

contained shall affect or alter the period so prescribed,"—that is to say, the time within which the suit is to be brought remains unaffected by the Act of 1877. But nothing forbids the application of the other provisions, and specially of the provisions for computing the period of limitation contained in Part III of the new Act. The 6th section differs in this particular from the corresponding section of the old Act, which says—"nothing herein contained shall affect such law."

The intention of the Legislature to give to the persons suing the benefit of the rules contained in the present Act for computing the period within which a suit is to be brought is thus manifest. This suit, therefore, being brought on the first day after the Court reopened, was in time. The judgments of the Courts below, which dismissed the suit on the ground of limitation, are set aside, and the case is remanded to the Munsif's Court for trial on the other issues. The costs of this appeal will follow the result.

Case remanded.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

KALLIDA PERSHAD DUTT (ONE OF THE DEFENDANTS) v. RAM HARI CHUCKERBUTTY (PLAINTIFF).*

1879
May 6.

Suit for Possession—Limitation—Beng. Act (VIII of 1869), s. 27—Documents filed with the Record, but not proved.

Where a landlord does not himself directly take steps to interfere with the rights of cultivation of his tenants, but does so through other persons, whose acts he may, if it so pleases him, afterwards ignore, he is not in a position to set up a special plea of limitation under the Rent Law (*Beng. Act VIII of 1869, s. 27*).

Documents which have not been proved, but simply filed in accordance with a usage in the mofussil, should not be put up with the record. It is the duty of a Judge to pass over such documents as unproved, but it is also the duty of the pleader of the party, against whom they are intended to be used, to insist that they should not remain on the record at all.

* Appeal from Appellate Decree, No. 1826 of 1878, against the decree of H. Muspratt, Esq., Judge of Sylhet, dated the 9th July 1878, affirming the decree of Baboo Nilmadhub Samunto, First Sudder Munsif of that District, dated the 11th December 1876.

1879

KALLIDA
PERSHAD
DUTT
v.
RAM HARI
CHUCKER-
BUTTY.

THE plaintiff, one Ram Hari Chuckerbutty, brought this suit to recover possession of certain lands, which he alleged he had purchased from Ram Deb, a jotedar of the estate; but from which he had since been ousted by certain persons, to whom the proprietor of the estate had granted a lease.

It appeared that one Kallida Pershad Dutt was the proprietor of the estate, portions of which he let out to certain jotedars, on the understanding that their rents should not be enhanced, nor should they be ejected from their holdings; he being, however, at liberty to bring their jotes to sale on nonpayment of rent.

One of such jotedars, Ram Deb, in 1257 (1851) sold his jote to the plaintiff.

The defendants alleged that the owner of the estate had leased the lands to them; and that they were entitled to possession. On this contention, the Court ordered the proprietor of the estate to be made a defendant, allowing the plaint to be amended to suit the altered circumstances of the case, and fresh issues to be raised. The proprietor of the estate put in a written statement, denying the right of Ram Deb to sell or transfer his jote without his consent, and stating that Ram Deb had relinquished his holding in 1275 (1868), and that he had leased the jote to the defendants.

The Munsif decided the case in favor of the plaintiff. On appeal, the District Judge dismissed the plaintiff's suit, on the ground that the Munsif was wrong in allowing the plaintiff to vary his original plaint; and he, at the same time, refused to go into the merits of the case.

On appeal to the High Court, Mr. Justice Ainslie ordered that the case should be remanded to the lower Court, to be heard on all the issues of law and fact which were raised by the grounds of appeal below.

At the re-hearing the following were the issues:—

- (1.) Was the suit barred by limitation?
- (2.) Were the amendments in the plaint such as to affect the merits of the case between the plaintiff and defendant?
- (3.) Had Ram Deb, by any recognized custom, the power to transfer his mourasi jote?

(4.) Did the proprietor recognize the transfer ?

(5.) What was the value of the deed of relinquishment executed by Ram Deb.

On these issues, the District Judge held that the case did not fall within s. 27 of Act VIII of 1869, because the plaintiff did not assert that he was dispossessed by the person entitled to receive rent of the lands; and that, therefore, the plaintiff was entitled to bring his suit within twelve years from the date of dispossession; that the amendment of the plaint in no way affected the merits of the case; that the plaintiff had produced sufficient evidence to show that the jote was transferable; that the plaintiff had filed rent receipts signed by the proprietor of the land for the years 1257 to 1260 (1851 to 1854) and 1263 (1857), and although he had failed to secure the attendance of the people who wrote the receipts, on account of those persons being in the employment of the defendants, yet, inasmuch as he had used due diligence to procure the attendance of these people, he held that the receipts might be taken as secondary evidence for which primary evidence was not forthcoming; and that, therefore, the proprietor had recognized the transfer to the plaintiff by signing the receipt; that as to the deed of relinquishment said to have been given to the proprietor by Ram Deb, in 1275 (1868), such a document could have no effect, as Ram Deb at that time held no jote to relinquish; he, therefore, dismissed the appeal.

The defendant appealed to the High Court.

Baboo *Rajendronath Bose* for the appellant.

Baboo *Joygobind Shome* for the respondents.

The judgment of the Court was delivered by

AINSLIE, J. (BROUGHTON, J., concurring).—We think that the Judge is right in the view he took of the question of limitation.

The suit as framed was not one coming under the provisions of s. 27 of the Rent Law. The zemindar appears not to

1879

KALLIDA
PINGSHAD
DUTTv.
RAM HARI
CHUCKRABUTTY.

1879

KALLIDA
PRUSHAD
DUFFv.
RAM HARI
CHUCKHIBUTTY.

have come forward in his own name to interfere with the cultivation of one of his tenants, but to have proceeded by the agency of other persons, who now say he had given a lease without notice to the plaintiff. Where a landlord does not directly take steps to interfere with the rights of cultivation of his tenant, but does so through other persons, whose acts he may, if it so pleases him, afterwards ignore, he is not in a position to set up a special plea of limitation under the Rent Law.

The other questions to be considered in this case are, whether the Judge was right in treating this tenure as one which was transferable by sale, and in receiving the receipts put forward by the plaintiff as evidence in the case. It is unnecessary for us to go into the question of what tenures are transferable by sale without the consent of the zemindar, because we find that the Judge has confirmed the decision of the first Court, and from the judgment of the first Court it appears that there had been possession by the plaintiff under the alleged transfer for a period of twenty years without any interruption before the disturbance which has given rise to the present suit.

Under these circumstances it must be taken, that the transferability of this particular tenure has been recognized, and there being evidence of possession by the plaintiff within twelve years, the admissibility of the receipts is not material. Apparently the Judge ought not to have acted upon these receipts, nor indeed should they have formed part of the record, until proved in some way, as they were not admitted. Section 141 provides, that documents shall not be put up with the record until they are proved or admitted. This provision, no doubt, was not to be found in the former Code of Procedure, but the rule of practice was the same under that Code, and the declaration contained in the new Code has merely embodied that which was an established rule in the Courts before. But if it was the duty of the Judge to pass over these documents as unproved, it was equally the duty of the pleader of the party, against whom they were intended to be used, to insist that they should not remain on the record at all.

The appeal is dismissed with costs.

Appeal dismissed.