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would be invalid. But, if on the other hand, Bissessur Dyal were adopted by Chandan, and Badam Koer, being a member of that branch of the family, that is, the branch descended from Kulwanth Singh, had merely assented to such adoption, we cannot say that the fact of Badam Koer's joining in the adoption with this object would in any respect invalidate it as an adoption by Chandan. The deed of adoption is not before us; no positive evidence have been given to show that Bissessur Dyal was adopted by two persons simultaneously. The statement in the petition cannot, in our opinion, be interpreted as an admission of such a double adoption. We cannot therefore say that Bissessur's adoption by Chandan is invalid upon this ground. The result is that the decree of the Munsiff dismissing the plaintiffs' suit must be affirmed, and this appeal dismissed with costs.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Norris.

GOPI NATH CHOBEY (ONE OF THE DEFENDANTS) *v.* BHUGWAT PERSHAD AND ANOTHER (PLAINTIFFS).*

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May 7.

Suit for Malikana—Benamidar—Res-judicata—Limitation—Adverse possession—Court of Jurisdiction competent to try such subsequent suit—Act XIV of 1882, *s.* 13—*Act XV of* 1877, *Sch. II, Arts.* 120, 131, 144.

So long as the benami system is recognised in this country, it is to be presumed, in the absence of any evidence to the contrary, that a suit instituted by a benamidar has been instituted with the full authority of the beneficial owner, and any decision made in such suit will be as much binding upon the real owner as if the suit had been brought by the real owner himself. *Meheroonissa Bibee* v. *Hur Churn Bose* (1); *Kallee Prosunno Bose* v. *Dino Nath Bose Mullick* (2); and *Sita Nath Shah* v. *Nobin Chunder Roy* (3) discussed.

In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed, and when the question of the proprietary right has been decided in a previous suit between the same parties a subsequent suit for malikana will be barred as *res-judicata*.

* Appeal from Appellate Decree No. 805 of 1883, against the decree of H. Beveridge, Esq., Judge of Patna, dated 30th of December 1882; reversing the decree of Moulvi Nurrul Hosain, Khan Bahadur, First Subordinate Judge of that district, dated the 19th of December 1881.

(1) 10 W. R., 220. (2) 19 W. R., 434.

(3) 5 C. L. R., 102.

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In s. 13 of Act XIV of 1882 the words "in a Court of jurisdiction competent to try such subsequent suit" refer to the jurisdiction of the Court at the time the first suit, is brought. Thus when the first suit is within the jurisdiction of a Munsiff, and the subsequent suit, by reason of an increase in value of the property, is beyond his jurisdiction, such subsequent suit would nevertheless be barred, inasmuch as if the subsequent suit had been brought at the time when the first suit was brought, the Munsiff would have been competent to try it.

Previous to 1825 dearah *X* accreted to mouzah *Y*, and some time before 1860 the malik of *Y* executed two conveyances in favor of *A* and *B* respectively. In 1860 *A* sued *B* in the Munsiff's Court for possession of a share in *X* which *B* claimed under his conveyance. In that suit *A* succeeded on the ground that *B's* conveyance did not cover the share claimed by him in *X*, but merely covered the share in the mouzah itself whereas by his conveyance *A* had acquired the right to the share in *X* which he claimed. In 1866 the Collector refused to recognize *B's* right to malikana payable in respect of the share in *X*, which had been the subject of the suit in 1860, or to register his name in respect thereof, but acknowledged *A's* right thereto, relying on the decision of the Civil Court in the suit between *A* and *B*. Subsequently *B's* representatives, *C* and *D*, in 1876, sought to have their names registered in respect of the same malikana, but they were opposed by *E*, who alleged that *A* had been acting throughout as his benamidar. The Collector referred the case under s. 55 of Act VII of 1876 to the Civil Court, and the application of *C* and *D* was eventually disallowed. *C* and *D* thereupon, on the 5th November 1880, instituted the present suit against *E*, in the Court of the Subordinate Judge, for a declaration of their right to the malikana, and for a reversal of the order refusing to allow their names to be registered in respect thereof.

