

such certificate shall bind all immoveable property of the judgment-debtor situate within the jurisdiction of the said Collector in the same manner and with like effect as if such immoveable property had been attached under the provisions of section 274 of the Code of Civil Procedure, and section 19 declares that such certificate may be enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money, so that any proceedings under the certificate procedure would be of the nature of proceedings in execution of decrees to recover personal debts. We would refer also to sections 98 and 99 of Act IX (B.C.) of 1880, more particularly to section 99, which relate to the course to be taken by the Collector if he fails to find any property belonging to the person from whom any sum on account of cesses is due. We think it unnecessary to refer to any further argument to show that the amount so due is only a personal debt and cannot properly be recovered from the property on which it is assessed, if it should so happen that that property belongs to a third person.

The order of the Lower Appellate Court is accordingly set aside, and the plaintiffs' claim decreed with costs in this and the Lower Appellate Court.

C. D. F.

*Appeal allowed.*

*Before Mr. Justice Prinsep and Mr. Justice Banerjee.*

KHANTOMONI DASI (PLAINTIFF) *v.* BIJOY CHAND MAHATAB, BAHADUR, MAHARAJA DHIRAJ OF BURDWAN (MINOR), REPRESENTED BY HIS NEXT FRIEND AND MANAGER, LALA BUNBEHARI KAPUR AND OTHERS (DEFENDANTS).\*

1892  
May 23.

*Adverse possession—Suit for possession—Limitation—Purchaser at a patni sale, under Regulation VIII of 1819, not affected by adverse possession prior to date of sale.*

A person who has held possession of property adversely against a former proprietor cannot be allowed, in a suit for possession, to set up such adverse possession against a person who has purchased the property at a patni sale, held under Regulation VIII of 1819, within 12 years from the date of

\* Appeal from Appellate Decree, No. 840 of 1891, against the decree of F. W. Badcock, Esq., Judge of Burdwan, dated the 18th of March 1891, reversing the decree of Baboo Bepin Behary Sen, Munsiff of Kalna; dated the 8th of March 1890.

1892

KHANTO-  
MONI DASI  
v.  
BIJOY  
CHAND  
MAHATAB,  
BAHADUR.

the institution of the suit. The purchaser is entitled to the patni free from all incumbrances and in the condition in which it was created.

*Womesh Chunder Goopto v. Raj Narain Roy* (1) referred to.

THIS suit was instituted by the plaintiff, on the 26th April 1889, to recover possession of certain property, on the grounds that it was her *lakhiraj* property, and that she and her vendor had been in adverse possession of it for more than 12 years, and that she had been dispossessed by the defendants.

The defendant No. 3 was a tenant of the disputed land, under defendant No. 2, who held under a patni lease from defendant No. 1.

The defence was that the disputed land was not the *lakhiraj* land of the plaintiff or of her vendors; that it was the *mal* land of mahal Goalpara, and that it had passed into the khas possession of defendant No. 1 when he purchased Goalpara in the year 1289 (1882-83) at a sale held under Regulation VIII of 1819, and that, supposing the plaintiff and her vendors had held possession for more than 12 years adversely to the former talukdar, such possession would not avail her against defendant No. 1, who was a purchaser under the Regulation.

The Munsiff gave the plaintiff a decree, on the ground that she had acquired a *lakhiraj* title by adverse possession for more than 12 years.

On appeal, the District Judge held, upon the authority of the cases of *Womesh Chunder Goopto v. Raj Narain Roy* (1) and *Krishna Gobind Dhur v. Hari Churn Dhur* (2) "that adverse possession did not begin to run as against defendant No. 1 till the date of his purchase of the patni tenure, and as that took place less than 12 years ago, the plaintiff has not acquired a right by adverse possession." Accordingly he decreed the appeal, dismissing the suit.

The plaintiff appealed to the High Court.

Baboo *Monmotho Nath Mitter* for the appellant.

Baboo *Hem Chunder Banerjee*, Baboo *Ram Churn Mitter*, and Baboo *Joshoda Nundun Pramanic* for the respondents.

The contention of the parties appears from the judgment of the High Court (PRINSEP and BANERJEE, JJ.), which was as follows :—

The plaintiff sues to recover possession of 1½ bighas of land as *lakhiraj* situate within the patni property bought by the defendant

(1) 10 W. R., 15.

(2) I. L. R., 9 Cal., 367.

at a patni sale. She claims title as being a valid l khirajdar and also by reason of her having,<sup>1</sup> together with her predecessor, held the land for upwards of 12 years adversely to the landlord.

The Munsiff gave the plaintiff a decree, on the ground that she had acquired a l khiraj title by more than 12 years' adverse possession.

The District Judge, on appeal, has set aside this decree, and dismissed the suit on the ground that no adverse title could be pleaded against defendant No. 1, who had purchased the property at a patni sale held within 12 years from the date of the institution of the suit, and who is entitled to it free of all incumbrances created subsequent to the original grant of the patni estate.

The decision of the Full Bench in the case of *Womesh Chunder Goopto v. Raj Narain Roy* (1) is to that effect, and there is no doubt that the plaintiff's case must fail on this ground. It is not denied that she has altogether failed to establish any direct l khiraj title. It is, however, pleaded on her behalf in this appeal that inasmuch as it was found by the Court of First Instance, and that finding has not been displaced in the Lower Appellate Court, that she has held this land without payment of rent for more than 30 years, a l khiraj title should be presumed. That, however, was not the case set up by her in her plaint, nor was it made the subject of any finding in the Lower Courts. Such a plea, moreover, is one which would affect the title of the zemindar, and in order to establish any title against him, it would be necessary for her to show that she has held under a l khiraj title adversely to the zemindar before the creation of this patni. This, too, is not a plea which she has raised in her plaint or in the course of the trial. We are consequently of opinion that her suit should be dismissed, and that there should be no further trial on any issue which has been raised for the first time in second appeal.

The appeal must be dismissed with costs.

*Appeal dismissed.*

C. D. P.

1892

KHANTO-  
MONI DAS,

v  
BIJOY  
CHAND  
MAHATAB,  
BAHADUR.