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some joint possession on behalf of the plaintiff, on the grounds, 1st, that he lived in the family house, though not in the same apartments with his cousin; 2ndly, that he obtained an allowance of some Rs. 90 either per mensem or per annum,—it does not clearly appear which. The first of these grounds does not appear to their Lordships to establish joint possession; the second goes some way to negative it.

The plaintiff has been excluded from his share, if he had one, of the family property, for more than twelve years, and he must have known of this exclusion. If so, the Statute of Limitations has run against him.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed, and the appellant must pay the costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Young, Jackson, & Beard.*

Solicitors for the respondent: Messrs. *Watkins & Lattey.*

APPELLATE CIVIL.

Before Mr. Justice Wilson and Mr. Justice Beverley.

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SARAT SUNDARI DABI AND OTHERS (PLAINTIFFS) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT.)*

Assessment of accreted lands—Act IX of 1847, *ss.* 6, 9—*Order of Board of Revenue when final under s.* 6 *of Act IX of* 1847.

The effect of the words "whose order thereupon shall be final" in s. 6 of Act IX of 1847, is, that where an assessment has been made under s. 6, which has been approved by the Board of Revenue, such assessment is final and cannot be called in question in a civil suit; but the fact of an assessment having been made is no bar to a suit raising the question, whether the Board of Revenue had jurisdiction under s. 6 of the Act to assess.

Act IX of 1847 applies to land re-formed on the site of a permanently settled estate.

THIS was a suit for a declaration that certain lands were a re-formation on the original site of the plaintiff's permanently-settled village of mouzah Boyrampore, and as such, not subject to Government assessment.

* Appeal from Original Decree No. 106 of 1884, against the decree of Baboo Pramatha Nath Mukerji, Rai Bahadur, Subordinate Judge of Rajshahye, dated the 18th of February 1884.

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The plaintiffs stated that they were jointly in possession as zemindars of certain mehals in Pergunnah Luskurpore, in which the mouzah in dispute was situate; that at the time when their predecessors were in possession of these mehals, a portion of the land of Mouzah Boyrampore had been submerged in the bed of the river Mohanunda; and that subsequently this land re-formed on its original site; that in 1849, at the time of the Government survey, this land was again partly submerged, and as a consequence the survey and thak measurements made in 1849 included only such portions of this mouzah as had re-formed; that subsequently to this survey the portion which had re-formed was again submerged, and did not commence to re-form till the year 1865 when a portion only of the mouzah re-formed. That at about the time whilst the land re-formed was in possession of the plaintiffs, Government made a dearah survey, and in 1871 settled in *ijarah* such of the land as had re-formed on its original site as excess land for a term of ten years under Act IX of 1847 with the plaintiff No. 1, and one Coomar Gopalendro, reserving to the other co-sharers, who refused to take settlement, *malikana*, as persons entitled to take settlement; that no remission of rent was allowed by Government for the land which had not re-formed, and that after the expiration of this settlement, they had held possession of this re-formed portion as *maliks* in zemindari right, and on the 10th February 1882 served notices on the Collector, under s. 424 of Act X of 1877, signifying their intention to bring a suit to enforce their rights to the land, the Government having attempted to exercise *khas* rights thereon.

The defendant contended that the land in question was not a re-formation on the original site of Mouzah Boyrampore; that at a dearah settlement in 1867-68, the disputed land was found to be excess land accreted to the plaintiffs' estate, and that it had been assessed with revenue under the sanction of the Board of Revenue, and that therefore under s. 9 of Act IX of 1847 the suit would not lie, and that under s. 6 of that Act the assessment was *final*, and not liable to be set aside by a Civil Court; it was further contended that the plaintiffs not having been in possession of these lands as zemindars within twelve years before suit, the suit was barred.

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The Subordinate Judge decided in favor of the defendant, deciding the contention as to the effect of s. 6 of Act IX. of 1847 in his favor, on the authority of the following cases: *Dewan Ramjewan Singh* v. *The Collector of Shahabad* (1); The *Collector of Moorshedabad* v. *Dhunput Singh* (2); *Narain Chunder* v. *Taylor* (3); and also holding s. 9 to be a bar to the suit.

The plaintiffs appealed to the High Court.

Baboo *Srinath Das* and Baboo *Kishorilal Sarkar* for the appellants.

The *Senior Government Pleader*, Baboo *Annoda Pershad Banerji*, for the respondent.

The judgment of the Court (WILSON and BEVERLEY, JJ.) was as follows:—

This was a suit brought by the plaintiffs to establish their zemindari right to certain lands as having re-formed on the original site of Mouzah Boyrampore or Boyamari within the plaintiffs' permanently settled mehals of Pergunnah Luskurpore, and to have it declared that the Government had no *khas* right in the said lands, and that they were not liable to a fresh assessment of land revenue.