Held, that inasmuch as the allegation made by *E*, in the proceedings held in 1876 on the application by *C* and *D* before the Collector, and afterwards upon the reference before the Civil Court, that *A* had been acting in the matter merely as his benamidar, was uncontradicted by *C* and *D* in their plaint in the present suit, there was sufficient evidence upon which to hold that that fact was true.

Held, also, that the suit was barred as *res-judicata* on the ground that the right to malikana was substantially the same question as the proprietary right to the share in the dearah, and that this issue had been tried and decided in the suit in 1860 in favour of *A*, who must be taken to be *E;* that the fact that the previous suit had been brought in a Munsiff's Court, whereas the present suit was brought before a Subordinate Judge, did not affect the question, inasmuch as the property was the same, and it was not shown that the present suit, if brought in 1860, would not

have been within the jurisdiction of the Munsiff, nor was it alleged that the suit in 1860 was beyond his jurisdiction.

Held, further, that the suit was barred by limitation, being governed either by Arts. 120, 131, or 144 of the Limitation Act (Act XV of 1877), because—

(1) There being no allegation of dispossession, if it were contended that the suit was one for possession of an interest in immovable property, Art. 144 would apply;

(2) If it were contended that the suit was for the purpose of establishing a periodically recurring right, pure and simple, Art. 131 would apply, and the period must be reckoned from 1866, when the plaintiff was first refused the enjoyment of the right;

(3) If, however, it were said to be a suit to establish a periodically recurring right, and something in addition, inasmuch as the right carried with it a right to the property itself, if the parties consented to take a settlement when the time for concluding the next temporary or permanent settlement came, Art. 120 must be held to apply.

But that, in any event, inasmuch as in the year 1866 the Collector refused to recognise *B's* right to the malikana and adverse possession, so far as possession could be taken of such an interest in immovable property, was then taken by *A*, or in other words by *E*, because it must be taken that the Collector since that date had been holding for *A*, whose right he had then recognised, after refusing to recognise the right claimed by *B*, the present suit having been instituted in 1880 was equally barred whichever of the above articles was held to apply. *Rao Karan Singh* v. *Raja Bakur Ali Khan* (1) referred to and distinguished.

THE plaintiffs brought this suit to obtain a declaration of their right to 6 annas 17 d. 18 c. of the malikana money of dearah Afzulpur which had formed in front of what they alleged to be their estate, and to have their names registered in the Collector's office in respect thereof in place of the defendants.

They alleged that mouzah Syedpur Mosleh consisted of several kulums or estates, and that there were 154 bighas 8 cottas of land belonging in common to the kulums of Syedpur Mosleh and dearah Afzulpur. They stated that they were the purchasers of that kulum of Syedpur Mosleh of which the touzi number was 319, and the sudder jama Rs. 423-13-4, and that out of the joint land 65 bighas 10 cottas 12 dhans belonged to Syedpur Mosleh; that one Behari Mahton was the proprietor of Syedpur Mosleh, having purchased it from one Tafuzzul Hosain, and that they were the auction purchasers of the right, title and interest of Behari Mahton;

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that as dearah Afzulpur had formed in front of Syedpur Mosleh contiguous to the joint land, they, as proprietors of the main land, had a right to the settlement thereof in proportion to their shares in the joint land; and that as the settlement of the shares had been concluded with a third party, they were entitled to get the amount sued for out of the malikana fixed.

That they had presented an application to the Collector to have their names registered, but on the defendant filing an objection to their right to the malikana money, the Collector referred the case under s. 55 of Act VII of 1876 to the Judge, who in turn referred it to the Additional Subordinate Judge. The latter official on the 10th October 1879 disallowed the plaintiffs' application, and accordingly the Collector directed the registration of the names in accordance with the findings of the Additional Subordinate Judge.

The plaintiffs therefore brought this suit with the object above stated.

