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tenures, if registered, are protected from being set aside by auction-purchasers. The effect of this is, that a *bonâ fide* tenure actually proved is not protected unless it is registered. It does not provide that the registration of an alleged tenure will have the effect of proving it. We think, therefore, that the registration of the tenure alleged in this case is not a sufficient proof of the plaintiff's title.

The appellant's pleader, however, contended that there was further evidence in an admission by the lessor of the genuineness of the patta, such admission being contained in a petition made to the Collector at the time of the execution of the patta, or shortly afterwards, praying the Collector to enter the tenure in his books, and to hold the lessee responsible for a certain portion of the Government revenue. It turns out, however, that the petition here referred to is only a copy of the petition made, not by the lessor, but by a person calling himself the mooktear of the lessor. The petition, therefore, is of very little importance in this case, especially when we find that another petition made by the lessor before the Settlement Officer expressly repudiates any such patta as is now set up by the appellant.

It is unnecessary for us to go into the merits of the case, but we think that the lower Appellate Court was right, as a matter of law, in confirming the decision of the first Court.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Cunningham and Mr. Justice Tottenham.

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BISSORUP GOSSAMY AND OTHERS (PLAINTIFFS) *v.* GORACHAND GOSSAMY AND OTHERS (DEFENDANTS).*

Suit for Possession—Co-defendants—Res Judicata—Civil Procedure Code (Act X of 1877), *s.* 13.

A leased lands to *B*, who sued *C* for possession of a certain mauza, alleging it to be a portion of the lands leased. *A* was made a defendant, and supported the case of the plaintiff, who obtained a decree. *C* appealed, making *A* and

* Appeal from Appellate Decree, No. 2235 of 1880, against the decree of Baboo Brojendro Coomar Seal, Additional Judge of Bankura, dated the 28th June 1880, affirming the decree of Baboo Jogendro Nath Bose, Munsif of Gungajulghatty, dated the 21st March 1879.

B respondents, when the decree was reversed and the suit dismissed, on the ground that the mauza sued for was the property of *C*, and that ruling was upheld on special appeal to the High Court. Subsequently *A* brought a suit against *C* for the same mauza, making *B* a defendant.

Held, that the title to the mauza was *res judicata* between *A* and *C*, and that the suit would not lie.

Gobind Chunder Koondoo v. *Taruck Chunder Bose* (1) followed.

THE facts of this case, and the contentions raised by both parties, are fully set out in the judgment of the lower Appellate Court, which is as follows :—

"The issue raised in the case is, whether the disputed land, which goes by the name of Bonkata, forms a part and parcel of Mauza Gossamipur, or is it a separate mauza by itself distinct from Gossamipur. The very same issue was raised in suit No. 393 of 1865, and it was found that there was no separate mauza by the name of Bonkata, comprising the land in dispute, but that it was part of Gossamipur. The first Court has held, therefore, that the present suit is barred by the rule of s. 13 of the Civil Procedure Code. In appeal I have to see whether that view is correct or not.

"The facts of suit No. 393 of 1865 have to be closely examined. In that suit, Monmohini Dabia was the plaintiff. She stated that she had taken a patni of Mauza Bonkata on the 2nd of Pous 1271 (15th December 1864) from the plaintiffs in this case, and endeavoured to take possession on the 19th Pous 1271 (1st January 1865), but in consequence of the resistance offered by the defendants, she could not get possession. She, therefore, wanted to recover possession on an adjudication of her title. In that suit the plaintiffs in this case were made *pro formâ* defendants. They filed a written statement supporting Monmohini. At the trial they produced documentary evidence in support of their allegation. The first Court, in its judgment, took notice of their document. It was found by the Munsif that Bonkata was a separate mauza, and the claim of Monmohini was decreed on the 31st of May 1866. In appeal, Monmohini and her lessors, the present plaintiffs, were respondents; and the defendants were the appellants. The Appellate Court took notice of the documents filed by the plaintiffs, but it came to a different conclusion, and the claim of Monmohini was dismissed, it being found that Bonkata was not a separate mauza, but that it formed part of Gossamipur. That judgment bears date the 24th of September 1866. It was confirmed in

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special appeal on the 28th of March 1867. The judgment of the High Court is not with the record.

