

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge and
Mr. Justice R. L. Yorke

KAMTA PRASAD AND ANOTHER (DEFENDANTS-APPELLANTS) v.
CHHATARPAL AND OTHERS (PLAINTIFFS-RESPONDENTS)*

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December, 21

*United Provinces Land Revenue Act (III of 1901), section 44—
Khwat—Entries in khewat, whether conclusive proof of
title—Limitation Act (IX of 1908), article 120—Plaintiff in
continuous possession and enjoyment of land—Mutation
effected in favour of defendant, but possession not obtained
by him—Subsequently defendant suing for profits and obtain-
ing possession—Suit for declaration by plaintiff more than
six years after mutation order, but within six years from
decree for profits—Declaratory suit, whether barred by time.*

The entries in the khewat are presumed to be correct, but such entries are not conclusive proof of title under the provisions of section 44 of the Land Revenue Act.

So long as nobody interferes with a man's possession and enjoyment of his share in a property, the fact that his share is inaccurately recorded in the revenue papers does not affect his title to it.

Where the defendants applied for mutation of their names in place of their deceased father to which only some of the plaintiffs objected but the objections were dismissed and mutation was effected in favour of the defendants, but they never got actual possession and the land remained in the exclusive possession of the plaintiffs and a few years afterwards the defendants brought a suit for profits which was decreed, and then the plaintiffs brought a suit for declaration that the defendants had no share in the land in suit and that they were not bound by the defendants' decree for profits, *held*, that the suit though brought more than six years after the mutation order was not barred under article 120 of the Limitation Act as it was within six years of the decree for profits. The mutation entry gave plaintiffs a cause of action but the decree for profits gave them a fresh cause of action and the declaratory suit brought within six years of that decree was within time. *Jevanand and another v. Beni Madho (1), and Baij Nath Singh*

*Second Civil Appeal No. 16 of 1936, against the order of Mr. Gauri Shankar Varma, Sub-Judge of Gonda, dated the 16th October, 1935.

(1) (1909) 12 O.C., 320.

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v. *Arjun Singh and others* (1), relied on. *Mahabir Pathak and others v. Jageshar Pathak and others* (2), distinguished. *Gopal Das v. Shri Thakur Ganga Beharaji Maharaj* (3), *Smail and others v. Bahab and others* (4), *Suryanarayana and others v. Bullayya and others* (5), *Abdul Ghafur Chaudhury and another v. Abdul Jabbar Mia and others* (6), *Sheikh Amiruddin v. Sheikh Saidur Rahman and others* (7), *Jahana and another v. Wali and others* (8), *Francis Legge v. Rambaran Singh and another* (9), *Akbar Khan and another v. Turaban* (10), *Sukhdasi Kuar, Musammat and others v. Fateh Bahadur Singh* (11) and *Bhagwati Prasad and another v. Chauharja and others* (12), referred to.

Mr. K. P. Misra, for the appellants.

Mr. S. N. Srivastava, for the respondents.

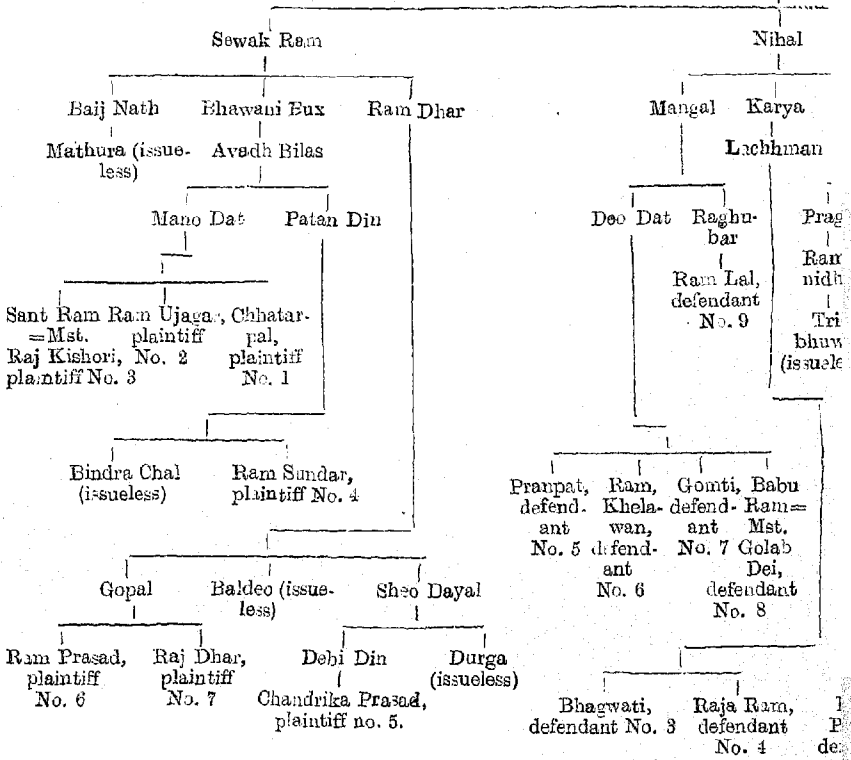
THOMAS, C.J., and YORKE, J.:—This is an appeal on behalf of defendants 1 and 2 against the judgment and decree of the learned Subordinate Judge (now Civil Judge) of Gonda, dated the 16th October, 1935, upholding the decree of the learned Munsif of the same place dated the 27th July, 1935.

