

APPELLATE CIVIL.

1899
December 11.*Before Mr. Justice Blair and Mr. Justice Burkitt.*BALWANT SINGH (PLAINTIFF) v. THE SECRETARY OF STATE FOR
INDIA IN COUNCIL (DEPENDANT).**Act No. XIX of 1878 (N. W. P. Land Revenue Act), section 241(i)—Act No. VIII of 1878 (Northern India Canal and Drainage Act), section 45—Civil and Revenue Courts—Jurisdiction—Suit to recover alleged excess payments in respect of irrigation dues.**Held* that no suit would lie in a Civil Court to recover payments alleged to have been made in respect of irrigation dues in excess of what was properly leviable on the plaintiff.

THIS was a suit instituted in the Court of the Subordinate Judge of Agra for the recovery of a certain sum of money alleged to have been paid under the following circumstances as detailed in the judgment of the Court of first instance :—

“ The plaintiff is the zamindar of two villages, namely Kayatha and Gangni, pargana Ferozabad, zila Agra, and pays the irrigation (called the owner's) rate for these villages. The owner's rate is levied on those lands alone which at the time of the last settlement were *usar*, or *bunjur*, or *khakee*, or *nautor*, and which are now irrigated through the canal; these have been assessed with an irrigation fee of those lands which did not use to be irrigated.

“ On account of the village Gangni for the years 1292 to 1296 F. Rs. 833-11-10 were taken in excess of the real dues from the plaintiff's ancestor through mistake on account of owner's rate, that is, on account of those lands which at the time of the last settlement used to be irrigated by canal or wells, or any other means; that in the same way Rs. 3,709-14-8 were taken in excess of the correct dues for the village Kayatha for the same period; that the lands for which these fees have been taken are entered in the jamabandis as being *Nahree* or *Chahce*, but the owner's rate was taken with respect to them by mistake. That the numbers of these plots are given in the exhibits marked from A to T.

* Second Appeal No. 194 of 1897 from a decree of W. F. Wells, Esq., District Judge of Agra, dated the 21st December 1896, confirming the decree of Maulvi Syed Muhammad Sirajuddin Ahmad, Subordinate Judge of Agra, dated the 6th August 1896.

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“The ancestor of the plaintiff and the servants of his estate relying upon the jamabandis supplied to the zamindars twice a year paid the said amounts.

“In May, 1891, the karindas of the estate discovered the mistake, and therefore on the 14th of May, 1891, an application was made to the Collector for a refund of the amount, but it was disallowed on the 1st of August, 1891.

“A notice under section 424 of the Civil Procedure Code was served upon the Collector on the 9th of March 1894.

“The cause of action arose on the 13th of May, 1891, when the ancestor of the plaintiff and the servants of the estate discovered the mistake, as well as on the 1st of August, 1891, when the application for a refund of the amount was disallowed.

“Upon these allegations the plaintiff seeks to recover Rs. 4,543 from the defendant.

“The defence is :—

“That the plaint has not been properly signed and verified by the plaintiff.

“That the claim is barred by limitation, and the plaintiff has given a wrong cause of action.

“That the amounts in dispute as stated in the plaint are incorrect and greatly differ from the entries in the jamabandis filed by the plaintiff with the plaint.

“That the defendant before the institution of the present suit asked the plaintiff for an account and a list of fields in dispute in order to decide whether any mistake had really been made, but the plaintiff neither sent the said papers to the defendant nor showed them to his pleader.

“That no excess irrigation dues have been realized from the plaintiff, and the dues referred to in the plaint having been fully examined, have been rightly assessed and recovered.

“That the plaintiff and his ancestor had been always paying the irrigation dues and deriving benefits thereof, and the jamabandis have been always in their hands; they never raised any objection; that the present plaintiff has no *locus standi*. The allegation that the said dues were paid by mistake and the mistake was discovered on the 13th of May, 1891, is wrong.

“That the plaintiff applied to the Collector of Agra for a refund of the amount but it was rejected on the 1st of August, 1891; that no excess irrigation fee has been recovered from the plaintiff, and if any has been recovered, he is not entitled to its recovery under circular A. D. of July, 1883.”

Upon these pleadings the Court of first instance dismissed the suit as barred by limitation.

The plaintiff appealed, and the lower appellate Court (District Judge of Agra) dismissed the appeal, finding the suit barred by limitation under article 14 of the second schedule to the Indian Limitation Act, 1877.

The plaintiff thereupon appealed to the High Court.

Babu *Jogindro Nath Chaudhri* and Babu *Satya Chandra Mukerji*, for the appellant.

Mr. *E. Chamier*, for the respondent.

BLAIR and BURKITT, JJ.—In our opinion the suit does not lie by dint of section 241, second paragraph of cl. (i), of the Land Revenue Act, No. XIX of 1873, and section 45 of Act No. VIII of 1873. This question was not raised in the appeal or indeed elsewhere at all. The Court below dismissed the suit by the application of art. 14, sch. II of the Limitation Act. The appeal is therefore dismissed, but under the circumstances, without costs.

Appeal dismissed.

Before Mr. Justice Blair and Mr. Justice Burkitt.

KANHIA LAL (PLAINTIFF), v. DEBI DAS AND ANOTHER (DEFENDANTS).*

Hindu law—Joint Hindu family—Suit for partition—Plea by defendants that some of the property in suit was their self-acquired property—Burden of proof.

In a suit for partition of property alleged to be the property of a joint Hindu family, of which the plaintiff was a member, the defendants, while admitting that some of the property scheduled in the plaint was joint property pleaded that the bulk of the property in suit, of which they were in possession, was their own self-acquired property. *Held* that the burden of proof was on the defendants to show that such property was their self-acquisition.

* Second Appeal No. 410 of 1897 from a decree of C. Rustomjee, Esquire, District Judge of Moradabad, dated the 24th March 1897, reversing the decree of Pandit Rajnath Sahib, Subordinate Judge of Moradabad, dated the 11th December 1893.

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