

being properly stamped, the presiding Judge or the head of the office may, if he thinks fit, order that such document be stamped as he may direct. In these terms we think the Court Fees Act gives effect to the object of section 54 of the Code of Civil Procedure, and it further declares that, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance. By this we understand that, if afterwards a document shall have been properly stamped, it is as valid as if it had been properly stamped in the first instance. We think that the terms of section 4 of the Limitation Act and its explanation, and section 28 of the Court Fees Act, show that this suit cannot be properly barred by limitation. We may further refer to the case of *Skinner v. Orde* (1) decided by their Lordships of the Privy Council, in which, in a somewhat analogous case, it was held that the date of the institution of a suit should be reckoned from the date of the presentation of the plaint, and not from that on which the requisite Court-fees were subsequently put in, so as to make it admissible as a plaint. Under such circumstances we feel ourselves unable to follow the judgment of the Full Bench of the Allahabad High Court, and we accordingly set aside the judgments of the Lower Courts, and remand the case to be dealt with on the merits. The costs will abide the result.

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MOTI SAHU
v.
CHHATRI
DAS.

Appeal allowed and case remanded:

C. D. P.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

SHEKĀAT HOSAIN AND ANOTHER (PLAINTIFFS) v. SASI KAR AND OTHERS (DEFENDANTS).*

1892.

May 10.

Public Demands' Recovery Act (Bengal Act VII of 1880)—Cess Act (Bengal Act IX of 1880)—Cesses—Personal Debt—Recovery of Cesses—Property belonging to a person not recorded as proprietor.

An amount due on account of cesses under the Bengal Cess Act, 1880, is only a personal debt, and cannot properly be recovered under the Public

* Appeal from Appellate Decree No. 944 of 1891, against the decree of G. G. Dey, Esquire, District Judge, Midnapore, dated the 10th of April 1891, modifying the decree of Baboo Satkowri Haldar, Munsiff of Kontai, dated the 20th of September 1890.

(1) I. L. R., 2 All., 241 ; L. R., 6, I. A., 126.

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Demands Recovery Act, 1880, from the property on which it is assessed, when such property belongs to a third person who may not have been recorded as proprietor under Act VII (B.C.) of 1876.

THIS was a suit for declaration of title to, and confirmation of possession of a share in certain immoveable property.

The plaintiffs alleged that Satkori Bibi (defendant No. 4) was the owner of a third share in mahal Talda Ram Mohan Chuck on the Collectorate roll of Midnapore, and that, on the 10th October 1885, by a hibanamah, she made a gift of the same to plaintiff No. 1 and his uterine brother Makbul Hosain in equal shares; that on the 15th May 1889 plaintiff No. 2 purchased the said share at a sale in execution of a decree against Satkori Bibi and Makbul Hosain; that thereupon plaintiff No. 1 preferred a claim under section 335 of the Civil Procedure Code, and his right to a half share in the said third share was allowed; that Sasi Kar (defendant No. 1) was owner of a share in the said mahal; that, with the object of acquiring the entire 16 annas of the said mahal, he defaulted in paying the Government cesses, and collusively and fraudulently had the said mahal sold at a certificate sale on the 16th March 1889, and purchased the same for an inadequate price, benami in the names of defendants Nos. 2 and 3. It was further alleged that in May 1889 the plaintiffs became aware of the certificate sale and were about to file objections to it, when defendants Nos. 1 and 3 dissuaded them from doing so and promised to restore their share to them, and, having taken from them Rs. 83-5 on the 16th May 1889, filed an application to the Collector for cancellation of the sale; that the said application was rejected as being made out of time, and thereupon the defendants Nos. 1 and 3 agreed to execute a kobala in favour of the plaintiffs in respect of the said one-third share, but never executed it.

The plaintiffs accordingly prayed that the sale should be set aside, the plaintiffs' title to a one-third share declared, and their possession of it confirmed. They also prayed for a return of the Rs. 83-5. In the alternative, the plaintiffs prayed that, should the Court be of opinion that the sale could not be set aside, that the defendants should be directed to convey a third share to the plaintiffs.