In answer thereto the defendants contended that, inasmuch as the right to the share in the dearah in respect of which the malikana money now claimed was payable, was the subject of a suit between Behari Mahton and one Sheik Rowshun Ali who, the defendants alleged, was their benamidar, and as the decision of the Court in that suit was in favor of Rowshun Ali, the present suit was barred as *res-judicata*. They also set up a title by twelve years' adverse possession, and contended that the suit was barred by limitation, and further alleged that the dearah formed a separate mehal, and did not appertain to mouzah Syedpur Mosleh at all.

It appeared from the evidence in the case that previous to 1860 in all settlements made by the Collector in respect of dearah Afzulpur, the proprietors of Syedpur Mosleh were treated as the maliks; that some time previous to that year the owner of the share now in dispute of both Syedpur Mosleh and the dearah executed two conveyances in favor of Behari Lal and Rowshun Ali, Behari Lal's being of the earlier date; that in 1860 Rowshun Ali sued Behari Lal (the suit referred to by the defendant) for possession of the share in the dearah, and for the reversal of an order of the revenue authorities settling it with Behari Lal; and in that suit he was successful, the Court holding that Behari Lal's

conveyance only included the share in mouzah Syed Mosleh, and did not affect the dearah, and that Rowshun Ali by his conveyance had acquired the title claimed by him to the dearah.

In the year 1866 the question of the right to receive malikana came before the revenue authorities, and the Collector, relying upon the decision in the suit between the parties, refused to recognise Behari Lal's claim, but allowed that of Rowshun Ali.

In the present suit, upon the above facts, the first Court found that there was nothing on the record to show that Rowshun Ali was benamidar for the defendants, and that the suit was not barred as being *res-judicata*; but inasmuch as it considered the plaintiffs had failed to establish their proprietary right in the dearah, it dismissed the suit. In that Court the plea of limitation was not considered as being necessary for the determination of the suit on the facts found.

The lower Appellate Court found that the dearah was an increment to Syedpur Mosleh, and that the proprietors of the latter had a right to the malikana money.

On the question of *res-judicata* that Court held that the suit was not barred, for it considered that, although Rowshun Ali must be taken to have been only benamidar for the defendant, still in the previous suit there was no question as to a right to malikana money, and there was no evidence as to what was the title set up by Rowshun Ali, and further that the decree in that suit was by a Munsiff, and the present suit being beyond a Munsiff's jurisdiction, the plea of *res-judicata* could not be supported under Act XIV of 1882.

Upon the question of limitation, the Court held that, inasmuch as the Government acknowledged that the malikana money was due, and was prepared to pay it to whoever should prove his right to it in the Civil Court, and as there was no evidence of anyone having drawn it adversely to the plaintiffs for twelve years, coupled with the facts that the right to it was not raised in the previous suit, and that it was an annually recurring charge and might be sued for within twelve years of its becoming due—*Hurmuzi Begum* v. *Hurdaynarain* (1)—the suit was not barred.

The Court accordingly reversed the decree of the Court of first instance, and gave the plaintiffs a decree as prayed for with costs.

(1) I. L. R., 5 Calc., 921.

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The defendants accordingly now specially appealed to the High Court.

Baboo *Rashbehary Ghose* and Baboo *Digumbur Chatterjee* for the appellant.

Mr. *C. Gregory*, Baboo *Mohesh Chunder Chowdhry* and Baboo *Durga Dass Dutt* for the respondents.

