APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

BIR CHUNDER MANIKYA (PLAINTIFF) *v.* BAJ MOHUN GOSWAMI AND OTHERS (DEFENDANTS).* 1889 *January* 15.

Limitation Act, 1877, *Art.* 130—*Suit for assessment of rent on lakheraj land after decree for resumption—Effect of decree as creating or not relationship of landlord and tenant.*

The plaintiff brought a suit in 1861 against *C* for resumption of, and for declaration of his right to assess rent upon, *C's* lands within his zemindari which *C* held as *lakheraj*. That suit was presumably instituted under Regulation II of 1819, s. 30, which related only to resumption of *lakheraj* lands existing prior to 1790, but there was nothing to show conclusively under what law it was instituted, or whether the *lakheraj* grant was one subsequent or anterior to 1790. In that suit an *ex parte* decree was passed in 1863 that "the suit be decreed, and the land in dispute be declared to be *shukur*," *i.e.*, liable to assessment. In a suit brought in 1886 against the representatives of *C*, after serving a notice upon them to pay rent for the land at a certain rate, to assess the land at the rate mentioned in the notice, and for the recovery of rent at that rate: *Held* that the decree of 1863 had not the effect of creating the relationship of landlord and tenant between the parties, and therefore the suit, not having been brought within 12 years from the date of that decree, was barred by art. 130 of the Limitation Act XV of 1877.

THIS was a suit for assessment of rent on certain lands which the predecessor of the defendants had held as *lakheraj* lands, but which had been declared liable to assessment by an *ex parte* decree, dated the 14th January, 1863, which, as the plaintiff claimed, had the effect of establishing the relationship of landlord and tenant between himself and the defendants.

The defence (so far as it is material to this report) was that the decree passed in 1863 had not the effect ascribed to it by the plaintiff, and that the suit was consequently barred by lapse of time. Both the lower Courts decided in favor of the defendants, and the plaintiff appealed to the High Court.

Mr. *P. O'Kinealy* and Baboo *Srinath Banerjee* for the appellant.

* Appeal from Appellate Decree No. 2231 of 1887, against the decree of Baboo Nil Madhub Bundopadhya, Subordinate Judge of Tipperah, dated the 2nd of July 1887, affirming the decree of Baboo Chunder Prosunno Dutt, Munsiff of Commilla, dated the 14th of March 1887.

1889

BIR CHUNDER MANIKYA v. RAJ MOHUN GOSWAMI.

Baboo *Akhoy Coomar Banerjee*, and Baboo *Gobind Chunder Doss* for the respondents.

The following cases were cited: *Sonatun Ghose* v. *Abdool Farrar* (1), *Madhusudan Sagory* v. *Nipal Khan* (2), *Saudamini Debi* v. *Sarup Chandra Roy* (3), *Protap Chunder Chowdhry* v. *Shukhee Soondaree Dassee* (4), and *Nilkomul Chuckerbutty* v. *Bir Chunder Manikya*, Special Appeal No. 1605 of 1885 decided on the 13th May, 1886 (5).

(1) B. L. R., Sup. Vol., 109; 2 W. R., 91.
(2) 8 B. L. R., Ap, 87 (note); 15 W. R., 440.
(3) 8 B. L. R., Ap., 82; 17 W. R., 363.
(4) 2 C. L. R., 569.
(5) *Before Mr. Justice Mitter and Mr. Justice Grant.*

NIL KOMUL CHUCKERBUTTY AND OTHERS (DEFENDANTS) *v.* BIR CHUNDER MANIKYA (PLAINTIFF).*

Limitation Act, 1877, Art. 130—Suit for assessment of rent on lakheraj land after decree for resumption—Effect of decree as creating or not relationship of landlord and tenant.

The plaintiff in 1862 obtained a decree for resumption of land held under an invalid *lakheraj* title created before 1790, the decree declaring the land liable to assessment. In a suit brought more than twelve years after the decree against the representatives of the defendant in the suit of 1862 to assess the land: *Held*, that the decree of 1862 did not create the relationship of landlord and tenant between the parties, and that the suit was, therefore, barred under Art. 130 of the Limitation Act XV of 1877.

THE facts of this case are sufficiently stated in the judgment.

Baboo *Troyluckonath Mitter* and Baboo *Golap Chunder Sircar* for the appellants.

Baboo *Rutneswur Sen* (for Baboo *Kali Mohun Das*), and Baboo *Durga Mohun Das* for the respondent.

