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Mr. Branson has applied to us to be allowed to file further affidavits to remedy the defect in his present one; but this would be, for obvious reasons, a very dangerous thing to allow. The respondents must have known the point perfectly well upon which they had to satisfy us; and they had ample time to bring before the Court all their available materials.

We think, therefore, that the appellant should be allowed to withdraw his appeal, as he has proposed to do, on payment of costs; and that the respondents should not be allowed to file a cross appeal.

*Appeal withdrawn.*

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*Before Sir Richard Garth, Knight, Chief Justice and Mr. Justice Macpherson.*

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RAM CHUNDER SAO (PLAINTIFF) *v.* BUNSEEDHUR NAIK (DEFENDANT.)*

*Evidence Act (I of 1872), s. 83—Measurement chittas.*

Chittas made by Government for its own private use are nothing more than documents prepared for the information of the Collector, and are not evidence against private persons for the purpose of proving that the lands described therein are or are not of a particular character or tenure.

THE plaintiff was the purchaser at a sale for arrears of rent under Regulation VIII of 1819, of a certain patni taluk called lot Hurirampur.

In 1878 the plaintiff sued defendant to recover possession of one bigha 19 cottas of land as appertaining to that taluk, on the ground that he (the defendant) held the land at a rental of Rs. 10. This suit was, however, dismissed, as the defendant denied the relationship of landlord and tenant.

The plaintiff thereupon brought the present suit for possession of this land, and also for a declaration that it belonged to mehal lot Hurirampur.

The defendant admitted the proprietary right of the plaintiff in the mehal, but pleaded that the suit was barred under s. 13,

* Appeal from Appellate Decree No 1950 of 1881, against the decree of Baboo Radha Krishna Sen, Additional Subordinate Judge of Hugli, dated the 3rd August 1881, reversing the decree of Baboo Behari Lall Mullick, Munsiff of Haripal, dated the 27th September 1880.

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Civil Procedure Code, and that the land did not form part of lot Hurirampur, but was the lakeraj land of one Domon, from whose vendee he, the defendant, obtained it by purchase.

The Munsiff found, relying on certain Government chittas, that lot Hurirampur had been measured and resumed by Government in 1844; that the land in dispute appertained to mehal lot Hurirampur, and was not the lakeraj land of Domon, from whose vendee the defendant alleged that he had purchased; that the judgment passed in the rent suit contained no adjudication on the issues raised in the present case, and therefore s. 13 of the Civil Procedure Code did not apply: he therefore decreed the case in favor of the plaintiff.

The defendant appealed to the Additional Subordinate Judge of Hughli, who held that the plaintiff had not sufficiently proved that he or his predecessors had ever been in possession of the land, and that the Munsiff was wrong in relying on the chittas of 1844, as under s. 83 of the Evidence Act their accuracy could not be presumed, and that in any case they could not be used as conclusive evidence of title against a third party: he further found that the disputed land was lakeraj, and therefore allowed the appeal.

The plaintiff appealed to the High Court.

Baboo *Umbica Churn Bannerjee* for the appellant.

Baboo *Srinath Dass* for the respondent.

The judgments of the Court (GARTH, C.J., and MACPHERSON, J.) were as follows:—

GARTH, C.J.—I am of opinion that the chitta of 1844, which has been treated by the Subordinate Judge as no evidence against the present defendant, was not evidence, and that he was perfectly right in the view which he took.

As I understand, this was a chitta prepared by the Deputy Collector, with a view to resumption proceedings being taken, and the way in which that chitta was sought to be used in this case by the plaintiff, was that in that chitta the 1 bigha and 19 cottas of land in suit which has been found by the Subordinate Judge to be lakeraj, was not entered as lakeraj, but as rent-paying land.

I think that having regard to the object of the chitta, and to the way in which it was prepared, it cannot be made evidence under s. 83 of the Evidence Act.

The maps and plans, which are mentioned in that section, are, as it seems to me, *maps and plans made by the Government for public purposes;* I quite agree with the learned Judges, who decided the case of *Junmajoy Mullick* v. *Dwarkanath Mytee* (1) that a map or plan made by the Government for private purposes, or when the Government is acting otherwise than in a public capacity, is clearly not evidence.

Our attention has been directed to certain cases by the learned pleader for the appellant, in which Mr. Justice Jackson and some other learned Judges appear to have considered that jamabandi papers and maps prepared by Government with reference to lands, which they were holding in their khas possession as proprietors, were evidence under this section of the Act.

But I confess I cannot accede to that view; and if it should become necessary, I would refer the question, whether such documents are admissible, to a Full Bench.

I think it would be extremely dangerous to admit evidence of this kind under the guise of public documents. Such papers are merely prepared by the Government as landlords for the purposes of their estate, and they appear to me to be no more evidence against the tenants of that estate than similar documents would be, prepared by any other landlord.

I consider the chitta in this case to be nothing more than a document prepared for the information and guidance of the Collector; and that it is not evidence against private persons for the purpose of proving that the land described in it was or was not of a particular character or tenure. If the resumption proceedings had been put in, and it had been shewn that the defendant's ancestors claimed the land as lakeraj and were defeated, I quite agree that the chitta, coupled with the resumption proceedings, would have been admissible to prove that the land was not rent-free.

(1) I. L. R., 5 Calc., 287.

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But I think that the chitta *per se* is not evidence in this suit; and that the Subordinate Judge was right in so dealing with it.

The appeal will be dismissed with costs.

MACPHERSON, J.—I concur in dismissing the appeal. I think that the chitta, standing by itself, furnishes no proof that the particular land, which is the subject of this suit, was resumed by Government. If the plaintiff wished to prove the resumption of these lands, he ought to have filed the resumption proceeding itself.

*Appeal dismissed.*

## FULL BENCH REFERENCE.

*Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep, and Mr. Justice Wilson.*

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MAHOMED ALI KHAN AND OTHERS (PLAINTIFFS) *v.* KHAJA ABDUL GUNNY AND OTHERS (DEFENDANTS.)*

*Possession—Dispossession—Adverse Possession—Presumption—Onus Probandi—Limitation—Joint owners, Adverse possession between.*

Under the former Limitation Act the cause of action, and under the present law the event from which limitation is declared to run, must have occurred within the prescribed period, and it lies on the plaintiff to show this. Accordingly, where the suit is for possession, and the cause of action is dispossession, the plaintiff is bound to prove possession and dispossession within twelve years.

Possession is not necessarily the same thing as actual user.

When land has been shown to have been in a condition unfitting it for actual enjoyment in the usual modes, at such a time and under such circumstances that that state naturally would, and probably did, continue till within twelve years before suit, it may properly be *presumed* that it did so continue, and that the previous possession continued also until the contrary is proved.

Such a presumption is in no sense a conclusive one. Its bearing upon each particular case must depend upon the circumstances of that case.

Many acts which would be clearly adverse, and might amount to dispossession as between a stranger and the true owner of land, would, between joint owners, naturally bear a different construction.

* Full Bench Reference made by Mr. Justice Mitter and Mr. Justice Norris, dated the 14th August 1882, in appeal from Appellate Decree No. 2378 of 1880.