"In their plaint in the present suit, the plaintiffs say that they had made a permanent settlement of the mauza with one Dinobundhu Chuttopadhya in 1237, and were in possession through him; that Dinobundhu having failed to pay rent, they brought a suit against him, and in execution of the decree in that case entered into khas possession (when, it is not stated), and afterwards made a settlement of it with Monmohini Dabia on the 2nd Pous 1271 (15th December 1864), and received rent from her up to the year 1274. Thus, though Monmohini never obtained possession of the property, and though it was finally settled by the High Court on the 28th of March 1867 (16th Cheit 1273) that the plaintiffs were not entitled to get rent on account of this property, the plaintiffs say that Monmohini paid rent up to the year 1274. The first Court notices that Monmohini is the mother of plaintiff No. 5. These are the facts of case No. 393 of 1865, and the plaintiffs in the present case date their cause of action from the time that the judgment in Monmohini's case was confirmed by the High Court.

"The difference between the case of Monmohini and that of the plaintiffs is this, that whereas the property in dispute in the case of Monmohini was the patni interest, in this case it is the zemindary right which is the subject of dispute; but the issue which has to be decided in this case is the same which was raised in that case. In case No. 393, the present plaintiffs occupied the position of *pro formâ* defendants, it is true; but s. 13 of the Procedure Code does not appear to make any distinction between principal parties and *pro formâ* parties. Throughout the Code there is no mention of *pro formâ* parties. Parties or no parties, the plaintiffs were parties. Were they parties litigating under the same title? Monmohini litigated for herself and for the plaintiffs, and the plaintiffs supported her, and were parties. The right for which Monmohini contended was one in which the plaintiffs were interested. According to Explanation V of s. 13 and the Full Bench case of *Gobind Chunder Koondoo* v. *Taruck Chunder Bose* (1), section 13 appears to bar the plaintiffs. My attention has been drawn to the case of *Price* v. *Khelat Chunder Ghose* (2). That case was decided in 1870, long before the Procedure Code of 1877 came into operation.

"The plaintiffs were *pro formâ* defendants, and from their position as defendants it is stated that they could not join issue with the other

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defendants. No doubt it was so, but every case has to be decided on its own merits. Monmohini, the plaintiff in that case, was the mother of plaintiff No. 5. The plaintiffs, if so disposed, might join Monmohini as plaintiffs, but they did not like to do so, and they were made *pro formâ* defendants. As *pro formâ* defendants they did not contend that they were not necessary parties to the case, but, on the other hand, supported Monmohini, and put in documentary evidence. In appeal, Monmohini and the present plaintiffs were respondents. So it was open to the plaintiffs to appeal to the High Court in the same way as Monmohini did, for they were interested in the issue that was tried in the same way as Monmohini was. There may be cases in which the position of *pro formâ* defendants would not allow them to appeal, but suit No. 393 was not one of such cases. I agree with the first Court in holding that the issue which is raised in this case cannot be tried again. Without entering into the question as to whether the suit is barred by limitation, I dismiss the appeal with costs."

The plaintiffs appealed to the High Court, on the ground that the Court below was in error in holding that the present suit was barred under s. 13 of the Code of Civil Procedure.

Baboo *Boikant Nath Dass* for the appellants.

Baboo *Umbica Churn Bose* for the respondents.

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

CUNNINGHAM, J.—In this case the plaintiffs sue for possession of certain land, described as Mauza Bonkata, on a declaration of their title thereto. They allege that their ancestors obtained the entire Mauza Gossamipur and two drones of land transferred from the jamai of Jugurnathpore; that these two drones were reclaimed and called Mauza Bonkata, and were let on mokurari lease to the father of the defendant Dinobundhu; that, on Dinobundhu's failure to pay rent, the land was resumed and let on patni to the 13th defendant, Monmohini; that Monmohini sued the principal defendants for possession, and obtained a decree in the original Court, which was reversed in appeal and special appeal, 28th March 1867; that Mauza Bonkata

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never did appertain to Mauza Gossamipur, and never belonged to the defendants.' In that suit the present plaintiffs were joined as defendants.