Defendants Nos. 2 and 3 contested the suit. They contended that, inasmuch as the names of the plaintiffs had not been registered under Act VII of 1876 (B.C.) in respect of their alleged share in the said mahal, and plaintiff No. 2 had purchased a share at an execution sale subsequent to the certificate sale, and therefore could have acquired no title, the suit was not maintainable; that the hibanamah had not been executed *bonâ fide*, and that it was a purely benami transaction; that there was no fraud or irregularity in the certificate proceedings and sale; that they were *bonâ fide* purchasers and had paid a proper price for the property. They denied that they had taken any money from the plaintiffs.

The Munsiff found that the hibanamah was genuine, that at the time of the certificate sale plaintiff No. 1 and Makbul Hosain were the owners of the one-third share, and not defendant No. 4. He did not find fraud or irregularity in the certificate proceedings and sale, but held that only the right, title, and interest of the judgment-debtor Satkori Bibi had passed by the certificate sale, and as she had no interest in the property at that date, defendants Nos. 2 and 3 had acquired no title to the one-third share by their purchase, which would be binding on the plaintiffs. He further found that defendants Nos. 2 and 3 had taken Rs. 83-5 from the plaintiffs, promising to execute a kobala in their favour, and that the plaintiffs were entitled to recover that amount from them.

The Munsiff decreed the suit, declaring the plaintiffs entitled to a third share, confirming them in their possession, and declaring that the plaintiffs' title was not affected by the defendants' purchase at the certificate sale, and that they were entitled to recover the Rs. 83-5 claimed by them.

Defendants Nos. 2 and 3 appealed, and the District Judge upheld the findings of the Munsiff that the hibanamah was genuine, and that the plaintiffs had paid Rs. 83-5 to the defendants; but differed from him in holding that they had failed to prove the agreement to convey the property to them. He was of opinion that by section 68 of Act VII of 1876 (B.C.) the defendant Satkori Bibi (as the recorded proprietor), and the plaintiffs, the transferees, (as persons who were required to apply for registration) were liable for the payment of cesses due on the property; that the certificate bound their property, and that the subsequent attachment and sale

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were binding on them and passed their share in the property. He therefore held that the title of the plaintiffs passed by the certificate sale, and that they had made out no case for having it set aside.

The Judge accordingly modified the decree of the Munsiff and dismissed all the plaintiffs' claims except that for the Rs. 83-5, in which respect he upheld the decree of the Lower Court.

The plaintiffs appealed to the High Court.

Baboo *Debendro Nath Ghosh* and Baboo *Jogesh Chunder Dey* for the appellants.

Baboo *Neel Madhub Bose* and Baboo *Sib Chunder Palit* for the respondents.

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

The plaintiffs claimed to be the proprietors of one-third share of a certain mahal, but not the recorded proprietors on the Collector's register. They alleged that, in execution of a decree under the certificate procedure issued by the Collector against their vendor and donor, their share had been sold without any notice to them and in fraud of their title in consequence of the misconduct of defendant No. 1.

The suit has been dismissed by the Lower Appellate Court on the ground that the cesses were due from the particular property, and were properly realized by a decree, under the particular procedure known as the certificate procedure, against the recorded proprietor.

The only point laid before us in this appeal is whether such a sale would affect the rights of the plaintiffs who are admittedly not the recorded proprietors of this share. It is contended on one hand that cesses are only personal debts, and on the other, that they constitute a charge on the particular property belonging to the recorded proprietor.

We have no doubt that cesses are only a personal obligation on those who profess to be the proprietors of particular properties and who have admitted their liability by submitting to certain terms required by the Act. Section 10 of the Public Demands' Recovery Act of 1880, under which the sale was held, declares that, on the filing of the certificate by the Collector in the manner specified,

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).*

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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.