The judgment of the High Court (MITTER and NORRIS, JJ.) was delivered by

MITTER, J.—The plaintiffs (respondents before us) brought this suit for establishing their right to certain malikana money in respect of a 6 annas 17d. 18c. share of dearah Afzulpur bearing touzi No. 71. The previous history of this litigation is as follows: There was a permanently settled estate, which is recorded in the rent-roll of the Collectorate as No. 319, consisting of a mouzah named Syedpur Mosleh. It is admitted in this case that dearah Afzulpur lies in front of Syedpur Mosleh. The dearah accreted some time before 1825. Before 1860 in all the settlements which the Collector concluded in respect of the dearah in question, the maliks or proprietors of the permanently settled estate No. 319 were treated as the maliks of dearah Afzulpur. Some time before 1860 the owner of the 6 annas 17d. 18c. share, *viz.*, the share in dispute in this case, of both Syedpur Mosleh and dearah Afzulpur, executed two conveyances, one in favour of Rowshun Ali and the other in favour of one Behari Lal. Behari Lal's conveyance was of prior date. In 1860 Rowshun Ali sued Behari Lal for possession of 5 annas of the dearah in suit and for reversal of the order of the revenue authorities settling it with Behari Lal. The Court on that occasion came to the conclusion that Behari Lal had purchased only Syedpur Mosleh, and that under his conveyance he had acquired no right to dearah Afzulpur. On the other hand, the Court held that under the conveyance executed in favor of Rowshun Ali, he (Rowshun Ali) had acquired a title in the aforesaid dearah. That suit was accordingly decided in favor of Rowshun Ali. In the year 1866, on the occasion of another temporary settlement, the question as to the right to receive malikana again came before the

Collector, and the Collector, relying upon the Civil Court decision in the suit of 1860, refused to recognise Behari Lal's right to malikana, allowing Rowshun Ali's right to the share of the malikana. It is not shown on this record that Behari Lal or Rowshun Ali has, since the date of the Collector's robokari settling this malikana question, drawn the malikana in question. Behari Lal's right and interest in the property which he acquired under his conveyance were brought to sale in execution of a decree, and the plaintiffs (respondents) before us purchased them. After the new Registration Act came into operation, the plaintiffs, on the strength of their purchase, presented an application for the registration of their names in respect of a 6 annas 17d. 18c. share of the malikana money in question. They were opposed by the defendant Gopi Nath Chobey. The Collector referred the case, under s. 55, Act VII of 1876, to the Civil Court, and on the 18th October 1879 disallowed the plaintiffs' application. Thereupon the present suit was brought on the 5th November 1880.

It is alleged by the defendant Gopi Nath Chobey that Rowshun Ali was his benamidar only. The defendant Gopi Nath Chobey, who is the appellant before us, amongst other pleas relied upon the decision in the suit of 1860 being *res-judicata*, and also upon the plea of limitation. He contended that under the circumstances of this case the plaintiffs' claim was barred by limitation. On the merits his case was that the conveyance to Behari Lal did not transfer any right to dearah Afzulpur.

The Subordinate Judge dismissed the plaintiff's suit. The District Judge, on appeal by the plaintiff, has reversed that decision.

The District Judge has decided all three questions in favor of the plaintiff. He holds that under his purchase, Behari Lal acquired a right to dearah Afzulpur, which was only an accretion to mouzah Syedpur Mosleh. He has overruled the pleas of *res-judicata* and limitation. Upon all these three points this second appeal has been argued, but it is sufficient for us to notice only the pleas of *res-judicata* and limitation, and we are of opinion that upon both these pleas this appeal should succeed; first as regards *res-judicata*. The District Judge has found as a fact, with reference to which finding there is an objec-

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tion on the other side, that Rowshun Ali was the benamidar of the appellant Gopi Nath Chobey. Notwithstanding that finding he is of opinion that the present claim is not barred by *res-judicata*, *first* because there was no question about malikana in the suit of 1860; *secondly*, because it is not shown that the suit of 1860 was litigated by the parties upon the same title; and, *thirdly*, because the Munsiff who tried that suit was not competent to try the present suit. The learned vakeel for the respondents has urged that the District Judge is in error in assuming without evidence that Rowshun Ali is the benamidar of Gopi Nath Chobey. He has further contended that even supposing that Rowshun Ali was the benamidar of Gopi Nath, the suit of 1860 would not preclude the plaintiffs from contesting the same matter in a subsequent suit with the real owner, Gopi Nath Chobey. We shall notice these two objections, taken before us by the learned vakeel for the respondents, first. As regards the first objection, it appears to us that the cases cited in support of it do not at all bear him out. With the exception of the decision in *Mehervoonissa Bibee* v. *Hur Churn Bose* (1) none of the other cases really touch this point. As regards the decision in that case the observation relied upon appears to us to be a mere *obiter dictum*. There the question was whether the benamidar alone was entitled to maintain the suit without bringing upon the record the beneficial owner. In the course of the decision upon this point one of the learned Judges who decided that case made some observations which no doubt support the contention of the learned vakeel for the respondents. The other two cases are not in point; the decision in *Kallee Prosunno Bose* v. *Dinonath Bose Mullick* (2) really turns upon the ground that all the parties interested in the suit were not plaintiffs or parties to it. There a party, not on the record, *viz.*, one Kedar Nath Bose, stated in his deposition that the property in dispute in that case had been purchased in the benami name of his cousin, the plaintiff on the record, and he further stated that under that purchase he and his cousin, the plaintiff on the record, were jointly entitled to the property. Upon that state of things the learned Judges decided the case