The defendants contend, and the Courts below have held, that the suit is barred by s. 13 of Act X of 1877, inasmuch as the main issue in the case,—*viz.*, the question whether the disputed land appertains to Mauza Bonkata and belongs to the plaintiffs, —has already been raised and adjudicated in a suit to which the present plaintiffs and defendants were parties,—*viz.*, the suit brought by Monmohini, the 13th defendant in the present suit, against (i) the present defendants and (ii) the present plaintiffs.

It appears that Monmohini is the mother of the 5th plaintiff in the present suit, and that, in the former suit, the present plaintiffs, though formally joined as defendants, supported Monmohini's case and put in evidence in its support; and that, in appeal, Monmohini and the present plaintiffs were joined as respondents. In that appeal it was decided that the disputed land did not form a separate mauza, as Bonkata Mauza, but pertained to Gossamipur; and that the present plaintiffs not having any rights in it could not settle it with Monmohini.

The same issue is raised in the present suit; but it is contended that s. 13 does not apply, the matter not having been "in issue between the same parties," inasmuch as the present plaintiffs were co-defendants in that suit with the present principal defendants, and Monmohini, the present 13th defendant, was plaintiff.

We concur with the Courts below in thinking this contention unsound. The material point for deciding whether a matter has become *res judicata* under s. 13 is, whether it was directly and substantially in issue between the same parties and was finally decided. If the issue is clearly raised between the several parties to the suit and adjudicated, it matters not that the parties were marshalled in the one case differently from the other—*Gobind Chunder Koondoo* v. *Taruck Chunder Bose* (1). Here there can be no doubt, that though the present plaintiffs were joined as defendants in the former suit, they were practically supporting the case of the plaintiff and had the fullest

(1) I. L. R., 3 Calc., 146.

opportunity of contesting the point which that suit decided, a circumstance which is proved by their being joined as respondents in the appeal. In these circumstances, the plaintiffs are, in our opinion, debarred under s. 13 from now again contesting the same point with the parties to the former suit. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

BHOOTNATH CHATTERJEE (DEFENDANT) v. KEDARNATH BANERJEE AND OTHERS (PLAINTIFFS).*

1882 *June* 19.

Suit for Possession—Previous Dispossession—Limitation—Adverse Possession —Evidence—Onus.

In every suit for the recovery of land, on the allegation of previous dispossession by the defendant, the plaintiff must start his case by showing that, at some time within twelve years previous to the institution of the suit, he has been in possession of the land sued for.

Rajah Sahib Perhlad Sein v. *Maharajah Rojender Kishore Singh* (1), *Dawkins* v. *Lord Penrhyn* (2), and *Noyes* v. *Crawley* (3) cited.

THIS was a suit for the recovery of possession of four katas of land, on adjudication of rights thereto. The plaint alleged that the land in dispute (together with certain land adjoining, which is now the property of the defendant) formerly belonged to the plaintiffs' father; that the defendant purchased from the plaintiffs' father the land adjoining the land in dispute ; and that he had, by falsely alleging that he had subsequently obtained the disputed land as a gift from the plaintiffs' father, got himself registered as the owner thereof under the provisions of Beng. Act VIII of 1876. The defence was, that the suit was barred by limitation, and that the plaintiffs' father had made a gift of the disputed land to the defendant. The Mun-

* Appeal from Appellate Decree, No. 594 of 1881, against the decree of J. F. Browne, Esq., Officiating Judge of the 24-Parganas, dated the 13th January 1881, reversing the decree of Baboo Prosunno Coomar Bose, Additional Munsif of Baroypore, dated the 24th March 1880.

(1) 12 Moore's I. A., 337. (2) 4 App. Cas., 51,

(3) 10 Ch. D., 31, 36.