrears of Rent paid to Government under Certificate—Cause of Action.

At the time when a zemindari came under the khas management of a Settlement Officer, arrears of rent were due by the plaintiff to the zemindar. The Settlement Officer issued a certificate against the plaintiff under s. 19 of Beng. Act VII of 1868, requiring him to pay these arrears. The plaintiff at first objected, but subsequently withdrew his objection and paid a portion of the money into Court, and presented a petition stating that the amount paid in was partly due to the Government, and asking that his property might

* Appeal from Appellate Decree, No. 1836 of 1878, against the decree of W. Cornell, Esq., Judge of Midnapore, dated the 11th of July 1878, reversing the decree of Baboo Raj Chunder Sanyal, Munsif of Tumlook, dated the 26th of February 1877.

1879 be released from attachment. On payment of the balance claimed under the certificate and costs, the certificate was discharged.

BEPIN BHAI SINGH *Held*, that a suit to recover the amount paid to Government brought on the ground that that amount was really payable to the zemindar, would not lie.

THE GOVERNMENT. *Query.*—Whether such a suit would lie if the plaintiff were compelled to pay again to the zemindar?

THIS was a suit to recover the sum of Rs. 710-0-3 realized from the plaintiff by a Settlement Officer exercising the powers of a Collector, under a certificate issued against the plaintiff by that officer under Beng. Act VII of 1868, s. 19. It appeared that, in the year 1875, a certain zemindari was placed under the khas management of a Settlement Officer, and that a lease to the plaintiff of the mehal had been cancelled. Certain arrears of rent were then due from the plaintiff to the zemindar. A certificate was issued against the plaintiff by the Settlement Officer under s. 19 of Beng. Act VII of 1868, and on the 17th of May 1875 a notice of the certificate was served on the plaintiff under s. 21 of that Act, intimating that the sum of Rs. 694-1-5½ was due from him as rent for the current and passed years, and that the same would be realized in the manner provided by the Act,—that is to say, by the attachment and sale of the property. The plaintiff appeared and objected to the claim, and the Settlement Officer referred the matter to a subordinate, before whom the plaintiff appeared and stated that he would not prosecute his objections. On the 5th August 1875, the plaintiff deposited Rs. 635-7-0 in Court, and on the 30th of August presented a petition to the Settlement Officer, stating that this sum, which was partly due to the Government, had been deposited by him in Court, and praying that the money in deposit might be drawn from the treasury, the sale of the properties stayed, and that they might be released from attachment. On this the remainder of the money specified in the notice, together with the costs necessary for drawing the money from the treasury, was required from the plaintiff, who accordingly paid Rs. 74-9-3 to the Settlement Officer, when the certificate was discharged. The plaintiff now sued to recover the sum paid by him, upon the ground that the rent was due, not to the Government but to the zemindar, and that he had been

compelled to pay, through fear of having his property sold. The Munsif considered that the plaintiff was entitled to recover the sum of Rs. 710, *minus* a sum of Rs. 51-13-0 for rent which accrued due after the zemindari came under the direct management of the Collector, and gave the plaintiff a decree for Rs. 658-3-0. On appeal, the District Judge reversed the decision of the Munsif, and dismissed the suit with costs. The plaintiff appealed to the High Court.

1879
 BEPIN BHAIARI
 SINGH
 v.
 THE GOVERN-
 MENT.

Baboo Mohesh Chunder Chowdhry and Baboo Taruck Nath Sen for the appellant.

Baboo Unnoda Pershad Bannerjee for the respondent.

MITTER, J.—In this case the Munsif awarded a partial decree in favor of the plaintiff, but on appeal the District Judge has reversed the judgment of the Munsif, and has wholly dismissed the plaintiff's suit.

The decision of the District Judge is based upon two grounds:—In the first place, he is of opinion that, after the lease to the proprietor of the mehal had been cancelled, and the zemindari had been brought under khas management, the Collector had the right to recover the arrears which were due to the proprietor whose lease was cancelled. The second ground upon which the District Judge has dismissed the plaintiff's claim is, that as regards the claim for Rs. 635, the plaintiff has no cause of action, and that the balance was justly recovered by the Government from the plaintiff under a certificate.

As regards the first ground of the decision of the lower Appellate Court, we do not think that it is necessary in this case to express any opinion. But we are of opinion that, having regard to the facts found by both the Courts below, the plaintiff cannot maintain this suit to recover back the money which has been paid by him. It appears that the whole of the amount, which has been paid by the plaintiff, is due, either to the Government, or to the proprietor whose engagement had been cancelled. It also appears that the Revenue Officer, who was managing this khas mehal, after the cancellation of the afore-

1879
 BEHIN BEHARI
 SINGH
 v.
 THE GOVERN-
 MENT.

said lease, issued a certificate to recover the money which is involved in this suit. The plaintiff appeared and objected to the claim made under that certificate. The Revenue Officer to whom this objection was made, referred the matter for enquiry to a subordinate revenue officer. Upon that the plaintiff appeared before this latter officer, and stated that he would not prosecute his objections. After thus waiving all objections to the proceedings of the Revenue Officer, the plaintiff deposited a portion of the amount sought to be recovered under this certificate in the Munsif's Court in favor of the Government, and that amount was drawn by Government after it was so deposited. The balance of the money due under this certificate was paid by the plaintiff direct to the Officer who issued the certificate in question.

It appears to us that, under these circumstances, it cannot be said that the plaintiff has been in any way endamaged, or has sustained any injury. The amount recovered from him is admittedly due from him as rent. He was in doubt whether it was recoverable by the proprietor whose lease had been cancelled, or by Government. It is also evident that Government had to receive from that proprietor the revenue which he had defaulted to pay, and which default was followed by the cancellation of the lease. In this state of things the plaintiff, being under the impression that the amount in question was justly recoverable by Government, paid in the money. Under these circumstances, the plaintiff is not equitably entitled to recover this amount from Government, simply on the ground that it was not due to Government, but to the proprietor whose lease had been cancelled. If he be compelled to pay it again to the latter, it may be that he would be entitled to be reimbursed by Government. But it is not necessary to express any decisive opinion upon that point, as he has not been compelled to pay it twice over.

We are of opinion that the judgment of the District Judge, that upon the facts proved the plaintiff has no cause of action against the Government is correct in law; and we accordingly dismiss the appeal with costs.

Appeal dismissed.