The plaint alleges that Mouzah Boyrampore formerly comprised some 7,284 bighas, but that the greater part of these lands had diluviated at the time of the Revenue survey in 1849; that after that survey the whole of the lands disappeared, but that from 1865 portions began to be re-formed on the original site; that in 1868 the Government made a dearah survey of the lands thus formed, and on May 6th, 1871, settled them with two of the zemindars for a term of ten years "after maintaining the right of the proprietors;" and that since the expiry of that settlement the plaintiffs had been in possession as owners.

The plaint is inconsistent and indistinct. In one place it asserts that the Government was itself claiming the zemindari title to the lands in dispute, and in another that the Government had recognised the zemindari rights of the

(1) 14 B. L. R. 221 note; 18 W. R., 64.
(2) 15 B. L. R. 49; 23 W. R., 38.
(3) I. L. R., 4 Calc., 103.

plaintiffs and had merely imposed an additional assessment on the lands.

The defence was virtually that the lands in suit having been found at the time of the dearah survey to be excess lands gained by alluvion since the date of the previous survey, had been settled under the provisions of s. 6 of Act IX of 1847, and that under ss. 6 and 9 of the Act that assessment was final and not liable to be set aside in a Court of Justice. It was further contended that the plaintiffs not having been in possession of the lands in dispute as zemindars within twelve years before suit, their claim was barred by limitation.

Several issues were framed in the case, of which the second and third were as follow:—

2*nd*.—Whether the suit is barred by limitation?

3*rd*.—Whether plaintiffs are barred from bringing this suit, the lands in dispute having once been assessed as excess lands under the sanction of the Board of Revenue?

The lower Court has found both these issues against the plaintiffs.

As regards the question of limitation, we are unable to see how it can arise in the present suit. The case for Government is (see para. 7 of the written statement) that at the time of the dearah survey the lands in suit were found to be excess lands, which had accreted to the estates of the plaintiffs and their co-sharers, and that they were merely assessed with additional revenue as such accretions. It is no part of the defence that the lands were ever claimed by Government as the property of the State. The settlement proceedings show that the proprietors of all the nine mehals to which the lands were found to have accreted were invited to accept the settlement, and the settlement was made with the owners of two mehals only, because the others either refused to take it or omitted to appear. *Malikana* was, however, reserved for them; and although those owners who took the settlement are styled *ijaradars*, the meaning of that phrase apparently was that the settlement was a temporary one only, and it cannot be contended from its use that the Government either had or intended to set up a proprietary interest adverse to the plaintiffs. On the contrary, the possession of the

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settlement holders must be taken to be the possession of the zemindars, and the question of limitation does not therefore arise.

On the second point we think that s. 9 of Act IX of 1847 does not apply to the present suit. This is not a suit against Government or any of its officers on account of anything done in good faith in the exercise of any of the powers conferred by that Act. On the contrary, it is a suit for a declaration that the provisions of that Act are inapplicable. We agree with the remarks of *Phear*, J., in the case of *Collector of Moorshedabad* v. *Dhunpat Singh* (1) that "the words of this section seem to be limited to forbidding a suit wherein the plaintiff seeks to make Government or any of its officers responsible *in damages* on account of anything done in good faith in the exercise of the powers conferred by the Act."

The next question is, whether the Subordinate Judge was right in holding that the suit was barred by the provisions of s. 6 of Act IX of 1847.

That section runs as follows :—

"Whenever on inspection of any such new map it shall a to the local revenue authorities that land has been added to any estate paying revenue directly to Government, they shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the Sudder Board of Revenue, *whose orders thereupon shall be final.*"

What we have to consider is what interpretation is to be put on these words, that the orders of the Board of Revenue on the proceedings of the local revenue authorities shall be final? Is it intended that the Civil Courts shall be precluded altogether from enquiring into the legality of the proceedings of the revenue authorities; or are the orders of the Board final only as regards the conduct of the proceedings and the amount of the assessment?

By s. 11 of the Code of Civil Procedure the Civil Courts have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force.

(1) 15 B. L. R., 49; 23 W. R., 38.

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The present suit is not brought to contest the amount of the revenue assessed upon the lands in dispute, but to contest the right of the revenue authorities to assess those lands with any additional revenue at all.

The right to assess alluvial increments with Government revenue is conferred by Regulation II of 1819, s. 3, cl. 2; and ss. 24 and 26 of that Regulation provide for the institution of civil suits in certain cases to contest the awards of the revenue authorities.