(1) 10 W. R., 220. (2) 10 W. R., 434.

upon the ground that all the persons entitled to the property were not joined as plaintiffs.

The other decision, *viz.*, in the case of *Sita Nath Shah* v. *Nobin Chunder Roy* (1) was on the question whether a benamidar alone, without joining the beneficial owner, is entitled to maintain a suit. Therefore none of the cases cited by the learned vakeel for the respondents really can be relied upon as authorities upon the point now before us. But apart from authorities, it appears to us that so long as the benami system is, to be recognised in this country, the proper rule, in our opinion, is that, in the absence of any evidence to the contrary, it is to be presumed that the benamidar has instituted the suit with the full authority of the beneficial owner, and if he does so, any decision come to in his presence would be as much binding upon the real owner as if the suit had been brought by the real owner himself. That being so, we do not think that this objection is valid. The next objection that was taken was that there was no evidence upon which the learned Judge could find that Rowshun Ali was really the benamidar for Gopi Nath Chobey. It appears to us that in the proceedings before the Civil Court under s. 55, Act VII of 1876, it was taken for granted by the Judge who decided that case that Rowshun Ali was the benamidar for Gopi Nath. The Subordinate Judge who tried that case, as found by the District Judge in this case, treated the defendant (appellant) Gopi Nath Chobey as the real owner of the share which had been purchased in the name of Rowshun Ali. In the plaint it is not stated by the plaintiffs that the Subordinate Judge was not right in treating Gopi Nath, the defendant, as the benamidar of Rowshun Ali; and whether the recital in the decision of the Subordinate Judge in the proceeding under s. 55, Act VII of 1876, is any evidence upon this point or not, it is clear to us that the said recital, coupled with the fact that it is not contradicted by the plaintiffs in the plaint, is some evidence of the fact that Rowshun Ali is the benamidar for Gopi Nath. Therefore we think that this objection also must fail.

We now come to the grounds upon which the District Judge has overruled the plea of *res-judicata*. The first ground taken

(1) 5 C. L. R., 102.

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by the District Judge is that the former suit was for possession of the dearah itself, and that no question of malikana was in issue. It seems to us that this ground is untenable. Substantially the same question is at issue in both these suits, *viz.*, the proprietary right to the dearah in dispute. In the suit of 1860, if Behari Lal had succeeded in establishing his proprietary right to the dearah, the suit of Rowshun Ali would have been dismissed; so also in this case, if the plaintiffs can establish as against Gopi Nath Chobey, the appellant, their proprietary right to the dearah, the plaintiffs would be entitled to a decree. The substantial question is therefore identical, *viz.*, who is the proprietor of mouzah Afzulpur. The second ground upon which the District Judge has overruled the plea of *res-judicata* is equally untenable. We have the decree passed in 1860 in which it was decided in favor of Rowshun Ali (and it may be taken now, that Rowshun Ali is only another name for Gopi Nath, the appellant before us); that Gopi-Nath under his purchase from the common vendor of both himself and Behari Lal, had acquired a title to the dearah in dispute; and that Behari Lal had no title to it. It is not shown that that title, which was established in the suit of 1860 in favor of Rowshun Ali or Gopi Nath, the appellant before us, has been extinguished. Under these circumstances, it is reasonable to presume that Gopi Nath is in this suit relying upon the same title upon which Rowshun Ali on his behalf obtained a decree in the suit of 1860. Unless the plaintiffs can show that that title has been extinguished and that Gopi Nath is really relying upon a different title, it is reasonable to presume that Gopi Nath is litigating the same question in this suit under the same title. As regards the third ground, no doubt the District Judge's view is to a great extent supported by the language of s. 13 of Act XIV of 1882. The first paragraph of the section, which is alone material, is as follows:—"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, *in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised.*" Now the District Judge says that, as the Munsiff who tried the former suit would