The plaintiffs brought the suit for a declaration that the defendants 1 and 2 have no share in the under-proprietary *khata* in suit and that they are not bound by the decree for profits in the 2 annas 8 pies share passed in favour of defendants Nos. 1 and 2.

In order to appreciate the facts of the case, it is necessary to give the following pedigree, which has not been disputed before us:

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|---------------------------------|---------------------------------|
| (1) (1919) 7 O.L.J., 237. | (2) (1926) 3 O.W.N., 896. |
| (3) (1922) A.I.R., All., 115. | (4) (1927) A.I.R., Lah., 119. |
| (5) (1927) A.I.R., Mad., 568. | (6) (1927) A.I.R., Cal., 30. |
| (7) (1916) 1 P.L.J., 73. | (8) (1919) 53 I.C., 595. |
| (9) (1897) I.L.R., 20 All., 35. | (10) (1908) I.L.R., 31 All., 9. |
| (11) (1933) 10 O.W.N., 366. | (12) (1934) 11 O.W.N., 1297. |

PURI



Ramnidh, who belonged to the line of Nihal and representing the branches of Sewak Ram. Nihal and Bechu, obtained an under-proprietary decree in the first regular settlement of 1874 in respect of an area of 129 bighas 9 biswas in village Birpur Bhoj (*vide* Ex. 27). In the year 1875 he applied for a division of the area into *thoks* (*vide* Ex. 5), and five different *thoks* were formed as representing different branches of the common ancestor. The *fard hissa kashi* (Ex. 3) shows that the area was divided as follows:

(1) Bhawani Bux and Ram Dhar's Line	..	4 annas 3 pies 4 krts.
(2) Chhutkau and Sampat (of Suchit's line)	..	2 annas 8 pies.
(3) Ramnidh, Ganga and Salik	..	2 annas 8 pies.
(4) Ram Dayal	..	2 annas 8 pies.
(5) Mangal and Lachhman of Nihal's line	..	2 annas 8 pies.
(6) Mathura	..	1 anna and 16 krts.
Total	..	<u>16 annas.</u>

The khatauni was prepared on the above basis. It is thus clear that Ramnidh, Ganga and Salik, the predecessors of defendants 1 and 2, got a 2 annas 8 pies share, that is one-sixth of 129 bighas 9 biswas. It appears that between the first and second settlement the family somehow lost 27 bighas and 2 biswas leaving an area of 102 bighas and 7 biswas only.

In 1890 the superior proprietor of the village, namely the Ajudhia estate, brought a suit for ejection against Ramnidh, Ganga and Salik for arrears of rent in respect of an area of 24 bighas and 17 biswas and obtained a decree (*vide* Ex. 7), but it appears that the names of these persons continued to remain in the khewat as holders of 2 annas and 8 pies share. The defendants 1 and 2 filed a suit for profits of the above share in the revenue court against the plaintiffs and defendants 3 to 10. The suit was dismissed, but it was decreed by the appellate

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court, and that decree was upheld by the Chief Court on the 6th February, 1935.

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The plaintiffs, who represent the branches of Sewak and Bechu, brothers of Nihal, who was the father of Gurdin, brought the present suit for a declaration that the defendants 1 and 2 had no share in the *khata* in suit and that they were not entitled to claim profits from the plaintiffs. The plaintiffs' contention was that as the predecessors of the defendants 1 and 2 had been ejected by the superior proprietor from their 2 annas 8 pies share, they lost all the right they had in the under-proprietary *khata*.