Similarly, cl. 3 of s. 14 of the Settlement Regulation (VII of 1822) runs as follows: "The decisions passed by the Collectors under the above powers, if not altered or annulled by the Board or by Government, shall be maintained by the Courts, unless on an investigation in a regular suit it shall appear that the possession held under such a decision is wrongful and nothing herein contained shall be understood to authorise any Court to interfere with the decision of the revenue authorities relative to the *jama* to be assessed on any mehal or portion of a mehal, or to the extent and description of lands belonging to any mehal that may be assigned on the partition of the same to the several parceners concerned."

In the case of *Dewan Ram Jewan Singh* v. *Collector of Shahabad* (1), it was found as a fact that the lands in dispute were lands added to the estate within the meaning of s. 6 of the Act, and it was accordingly held that the Act applied, and that the orders of the Board of Revenue in regard to the assessment were final.

So in the case of *Collector of Moorshedabad* v. *Dhunput Singh* (2), the orders of the revenue authorities were held to be final, but only "as regards the person whom they may directly affect, *viz.* the zemindar."

We think, therefore, that the words of the Act and the reported cases go to this extent, that when an assessment has been made under s. 6 of the Act and approved by the Board of Revenue, that assessment is final and cannot be called in question in a civil suit. But the fact of an assessment having been

(1) 14 B. L. R., 221 note: 18 W. R., 94.

(2) 15 B. L. R., 49 : 23 W. R., 38.

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made is no bar to an enquiry as to whether the Act applied, and whether the revenue authorities had any right to make the assessment—in other words, whether they had jurisdiction under s. 6 of the Act. That is a question which we think it is open to the Courts to try, and that is precisely the question raised in the present suit.

It is contended before us that Act IX of 1847 was intended only to apply to lands gained by alluvion or dereliction from the sea or rivers in which no proprietary title existed, and that it does not apply to land re-formed on the site of a permanently-settled estate.

We think, however, that on the face of the Act itself and the decisions *of Dewan Ram Jewan Singh* v. *Collector of Shahabad* (1), *Ram Jewan Singh* v. *Collector of Shahabad* (2) and *Collector of Moorshedabad* v. *Dhunput Singh* (3) this contention cannot be allowed to prevail. The object of the Act is to provide for the assessment of riparian estates from time to time, in accordance with the changes which periodical surveys may show to have taken place in their area and boundaries. Section 3 of the Act refers to a revenue survey which is to be approved by Government as fixing the boundaries of estates, and provides that at intervals of not less than ten years fresh surveys of such estates may be made. Section 5 then provides for a reduction in the sudder *jama* when on a comparison of two successive surveys it appears that the area of an estate has been diminished, and s. 6 provides for an addition to the *jama* when on inspection and comparison of the new map land appears to have been added to the estate since the last survey. In every case the starting point is to be the revenue survey which, it would appear, is to be taken as representing the boundaries of the estate as they existed at the time of the permanent settlement, and it is apparently not open to the revenue authorities to go behind that survey and enquire whether in fact the boundaries at the time of settlement were not other than therein represented.

In the present case the revenue survey admittedly took place in 1849; and if, as compared with the state of things ascer-

(1) 14 B. L. R., 221 note: 18 W. R., 64. (2) 19 W. R., 127.
(3) 23 W. R., 88.

tained at that survey, an accretion was found to have taken place at the subsequent dearah survey of 1867-68, we think the revenue authorities were bound by the provisions of s. 6 of the Act to assess such accretion.

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Now it appears from the evidence that in 1868 there was an accretion to the estate mouzah Boyrampore as compared with the survey of 1849; and, that being so, we must hold that the Act applied, and that the accretion was liable to assessment. It is true that (if we understand the settlement proceedings aright) the entire area found in 1868 was assessed without any deduction for the area existing in 1849, apparently on the ground that in the meantime the whole of the lands had been diluviated. But this objection to the settlement proceedings has not been taken in the present suit, and even if it had been taken, it is open to question whether we could have interfered. The matter was one affecting the settlement proceedings in respect of which the orders of the Board of Revenue are declared to be final.

That the excess lands, however, were liable to assessment, seems to admit of no doubt, and we think, therefore, that the suit was rightly dismissed.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Ghose.

KOKILMONI DASSIA (ONE OF THE DEFENDANTS) *v.* MANICK CHANDRA JOADDAR AND ANOTHER (PLAINTIFFS).*

1885 *May* 26.

Limitation Act, 1877, Sch. II, cls. 140, 141—*Adverse possession—Hindu mother—Reversioner.*

Semble, that, in Hindu Law, where a mother succeeds to property as heir of her son, and her right thereto becomes barred by adverse possession, the next heirs of her son on her death will have twelve years therefrom in which to sue for possession of the property.

Appeal from Appellate Decree No. 2416 of 1883, against the decree of G. G. Dey, Esq., Officiating Judge of Nuddea, dated the 1st of August 1883, reversing the decree of Baboo Amrito Lall Chaterji, Subordinate Judge of that District, dated the 31st of March 1882.