

this did not differ materially from those applicable under s. 622, and which were applied before the decision of the case *Amir Hassan Khan v. Sheo Buksh Singh* by their Lordships of the Privy Council. The case was reported in I. L. R., 11 Calc., 6. It appears to us that we have no clear and satisfactory guidance from the decided cases as to what was held by this Court to be the scope of s. 622 before the clear and definite ruling in that case. It seems quite certain that there was no consistent course of decision in this Court. Abundance of rulings can be found, some entertaining wider and some entertaining narrower views of the limitations imposed by that section. We consider the closer and stricter interpretation to be most in accord with the intention of the Legislature, and we therefore in our discretion refuse to try in revision, and to reopen the questions of law and fact which have in the exercise of its jurisdiction been decided upon evidence by a Court whose decision upon such a point has been made final by law. We reject the application.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Aikman.

MUHAMMAD HUSAIN (PLAINTIFF) v. BADRI PRASAD (DEFENDANT).*

Act No. XII of 1881 (N.-W. P. Rent Act), s. 93—Suit by recorded co-sharer for recorded share of profits—Adverse possession.

The mere circumstance that a co-sharer's name is recorded in the Revenue papers will not prevent a suit by him for his share of profits being barred by limitation if in fact he has received no profits for more than twelve years prior to such suit. *Maksood Ali Khan v. Ghazee-ood-deen* (1) and *Tulshi Singh v. Lachman Singh* (2) followed.

THE facts of this case sufficiently appear from the judgment of Aikman, J.

Munshi *Madho Prasad* for the appellant.

Mr. *A. H. S. Reid* for the respondent.

* Second Appeal No. 707 of 1894, from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 28th March 1894, reversing a decree of Babu Dalthamban Singh, Assistant Collector, 1st class, dated the 27th September 1889.

(1) N.-W. P., H. C. Rep., 1868, p. 158.

(2) Weekly Notes, 1881, p. 20.

1895

SARMAN LAL
v.
KHUBAN.

1895.

March 5.

1895

MUHAMMAD
HUSAEN
v.
BADRI
PRASAD.

AIKMAN, J.—This was a suit under clause (h) of s. 93 of Act No. XII of 1881 to recover profits for the years 1293, 1294 and 1295 F. The defence was that, although the plaintiff had purchased this property about 21 years ago, he had never got possession of it, and that for upwards of 12 years the defendant had been in adverse possession. The Court of first instance, the Assistant Collector of Aligarh, decreed plaintiff's claim in part. On appeal this decree was reversed by the learned District Judge, who dismissed the plaintiff's claim. The plaintiff comes here in second appeal. The plaintiff relies on the fact that he is a recorded co-sharer. He does not assert that he ever received profits of the shares of which he is recorded as being in possession. It appears that he brought a suit to recover the profits for 1283 Fasli which would fall due on the 1st of August 1876. There is nothing on the record to show when this suit was brought; but it appears from a copy of the Assistant Collector's judgment that it was decided on the 26th of August 1879. From that judgment it appears that the defendants to that suit raised a plea similar to that which is now put forward, namely, that the plaintiff had never received any portion of the profits. The Assistant Collector in 1879 gave the plaintiff a decree, but this decree was set aside in appeal, for what reasons does not appear, as no copy of the appellate judgment is produced. In appeal it is urged that the plaintiff's claim was not barred by any adverse title acquired by the defendant, inasmuch as the defendant for the first time in 1879 denied the plaintiff's title. With regard to that plea I would observe that it is not shown that it was in 1879 that the defendant first denied the plaintiff's title. From the defence in the former suit and from the fact that it is not shown that the plaintiff ever received any profits from this share, I infer that the defendant has all along denied the plaintiff's title. The rulings of this Court in *Maksood Ali Khan v. Ghazee-ood-deen* (1) and *Pulshi Singh v. Lachman Singh* (2) are clearly in the respondent's favor. In my opinion the decision of the lower appellate Court is right. I dismiss this appeal with costs.

Appeal dismissed.

(1) N.-W. P., H. C. Rep., 1868, p. 158.

(2) Weekly Notes, 1881, p. 20.