The defendants 1 and 2 represent the line of Gurdin and his brother Sahai who died issueless. Sahai's name is not given in the pedigree filed with the plaint, but it is to be found in the pedigree filed at the next settlement (*vide* Ex. 6). They denied the plaintiffs' claim and alleged that the superior proprietor had sued their predecessors Ramnidh and others for ejection in the representative capacity of all the under-proprietors and thus the area of land in possession of all the co-sharers was reduced, that the defendants 1 and 2 and their predecessors had all along been in possession of the 2 annas 8 pies share and that they had been receiving profits from other co-sharers, that the suit for declaration without possession was not maintainable and that the claim was barred by limitation. The remaining defendants supported the plaintiffs' claim.

The learned Munsif framed the following issues:

1. Have the defendants 1 and 2 got no share in the plots in suit, as alleged by the plaintiffs?
2. Is the present suit for declaration not maintainable?
3. Is the present suit barred by time as alleged in paragraph 17 of the written statement?"

The learned Munsif after discussing the oral and the voluminous documentary evidence came to the finding

that the defendants 1 and 2 held no share in the *khata* in suit. He, further, on issue No. 2 held that defendants 1 and 2 were not in possession of any share and that their names wrongly continued to remain in the *khewat*, therefore the suit for declaration was maintainable and the plaintiffs were not required to sue for possession. On issue No. 3 the learned Munsif held that the suit was within time as the period of limitation started from the 6th February, 1935, when the suit for profits was finally decided by the Chief Court.

On appeal the learned Civil Judge confirmed the findings of the learned Munsif.

We have said that the total area was 129 bighas 9 biswas. An area of 27 bighas and 2 biswas was somehow lost, thus leaving an area of 102 bighas 7 biswas. Out of this an area of 24 bighas 17 biswas was lost by ejection in the suit which was brought by the Ajudhia estate. Thus the total area left was 77 bighas 10 biswas.

It is contended on behalf of the appellants that the entries in the *kwat* should have been presumed to be correct. We agree with this contention, but such entries cannot be conclusive evidence under the provisions of section 44 of the Land Revenue Act.

P. W. 1, who is one of the plaintiffs, stated on oath that the Ajudhia estate obtained possession of the land which was in possession of defendants 1 and 2. This statement has been believed by the lower courts. It is also corroborated by the entries in *khewat kar-i-khas* (Ex. 2), which refers to an order dated the 31st May, 1892, by which the names of Ramnidh and others were expunged and the rights in the area were noted to have ceased to exist and extinguished in favour of the *taludar*. Exhibits 8, 9, 10 and 11 are copies of the plaint, written statement, judgment and decree respectively of another ejection proceeding in which the predecessors of defendants 1 and 2 and Baleshwar had filed the suit to contest the notice of ejection served on them by the Ajudhia estate as ordinary tenants. The plots from

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which they were sought to be ejected were the same as those in which they had lost the under-proprietary rights in the year 1890 as will appear on a comparison of Ex. 2 and Ex. 9 with the help of Ex. 19, the copy of the *fard mutabiqat*. It appears that after the ejectment decree of 1890 the same plots were let out to Ramnidh and others as ordinary tenants.

Exhibits A-2 to A-6 are the copies of khewats for different years. The appellants rely on them because the names of Ramnidh and his successors are there as holders of the 2 annas 8 pies share in the under proprietary *khata*, but it is clear to us that the predecessors of defendants 1 and 2 lost the under-proprietary rights in 1890 but somehow their names were not removed from the khewats.

It was contended that the ejectment suit brought by the Ajudhia estate in the year 1890 against Ramnidh and others was brought in a representative character and therefore all the co-sharers should be considered to have been ejected from the area of 24 bighas 17 biswas. There is no justification for us to accept this contention as there is no evidence in support of it. The note in the remarks column of Exs. 1 and 2 shows that Ramnidh, Ganga and Ajudhia, holders of *khata*s 3, 4 and 5, were ejected and the numbers of specific plots are given. There is no doubt that on the application made in 1875 the *khata* was divided into several shares and each branch took possession of its share which was separately assessed to rent.

Exhibit A-7 is a copy of an application which Ramnidh and others had made for correction of the entries in the khewat. They alleged that they had obtained a decree from the Settlement Court for 129 bighas and odd, and that the area in their possession was shown to be only 76 bighas and 10 biswas.