The judgment of the Court (MITTER and GRANT, JJ.) was as follows:—

This is a suit brought by the plaintiff to assess certain lands, which were declared by a decree of 1862 to be liable to assessment as invalid *lakheraj*. One of the objections taken by the defendants in this Court, as well as in the lower Courts, is that the suit is barred by limitation. Another point urged here is that one of the defendants in that suit, viz., Prosunno Coomar Chuckerbutty, was a minor at the time when the decree was passed, and that he was not represented by his guardian. As we think that upon the first point taken, namely, the point of limitation, the defendants appellants

*Appeal from Appellate Decree, No. 1605 of 1885, against the decree of Baboo Kali Dass Dutt, Subordinate Judge of Tipperah, dated the 22nd of April 1885, reversing the decree of Baboo Gour Chunder Ray, Munsiff of Kushtia, dated the 28th of April 1884.

1889

BIR CHUNDER MANIKYA v. RAJ MOHUN GOSWAMI.

The facts and arguments are sufficiently stated in the judgment of the Court (PRINSEP and GHOSE, JJ.) which was as follows:—

The question involved in this appeal is one of limitation under art. 130 of the second schedule of Act XV of 1877; and it arises in this way:—

The plaintiff, who is the zemindar of Chuckla Rashinabad, instituted a suit on the 28th of December 1861 against one

are entitled to succeed, it is unnecessary to express any opinion upon the other point.

Now, to a suit of this kind, art. 130 of the second schedule of the Limitation Act applies. That article says that in a suit for the resumption or assessment of rent-free land the period of limitation is twelve years from the date when the right to resume or assess the land first accrues. The right to assess accrued in this case in the year 1862, when the resumption decree was passed, and the present suit having been brought more than twelve years from that date is barred. But it has been contended on behalf of the respondent that that article does not apply, because in this case the decree in 1862 established a relationship of landlord and tenant between the plaintiff and the predecessor in title of the defendants. If that were so no doubt it would be an answer to the contention of the appellants that the suit is barred by limitation under art. 130. Now what has been settled by authorities on this point is this, that the mere mention of s. 30, Regulation II of 1819, is not conclusive, although that section only refers to the resumption of invalid *lakheraj* lands created before the 1st December 1790, that is, although on the face of the decree it appeared that that section was mentioned, yet the suit was really a suit for assessment of rent upon land alienated from the *mal* estate after the 1st December 1790, and that the decree established a relationship of landlord and tenant between the person in whose favor the decree was passed and the person against whom it was passed. If that is not established, then it would be taken to be a decree for resumption of invalid *lakheraj* lands under s. 6, Regulation XIX of 1793. In this case the decree has been placed before us, and we cannot say that it is shown thereby that, although it purports to have been based upon s. 30, Regulation II of 1819, yet it was really a decree for assessment of *mal* land. That being so, we must take it that the decree of 1862 was a decree for resumption of land held under an invalid *lakheraj* title created before the 1st December 1790. For assessment of such lands, the procedure laid down in s. 9, Regulation XIX of 1793, has first to be adopted by the zemindar. The last part of that section says: "If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors shall hold the lands as a dependent taluk, subject to the payment of such fixed revenue for ever." But that section does not provide for a case where the proprietor, that is to say, the *lakheraj*

1889

BIR CHUNDER MANIKYA v. RAJ MOHUN GOSWAMI.

Choituno Mohun Adhicary in the Collector's Court for the purpose of *resuming*, and for having his right declared to assess rent upon, certain lands within the ambit of his zemindari which he, the defendant, held as *lakheraj*. It does not appear from the decree pronounced in that suit, and which we may here mention is the only proceeding before us in connection with it, whether it was a suit under the provisions of s. 30, Regulation II of 1819, or s. 28, Act X of 1859, or under any other law; but we have it that subsequently to the passing of Bengal Act VII of 1862, which provided for the transfer of suits instituted under s. 30, Regulation II of 1819, from the Collector's Court to the Civil Court, that suit was transferred from the Collector's to the Civil Court; and there can be little doubt that, as this transfer was made immediately after the passing of that Act, and no special reason is assigned for its transfer, it was made in consequence, and that, therefore, the suit had been brought under s. 30, Regulation II of 1819. And we may here observe that if it had been a suit under Act X of 1859, there