not be competent to try the present suit which is "*the subsequent suit,*" therefore the provision of s. 13 do not apply. We are of opinion that this construction of s. 13 is not correct. It is well known that in this country the value of landed property is increasing every day. A suit regarding a particular property may be, so far as the pecuniary value of it, properly cognizable by a Munsiff to-day, and ten years hence a suit for that property, having regard to its pecuniary value then, might not be cognizable by the Munsiff. But it would be unreasonable to hold, in a suit which might be brought ten years hence, that a decision between the same parties to-day passed by a Munsiff having full jurisdiction would not be *res-judicata* ten years hence. The reasonable construction of the words "in a Court of jurisdiction competent to try such subsequent suit" seems to us to be that it must refer to the jurisdiction of the Court at the time when the first suit was brought, that is to say, if the Court which tried the first suit was competent to try the subsequent suit if then brought, the decision of such Court would be conclusive under s. 13, although on a subsequent date, by a rise in the value of such property or from any other cause, the said Court ceased to be the proper Court, so far as pecuniary jurisdiction is concerned, to take cognizance of a suit relating to that property. In this case, in the suit of 1860, there was no objection taken that the Munsiff had no jurisdiction to entertain it, and therefore the parties being the same, it may be taken as conclusively decided by that suit as between them that the Munsiff in that suit had jurisdiction to entertain it. The present suit relates to the same property; it is true that it has been brought in the Subordinate Judge's Court, and no objection has been taken to the value put upon the claim, still if the first suit was cognizable by the Munsiff, the second suit, which embraces the same property, must be held to have been cognizable by the Munsiff also if brought in 1860. Putting this construction upon s. 13 it seems to us that the decision in the suit of 1860 comes within the purview of it. Upon all these grounds, we are therefore of opinion that the plea of *res-judicata* taken by the defendant (appellant) should prevail.

As regards the other plea, *viz.*, that of limitation, it appears to us that one of the following articles, *viz.*, 131, 144, or 120 must

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apply to the present suit. If it can be held that this is a suit for possession of immovable property or any interest therein, then in that case it is quite clear that Article 144 must apply. Article 142 is not applicable, because that Article contemplates a suit for possession of immovable property when the plaintiff, while in possession, has been dispossessed. There is no allegation of dispossession in this suit; therefore if it is a suit for possession of an interest in immovable property, Article 144 applies. Again, if it be said that it is not a suit for *possession* of an interest in land, then either Article 131 or 120 is applicable. Article No. 131 is to this effect: "For a suit to establish a periodically recurring right twelve years from the time when the plaintiff is first refused the enjoyment of the right." In this case the plaintiffs are seeking to establish, no doubt, a periodically recurring right, *viz.*, a right to receive malikana annually, but there is also a further claim involved in the suit, because that right carries with it a right to the property itself, if the parties consent to take a settlement when the time for concluding the next temporary or permanent settlement comes. Therefore it cannot be said that it is purely a suit to establish a periodically recurring right. But if the present suit do not fall within Article 144 or Article 131 it must then fall under Article 120. If Article 144 applies, we have to determine whether in this case the possession of the defendant did not become adverse to the plaintiff for more than twelve years. In the year 1866, when the Collector refused to recognise the right of Behari Lall and recognised the right of Rowshun Ali, adverse possession, so far as possession could be taken of an interest in immovable property like the one in dispute in this case, was taken by Rowshun Ali. Upon this point the learned vakeel for the respondents strongly relied upon a decision in the case of *Rao Karan Sing* v. *Raja Bakar Ali Khan* (1). It was held in that suit that upon the facts found in the lower Court, Article 145 of the second schedule of Act IX of 1871, which corresponds with Article 144 of the present Limitation Act, was applicable; and their Lordships of the Judicial Committee further held that, with reference to the facts found in the case, adverse possession against the plaintiff had not been taken for more than twelve years. These