Exhibit A-8 is the judgment passed on that application which shows that they were correctly entered as *qabzedars* and that the area given was correct as they

had lost 27 bighas at the first settlement and were ejected from 24 bighas and 17 biswas of land in the year 1890.

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Exhibit A-9 and Ex. A-10 are the copies of orders in appeal which show that the appeals were dismissed and the order of the first court was upheld.

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We do not see how these documents help the appellants. Ramnidh tried to get back the land from which he was ejected, but failed in his attempt.

Reference was made by the learned counsel for the appellants to Exs. A-11, A-12, A-13 and A-14.

Exhibits A-11 and A-12 are the copies of judgments in the case for arrears of rent. These documents do not show that Ramnidh or his successors were in possession of any under-proprietary *khata*.

Exhibit A-13 is the copy of the judgment of the Commissioner in the same case.

Exhibit A-14 is the copy of objections filed by Raj Dhar, plaintiff No. 7, and Nand Kumar, predecessor of plaintiff No. 8, in the mutation case which the defendants Nos. 1 and 2 had filed after the death of their father Beni Madho. The objectors had alleged that the names of defendants 1 and 2 should not be recorded as sharers in the under-proprietary *khata*.

Exhibit A-15 is the judgment in that case and shows that the objections were dismissed and the names of defendants 1 and 2 were entered in the khewat as holders of 2 annas 8 pies share. It was held that as the share was entered in the name of Beni Madho their father, therefore it should be entered in the names of defendants 1 and 2, and the objectors were directed to seek their remedy in the civil court. The order is dated the 9th November, 1920.

Reference was also made to Exs. A-20, A-16, A-17, A-18, A-19 and A-21.

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Exhibit A-20 is the report of the Tahsildar in the mutation case.

Exhibit A-16 is the judgment passed by one of us sitting singly in the case for profits brought by defendants 1 and 2. The suit was decreed on the basis of the entry of the names of defendants 1 and 2 in the khewat.

Exhibit A-17 is the khewat for 1310 Fasli. It shows that a one anna four pies share was mutated in the name of Tirbhawan Nath after Ramnidh's death.

Exhibit A-18 is the khewat for 1311 Fasli which shows that the names of Baleshwar and Dharaj Ram were entered in place of Dharkan.

Exhibit A-19 is the khewat for 1317 Fasli and shows that the name of Baleshwar was entered in place of Dharaj Ram.

Exhibit A-21 is the khewat for 1332 Fasli and shows that defendants 1 and 2 held a one anna and four pies share which Baleshwar held and that mutation of this share was effected in favour of defendants 1 and 2 on the 24th July, 1924.

The substance of the chief documents relied on by the learned counsel for the appellants is that the names of the predecessors of defendants 1 and 2 were entered in the khewats as holders of the 2 annas 8 pies share in the under-proprietary *khata*, while on the other hand, the khataunis filed and relied on by the plaintiffs, Exs. 12 to 18, 20 to 25, prove that the defendants 1 and 2 or their predecessors were never in possession of any of the plots in the under-proprietary *khata*. There is no doubt in our mind that Ramnidh, Ganga and Ajudhia, the predecessors of defendants 1 and 2, were ejected from 24 bighas and 17 biswas of land which formed part of their share and the possession of it went to the Ajudhia estate. Defendants 1 and 2 lost all the rights they held in that *khata*. As we have said the entries in the khewats are not conclusive proof of title and the plaintiffs have discharged the burden and rebutted satisfactorily the presumption raised by such entries.

We may mention that the learned counsel for the appellants tried to explain the ejectment proceedings, but in our opinion there is no explanation, and the facts are very clear, the suit by the Ajudhia estate for ejectment in 1890 against Ramnidh, Ganga and Ajudhia was not in the representative capacity of all the under-proprietors. We therefore agree with the finding of the lower courts that defendants 1 and 2 have got no share in the plots in suit as alleged by the plaintiffs.

