

whether an acknowledgment was in writing, or was signed by the debtor, or was made within the period of limitation, and even an oral acknowledgment would revive a time-barred debt. The only way of avoiding such a result is to hold that an acknowledgment of the kind which we have here is neither an account stated, to which art. 64 applies, nor evidence of a new contract, which can be the basis of a suit. As shown above, there is ample authority for such a conclusion.

For these reasons we are of opinion that the plaintiff's suit as brought was not maintainable, and that the decision of the lower appellate Court is correct. We therefore dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Burkitt and Mr. Justice Chamier.

KESHO DAS AND OTHERS (PLAINTIFFS) v. NARAIN SINGH (DEFENDANT).^{*}
Act No. III of 1878 (*Local Rates Act*)—Act No. IX of 1889 (*Kanungo and Patwaris Act—Cess—Assignment of Government revenue—Assignees not entitled to cesses.*)

Held that an assignee of the Government revenue assessed on a certain patti was not entitled to receive patwari rates and local cesses from the zamindar, such rates and cesses have to be paid by the zamindar to the Government.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. D. N. Banerji, Pandit Sundar Lal, and Dr. Satish Chandra Banerji, for the appellants.

Pandit Madan Mohan Malaviya, for the respondent.

BURKITT and CHAMIER, JJ.—The matter at issue in this appeal refers to the patwari rates and other cesses payable on account of patti Hardeo in mauza Birahu. In that village it appears that at settlement the zamindar, Narain Singh, accepted the terms offered by the Settlement Officer for patti Hardeo, and the settlement was accordingly made with him, and at the same time the Government revenue assessed on that patti was assigned to the present plaintiffs appellants. As to the rest of the mahal the zamindars refused the terms offered by the Settlement Officer,

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^{*} Second Appeal No. 163 of 1900 from a decree of W. F. Wells, Esq., District Judge of Agra, dated the 28th November, 1899, modifying a decree of Munshi Muhammad Ali Khan, Assistant Collector of Agra, dated the 11th September, 1899.

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and the consequence was that settlement was made with the plaintiffs appellants, and a malikana allowance was fixed for the zamindars. The present suit was brought by the plaintiffs claiming a certain sum as revenue of the patti Hardeo. It was objected that in that amount two items were claimed for patwari rates and local cesses payable under Acts No. III of 1878 and IX of 1889 on patti Hardeo. A decree was given for the amount of revenue in arrears, but the lower Court refused the plaintiffs a decree for the cesses and rates. Hence this appeal. It is admitted that the patwari rates and cesses in dispute concern patti Hardeo alone. The plaintiffs' allegation is that they were compelled by the Revenue authorities to pay those rates and cesses, and they now seek to recover them from the defendant, Narain Singh. We should say that there is no allegation in the plaint as to any such compulsion, but the statement was made to us by the learned advocate who appeared for the appellants.

We are unable to see how the defendant respondent is liable to the plaintiffs for those rates and cesses, or how the plaintiffs are liable to Government for them. The plaintiffs' only connection with patti Hardeo is that they are the assignees of the Government revenue payable in respect of that patti. They have no other concern with it. They are not the assignees of the cesses or of the rates, they therefore are not authorized to demand these cesses or rates from the defendant, nor is there any obligation on the defendant, the zamindar, with whom the patti was settled, to pay them to the plaintiffs. Neither Act No. III of 1878 nor Act No. IX of 1889 affords any justification for this suit. The person liable to pay these rates and cesses is no doubt the defendant, Narain Singh, but the persons to whom he should pay and is bound to pay are the local Revenue authorities and not the muafidars. Whether the plaintiffs have a remedy by suit in a Civil Court to recover from the defendants the sums they say they have paid to Government is a matter as to which we think it unnecessary to express any opinion.

For the above reasons we are of opinion that this appeal must fail as far as the rates and cesses are concerned. We therefore dismiss this appeal with costs.

Appeal dismissed.