(1) L. R., 9 I. A., 99.

facts were as follows: One Badam Singh was entitled to the property in dispute in that case and upon his death his widow took possession. Karan Singh, who was the appellant before their Lordships, brought a suit to turn the widow out of possession, upon the ground that Badam Singh had made him his heir-at-law. That suit was defended by the widow, and after her death the grand children of Badam Singh, Kharag and Rudar Singh, were made parties to the suit. The claim of Karan Singh, the appellant before the Privy Council, was dismissed. Then Karan Singh brought another suit against Kharag and Rudar Singh for possession of the same property, on the ground that they, Kharag and Rudar Singh, who were the sons of a daughter, were not, according to the custom of the family, entitled to inherit the estate. While that suit was pending, the Collector, in order to secure the Government revenue, attached the property and retained possession from 1861 till October 1863, when, in accordance with the decision of the Civil Court, the possession of the property in dispute, together with the surplus profits of the estate lying in deposit in the Collectorate, were made over to Karan Singh.

Then the suit out of which arose the appeal under consideration, was brought within twelve years from October 1863, but not within twelve years from 1861 when the Collector took possession. Under these circumstances their Lordships of the Judicial Committee held that the Collector's possession from 1861 to October 1863 was not adverse to the plaintiff in that suit. Their Lordships observed:

"It was the duty of the Collector, whilst in possession under the attachment, to collect the rents from the ryots, and having paid the Government revenue and the expenses of collection, to pay over the surplus to the real owner. If the defendant was the real owner, the surplus belonged to him; but if, on the other hand, the infants were the right owners, then the surplus belonged to them." In this case it cannot be said that the Collector, supposing that the malikana money from the year 1866 is lying in deposit in his office, was holding it for the real owner, whoever he may be. In this case the Collector, under the power vested in him by the Settlement Regulations, had to decide at the time of the settlement as to the person who was entitled to the

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malikana, and under this power vested in him by the Regulations, he decided that question in favor of Rowshun Ali and against Behari Lal. Therefore, it is clear that after that decision he was holding for the person whose right he had recognised; he having the right to decide that question under the Settlement Regulations.

Therefore, in this case, it must be held that from the year 1866 adverse possession, so far as adverse possession can be held of a right of this description, has been held by Gopi Nath Chobey, the appellant before us. If Article 131 is applicable, the claim would be equally barred, because the plaintiffs are bound to bring their suit within twelve years from the time when they were first refused the enjoyment of the right. It is quite clear that at least in the year 1866 they were first refused the enjoyment of that right, and therefore the plaintiffs were bound to bring their suit within twelve years from that date. For similar reasons, if Article 120 be applicable, the suit should have been brought within six years from the date of refusal. We are, therefore, of opinion that the suit must be dismissed, both upon the grounds of limitation and *res-judicata* under s. 13 of the Civil Procedure Code.

We reverse the decision of the lower Appellate Court and dismiss the plaintiffs' suit with costs in all the Courts.

Appeal allowed.

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

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May 1.

CHUNDER KANT ROY (DEFENDANT) APPELLANT *v.* KRISHNA SUNDER ROY (PLAINTIFF) RESPONDENT.*

Specific Performance—Oral Agreement—Sale to third person in contravention of Agreement—Notice—Act XIV of 1882, *ss.* 261-262.

Where a *bonâ fide* contract, whether oral or written, is made for the sale of property, and a third party afterwards buys the property with notice of the prior contract, the title of the party claiming under the prior contract prevails against the subsequent purchaser, although the latters' purchase may have been registered, and although he has obtained possession under his purchase.

* Appeal from Appellate Decree No. 2733 of 1882, against the decree of G. G. Dey, Esq., Officiating District Judge of Mymensingh, dated the 23rd of September 1882; affirming the decree of Baboo Debendra Nath Roy, Officiating Second Munsiff of Netrokona, dated 11th of August 1881.