The next point raised by the learned counsel on behalf of the appellants is the question of limitation. In the year 1920 the appellants applied for mutation of names in place of their father Beni Madho and Raj Dhar, respondent No. 7, and Nand Kumar now represented by Mst. Rani, his widow, respondent No. 8, filed objections (*vide* Ex. A-14), but they were dismissed on the 9th November, 1920, and the objectors were directed to seek their remedy in the civil court and mutation was effected in favour of the appellants (*vide* the judgment, Ex A-15, to which we have already referred). The case of defendants 1 and 2 is that as the objections were dismissed on the 9th November, 1920, the period of limitation began to run from that date. Reliance was placed on Article 120 of the Limitation Act which gives a period of six years for such suits, and the period begins when the right to sue accrues, which, according to the appellant's counsel, is 9th November, 1920. The following cases were relied on on behalf of the appellants:

Gopal Das v. Shri Thakur Ganga Beharaji Maharaj (1); *Smail and others v. Bahab and others* (2); *Suryanarayana and others v. Bullayya and others* (3); *Abdul Ghafur Chaudhury and another v. Abdul Jabbar Mia and others* (4); *Sheikh Amiruddin v. Sheikh Saidur Rahman and others* (5); *Jahana and another v. Wali and others* (6); *Francis Legge v. Rambaran Singh and another* (7); *Akbar*

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(1) (1922) A.I.R., All., 115.

(2) (1927) A.I.R., Lah., 119.

(3) (1927) A.I.R., Mad., 568.

(4) (1927) A.I.R., Cal., 30.

(5) (1916) 1 P.L.J., 73.

(6) (1919) 53 I.C., 395.

(7) (1897) I.L.R., 20 All., 35.

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Khan and another v. Turaban (1); *Mahabir Pathak and others v. Jageshar Pathak and others* (2).

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On reading these cases it will appear that they have no bearing on the question before us. The only case which may be said to help the appellants to some extent is the case reported in *Mahabir Pathak and others v. Jageshar Pathak and others* (2).

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In the first case *Gopal Das v. Shri Thakur Ganga Beharaji Maharaj* (3) the plaintiff sued in 1919 on the allegation that in 1918 he came to know of the wrong entry. It was argued that the limitation began to run from the date of the wrong entry. It was held that mere entry in the village papers would not of itself give the plaintiff a cause of action.

In *Smail and others v. Bahab and others* (4), the revenue record showed that the land in suit was entered in the column of ownership in the names of the plaintiffs and the defendants since 1872. In 1897 an attempt was made by the plaintiffs to have the revenue record altered and their names entered not only as in sole possession but as sole owners. This application was rejected. In 1921 one of the defendants applied for partition of the land in suit. The plaintiffs pleaded their title and were referred by the revenue authorities to the civil court. It was held that the application for partition was in act of invasion which gave a new cause of action.

This case if anything helps the respondents, and not the appellants.

In *Suryanarayana and others v. Bullayya and others* (5) it was held that in a suit for declaration that an entry in the record of rights that the defendants are ryots with permanent rights of occupancy is wrong is not barred by reason of the fact that the defendants had, in a previous suit more than six years of the institution of the

(1) (1908) I.L.R., 31 All., 9.

(2) (1926) 3 O.W.N., 896.

(3) (1922) A.I.R., All., 115.

(4) (1927) A.I.R., Lah., 119.

(5) (1927) A.I.R., Mad., 568.

suit for declaration, set up rights of permanent occupancy in the written statement as against the plaintiffs and to their knowledge, the cause of action based on the entry in record of rights being an independent one from the one based on such denial.

This case if anything supports the contention of the respondents.

In *Abdul Ghafur Chaudhury and another v. Abdul Jabbar Mia and others* (1), the only cause of action alleged was a wrong entry in the record of rights, and it was held that in a suit for declaration limitation would run from the date of final publication of the record of rights.

In *Sheikh Amiruddin v. Sheikh Saidur Rahman and others* (2), the suit was under section 111A of the Bengal Tenancy Act. In the record of rights which was published on the 14th November, 1905, the plaintiff was shown as a tenant liable to pay rent to the defendant. The defendant obtained a decree for rent against the plaintiff on the 1st August, 1912. On the 7th October, 1912, the plaintiff instituted a suit for a declaration that he was a *lakheraj* tenant and that he was not liable to pay rent to the defendants. It was held that the suit was substantially one under the Bengal Tenancy Act, 1885, and therefore the cause of action will be from the date of the publication of the record of rights.

On a perusal of the judgment it will appear that this case has no bearing on the present case.

It is not necessary to discuss the remaining cases, excepting the case reported in *Mahabir Pathak and others v. Jageshar Pathak and others* (3), as we are of opinion that they have no bearing.