dar, refuses to pay the revenue required of him. It is clear that in a case of that description the zemindar must proceed by a regular suit to assess the land according to the provisions of s. 6, Regulation XIX of 1793. To a suit of that description, art. 130 of the Limitation Act would apply. In this case there is nothing to show that the plaintiff first proceeded under s. 9, Regulation XIX of 1793, and that then finding that the *lakheraj dar* did not agree to pay the revenue assessed upon the land, he was compelled to bring this regular suit. But it is clear from the proceedings in the lower Court that the defendants would not consent to pay any revenue at all. Their contention was that the suit is barred. It is, therefore, quite unnecessary to require the plaintiff to proceed first according to the direction contained in s. 9, Regulation XIX of 1793. We may take it that the *lakherajdars*, the defendants, would refuse to pay the revenue that might be assessed on their lands under the provisions of Regulation XIX of 1793. That being so, the simple question is whether the present suit is barred under art. 130 of the Limitation Act. I have already pointed out that, unless the decree of 1882 established a relationship of landlord and tenant, the present claim would be barred. It has been already shown that that decree does not go to establish that point in favor of the plaintiff. The suit is, therefore, barred by the limitation prescribed by art. 130.

We accordingly reverse the decree of the lower Appellate Court and dismiss the suit with costs.

was nothing to prevent the Collector from proceeding with it. In the Full Bench case of *Sonatun Ghose* v. *Abdool Farrar* (1), the majority of the Judges who constituted that Bench held that s. 30, Regulation II of 1819, related only to resumption of *lakheraj* existing prior to 1790. And if this suit be regarded as one brought under that law, it would seem that it was barred under the law of limitation then in force (XIV of 1859, s. 14). But however that may be, an *ex parte* decree was passed in January 1863 in these words: "The suit be decreed, and the land in dispute be declared to be *shukur*." These words, taken with the recitals of the claim given in the decree, mean, as we take it, that the prayer for resumption of the *lakheraj* be allowed, and the lands be declared liable to pay revenue or rent, as the case might be, with reference to the grant set up being either anterior or posterior to December 1790.

Nothing was done in furtherance of that decree, until the year 1886, when a notice was served by the zemindar upon the defendants, who are the representatives of Choituno Mohun Adhicary, calling upon them to agree to hold the lands at a certain jumma; and he subsequently brought the present suit on the 12th of July 1886 for the purpose of assessing the lands at the rate mentioned in the notice, and for recovery of rent at that rate.

This suit has been dismissed by both the lower Courts as barred by limitation.

The main contention that was raised before us by Mr. O'Kinealy, the learned Counsel for the appellant, was that, although more than 12 years have elapsed from the date of the decree of 1863, still no limitation would apply, because the effect of the decree was to re-annex the land that had been improperly alienated after 1790 to the *mal* estate of the zemindar, and to create between the parties the relationship of landlord and tenant. Mr. O'Kinealy further contended that the land having been already declared to be *mal*, art. 130 of the Limitation Act had no application. And he relied upon the rulings of this Court in *Madhusudan Sagory* v. *Nipal*

1889

BIR CHUNDER MANIKYA v. RAJ MOHUN GOSWAMI.

Khan (1), *Saudamini Debi* v *Sarup Chandra Roy* (2), and *Protap Chunder Chowdhry* v. *Shukhee Soondaree Dassee* (3).

The validity of the contention raised before us depends entirely upon what may be the true interpretation and effect of the resumption decree passed in January 1863. That decree, as already mentioned, does not show under what law it was passed, nor is there anything stated in it as to whether the grant set up by the *lakherajdars* was a grant subsequent or anterior to December 1790. Unless this be shown, we cannot say that the effect of the decree was to establish, as contended for the appellant, the relationship of landlord and tenant between the parties. It has been held in certain cases by this Court that a decree for resumption of a *lakheraj* grant before December 1790 does not by itself create such a relation; that it is after the decree has been followed up by a proceeding assessing the revenue payable by the *lakherajdar*, and when the latter agrees to pay the revenue assessed, that such a relationship is created; while in the case of a grant subsequent to the year 1790, the decree declaring the zemindar's right to assess rent does establish such a relation. See *Madhub Chandra Bhadory* v. *Mahima Chandra Mazumdar* (4), and *Shamasunderi Debi* v. *Sital Khan* (5).

