1904
February 20.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt

MUHAMMAD SUBHAN-ULLAH (PLAINTIFF) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT).*

Act No. XV of 1877 *(Indian Limitation Act), section* 14*—Limitation—Suit to recover possession of immovable property—Extension of period of limitation—Time occupied in prosecuting mutation proceedings before revenue officers.*

Held that the prosecution of an application for mutation of names under the provisions of the North-Western Provinces Land Revenue Act, 1873, and of appeals from the order of the Settlement Officer refusing mutation, does not fall within the terms of section 14 of the Indian Limitation Act, 1877—"Prosecuting with due diligence another civil proceeding in a Court of first instance or in a Court of appeal, &c., &c." An application for mutation of names is not a civil proceeding, nor are the Settlement Officer, the Commissioner and the Board of Revenue "Courts," but they are Executive Officers of Government.

The plaintiff in this case brought his suit to recover possession of certain waste and alluvial lands situate in mauza Barhalganj on the banks of the Ghagra in the district of Gorakhpur. The plaintiff claimed title by transfer from a grantee to whom the village is said to have been granted by Government. Owing to differences between the plaintiff's predecessor in title and one Sarju Prasad the village was attached by the Magistrate under the provisions of section 531 of the then Code of Criminal Procedure (Act No. X of 1872). The parties were referred to the Civil Court, and subsequently the plaintiff's predecessor in title obtained a decree in his favour, and the village was released to him on the 14th of August 1885. At that time revision of settlement operations were in progress. The plaintiff's predecessor in title applied for entry of his name in respect of the village. That application was granted in respect of nearly all the land in the village, but was refused in respect of certain *parti*, or waste, lands, which the plaintiff's predecessor claimed to be appurtenant to his zamindari, but which were claimed adversely to him by Government. Against the order refusing to record the plaintiff's predecessor as owner

* Second Appeal No. 1114 of 1901 from a decree of W. Tudball, Esq., District Judge of Gorakhpur, dated the 2nd of September 1901, confirming a decree of Munshi Anant Prasad, Subordinate Judge of Gorakhpur, dated the 14th of June 1901.

of these waste lands an appeal was taken to the Commissioner and then to the Board of Revenue. The Board of Revenue held that it had no power to determine questions of title between the Government and the applicant, and on the 7th of December 1889, refusing to entertain the matter, referred the parties to the Civil Court. The present suit was accordingly instituted on the 7th of December 1900. The Court of first instance (Subordinate Judge of Gorakhpur) dismissed the suit as barred by limitation, and on appeal the lower appellate Court (District Judge of Gorakhpur) confirmed this decree. The plaintiff thereupon appealed to the High Court.

Mr. *Abdul Raoof*, for the appellant.

Mr. *A. E. Ryves*, for the respondent.

STANLEY, C. J., and BURKITT, J.—The suit in this case has been instituted by the plaintiff appellant for recovery of certain waste and alluvial lands situate in mauza Barhalganj on the banks of the Ghagra in the district of Gorakhpur. The plaintiff derives his title under a transfer from a grantee to whom the village is said to have been granted by Government. Between the plaintiff's predecessor in title and one Sarju Prasad there was a dispute, which apparently so much endangered the public peace that this village was attached by the Magistrate under the provisions of section 531 of the then Criminal Procedure Code (Act No. X of 1872). The parties were referred to a Civil Court to settle their differences. The plaintiff's predecessor in title subsequently got a decree declaring his title and the village was released to him on the 14th of August 1885. Revision of settlement operations were then in progress. The plaintiff's predecessor in title applied for entry of his name in respect of the village. That application was granted in respect of nearly all the land of the village but was refused in respect of certain *parti*, or waste, lands, which the plaintiff's predecessor claimed to be appurtenant to his zamindari, but which were claimed adversely to him by Government. It was the duty of the Settlement Officer as an Executive Officer of Government making settlement under section 62 of the Land Revenue Act XIX of 1873, to prepare a list of all the co-sharers, and section 64 of the Act provides that all entries made under that section

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"shall be founded on the basis of actual possession." Therefore when the Settlement Officer was asked to insert the name of the plaintiff's predecessor in title as proprietor of the waste lands, he had to see whether he was in possession or not. Finding he was not, he refused to enter the name. An appeal was taken unsuccessfully to the Commissioner and to the Board of Revenue. The Board of Revenue held very properly that it had no power to settle questions of title between Government and the applicant, and on the 7th of December 1889, refusing to entertain the matter, referred the parties to a Civil Court. This suit was instituted on the 7th of December 1900.

As regards the *parti* lands the lower appellate Court agreeing with the Court of first instance dismissed the plaintiff's suit, holding it to be barred by limitation. In that conclusion we fully concur. The learned counsel for the appellant in contesting the decision of the learned District Judge on the point of limitation prayed in aid of his argument the provisions of section 14 of the Limitation Act No. XV of 1877. We are unable to follow the learned counsel in his contention. The period of time which under section 14 may be excluded is "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

Now in this case there was no civil proceeding whatever before the Settlement Officer. The Settlement Officer in the matter of preparing a record of rights is not a judicial officer and is not a Court. He is simply an Executive Officer who, under the instructions of Government and the provisions of section 62 and subsequent sections of Act XIX of 1873, is employed in revising the settlement. Among other duties he has to prepare what is called a "record of rights," which is a paper in which, *inter alia*, the names of all co-sharers and tenants are entered. As to co-sharers, the Settlement Officer is directed to make entries in it, as we have already mentiond, on "the

basis of actual possession." This is not a judicial act. It is a purely executive function discharged by an Executive Officer. An appeal from it is granted under the Land Revenue Act not to any "Court," exercising judicial functions, but to higher Executive Officers of Government, the Commissioner and the Board of Revenue. In this case, therefore, we hold that there was no civil proceeding in existence, and that even if the application made by the ancestor of the appellant to be recorded in the record of rights as proprietor of these waste lands be considered to be a civil proceeding, it was not before any Court, but before a purely executive officer acting in his executive capacity. We, therefore, think the District Judge was quite right in finding that this portion of the claim was barred by limitation.

The second portion of the claim refers to certain alluvial lands as to which the plaintiff alleges, and it may be correctly, that his cause of action as to them came into existence in 1892. Be that as it may, we are of opinion that the suit considered as a suit for possession of alluvial land cannot be supported. The land in dispute does not lie in front of the appellant's land, but is an alluvial deposit on each side of appellant's alluvial field. A glance at the map shows clearly that these two fields in dispute are alluvial accretions to the *parti* lands of the respondent, as to which the appellant's case has just failed. This alluvial increment is directly in front of the *parti* lands just mentioned, and though it may be bounded on the east and west by some alluvial land of the appellant, that does not do away with the rule that alluvial accretions accrete to the land in front of which they have been deposited. It is clear that these were deposited in front of the defendant respondent's lands mentioned above and therefore accreted to them. We are of opinion that the decision of the Court below is correct. The appeal fails; we dismiss it with costs.

Appeal dismissed.