In the case reported in *Mahabir Pathak and others v. Jageshar Pathak and others* (3) the wrong entry was made at the instance of the plaintiff himself and the application for correction of khewat did not give the

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(3) (1926) 3 O.W.N., 896.

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plaintiff a fresh cause of action. The earlier cases referred to in this judgment were distinguished on the ground that the erroneous entries were made behind the back of the plaintiff.

In the present appeal the entry was made behind the back of all the plaintiffs except plaintiffs 7 and 8.

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This case was distinguished in the case reported in *Sukhdasi Kuar Musammat and others v. Fateh Bahadur Singh* (1). At page 374, it is stated as follows:

“Lastly it was contended that the suit was barred by limitation . . . The plaintiff had no grievance against the entries until the defendants asserted title on their basis for the first time in February, 1930. It is this wrong assertion which constitutes the cause of action for the present suit.”

The case in *Mahabir Pathak and others v. Jageshwar Pathak and others* (2) was again distinguished in the case reported in *Bhagwati Prasad and another v. Chauhanarja and others* (3), in which it was held that where it is alleged in the plaint that the plaintiff had been all along in possession of the land in suit and that his application for correction of jamabandi had been dismissed by the revenue court and cloud had been cast upon his title, a suit for declaration of title brought within time, calculating limitation to begin from the date of the order of the revenue court is not time barred.

We may again point out that in the mutation proceedings the objections were filed not by all the plaintiffs, but only by Raj Dhar, respondent No. 7, and Nand Kumar, who is now represented by Mst. Rani, his widow, respondent No. 8. It is difficult to understand how the suit could be barred against the other plaintiffs who had nothing to do with the mutation proceedings. The cloud against them was cast when the appellants' suit for profits for the years 1936, 1937 and 1938 Faslis was decreed by this Court on the 6th February, 1935, and if we take this date as the starting of the period of

(1) (1933) 10 O.W.N., 366.

(2) (1926) 3 O.W.N., 896.

(3) (1934) 11 O.W.N., 1297.

limitation, the suit is within time. In our opinion the decisions reported in *Jevanand and other v. Beni Madho* (1) and *Baij Nath Singh v. Arjun Singh and others* (2) apply to the present case.

In the case reported in *Jevanand and other v. Beni Madho* (1), it was held that although the settlement entry gave plaintiffs a cause of action the decree for rent gave them a fresh cause of action and the present suit brought within six years of the decree was within time. When plaintiff has got a right every invasion of that right gives him a fresh cause of action.

In the case reported in *Baij Nath Singh v. Arjun Singh and others* (2) it was held that so long as nobody interferes with a man's possession and enjoyment of his share in a property, the fact that his share is inaccurately recorded in the revenue papers does not affect his title to it.

The finding of the lower courts is that the plots comprising 77 odd bighas of land have all along been in the exclusive possession of the plaintiffs, and the appellants had no interest left in this area. Nor had they ever been in possession of any portion of it, or received any profits before. We therefore agree with the lower courts that the suit is not barred by limitation.

In the plaint one of the reliefs sought was that "the defendants Nos. 1 and 2 were not entitled to get and recover from the plaintiffs Rs.71-8-6, the amount of profits and the costs decreed by the court of the District Judge, Gonda, in case No. 51 of 1932, *re Kamta Prasad and others, appellants v. Ram Ujagar and others, respondents*, decided on 26th January, 1933". This is the case in which the decree for mesne profits passed by the learned Judge was affirmed by this Court on the 6th February, 1935. The learned counsel on behalf of the respondents has not pressed for this declaration. He simply stated that he wanted the rights of his clients

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(1) (1909) 12 O.C., 320.

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to be protected in future. He further stated that the amount of profits which had been decreed in favour of defendants 1 and 2 has been realised by them. Under the circumstances we do not think it necessary to decide the question whether any such declaration can be granted. We have held that the appellants have got no share in the plots in suit as alleged by the plaintiffs and their names were wrongly entered in the revenue papers. It therefore follows that the defendants Nos. 1 and 2 in future cannot get any mesne profits with regard to the disputed land.

Lastly it was half-heartedly suggested that the suit for mere declaration was not maintainable. It has been found by the lower courts that defendants 1 and 2 were not in possession of any share and that their names were wrongly entered in the khewat, and we have agreed with these findings, the suit therefore is maintainable.

We therefore uphold the decree of the lower appellate court and dismiss the appeal with costs against defendants 1 and 2.

Appeal dismissed.