Taking the law as thus laid down we think that, in the absence of anything being shown by the plaintiff as to the law under which the above decree was passed, and whether the alienation was anterior or subsequent to the year 1790, we cannot say for him, upon the bare words of the decree, that it established the relationship of landlord and tenant; while, on the other hand, the fact of the suit being transferred after the passing of Bengal Act VII of 1862 from the Collector's to the Civil Court indicates to our mind that it was a suit under s. 30, Regulation II of 1819, which related to the resumption of grants made before the year 1790. If the alienation was made before that year, there can be no doubt that the decree was in respect of

(1) 8 B. L. R., Ap., 87 (note); 15 W. R., 440.
(2) 8 B. L. R., Ap., 82; 17 W. R., 363.
(3) 2 C. L. R., 569.
(4) 8 B. L. R., Ap., 83 (note); 12 W. R., 442.
(5) 8 B. L. R., Ap., 85 (note); 15 W. R., 474.

lands falling within s. 6, Regulation XIX of 1793, and it follows that the zemindar was bound to have adopted the procedure laid down by ss. 8 and 9, Regulation XIX of 1793, for the assessment of revenue upon those lands. And if this had been done, the relationship of landlord and tenant would have been established between the parties. But so far as the words of the decree of 1863 are concerned, they merely amount to this, that the *lakheraj* is not a valid one, and that the lands are liable to pay revenue or rent, as the case might be. It does not declare that the lands belong to the *mal* estate of the zemindar.

If this decree did not establish the relationship of landlord and tenant, and if it did not declare that the lands were the *mal* land of the zemindar, it seems to us to be clear that the plaintiff was bound to have brought his suit within twelve years from the date thereof for the assessment of the lands.

As to two of the cases relied upon by Mr. O'Kinealy, *viz. Madhusudan Sagory* v. *Nipal Khan* (1) and *Saudamini Debi* v. *Sarup Chandra Roy* (2), we may observe that the question of limitation was not raised in either of them; and there is nothing in those decisions, as we understand them, which militates against the view we have expressed. It was no doubt laid down in the first of these two cases that, in regard to decrees passed before the Full Bench decision in the case of *Sonatun Ghose* v. *Abdool Farrar* (3), it could not be said that merely because the procedure laid down in s. 30, Regulation II of 1819, was followed, it must be inferred that the grant was anterior to December 1790. But it is to be observed that it was found in the judgment delivered in the resumption case, which was before the Judges in the above case, that the defendant had failed to prove that the *lakheraj* existed prior to 1790; while so far as the resumption decree with which we are concerned, there was no such finding; and, in the second place, as already remarked, there are other facts before us which lead us to infer that the grant which was the subject-matter of the decree of 1863 was one anterior to 1790.

(1) 8 B. L. R., Ap., 87 (note); 15 W. R., 440.
(2) 8 B. L. R., Ap., 82; 17 W. R., 363.
(3) B. L. R., Sup. Vol., 109; 2 W. R., 91.

1889

BIR CHUNDER MANIKYA v. RAJ MOHUN GOSWAMI.

As regards the other case relied upon by Mr. O'Kinealy, *viz.*, *Protap Chunder Chowdhry* v. *Shukhee Soondaree Dassee* (1), it is sufficient to state that the judgment proceeds mainly upon the construction which the learned Judges put upon the resumption decree that was before them. That decree was construed to have the effect of declaring "that the land in the possession of the defendant had been part of the permanently-settled estate, and had been separated by an invalid grant, and thereon to resume the same and re-annex the land to the zemindar's estate." We have not before us the terms of the decree in that case, nor do we know what were the facts from which this construction was arrived at. The terms of the decree in the suit of 1886, now before us, do not however enable us to come to the same conclusion.

Our attention has been called by the learned vakeel for the respondent to an unreported decision by another Divisional Bench of this Court (Mitter and Grant, JJ.) in second appeal No. 1605 of 1885, decided on the 13th May 1886, which altogether supports the view adopted by the lower Appellate Court, holding that the plaintiff's claim was barred under art. 130 of the Limitation Act. The facts of that case were very similar to this, and we may say that we quite concur in that ruling.

The appeal will accordingly be dismissed with costs.

Appeals Nos. 2219, 2230, 2233 will be governed by the decision in No. 2231. And so far as the latter of these cases is concerned, it being found that the predecessor of the present defendant was no party to the resumption decree, there can be no question whatever that the plaintiff's suit is barred by limitation. These appeals are accordingly dismissed with costs.

J. V. W.

Appeal dismissed.

(1) 2 C. L. R., 569.