

1922.

QAYAMUDDIN  
KHAN  
v.  
RAMYAD  
SINGH.  
DAWSON  
MILLER,  
C. J.

themselves at the time of the *batwara*, none of them has the right to dispute the possession of those into whose *takhta* the particular lands in question fall. The only exceptions seem to me to be those which are created by law either under the Bengal Tenancy Act or under some other provision of law whereby a tenancy interest or possibly some other interest in land is acquired. But in the present case there is no law that I am aware of which provides that merely because a co-sharer has been in possession of *bukasht* lands belonging to himself and his co-sharers he is therefore entitled after a Collectorate partition to remain in possession of those lands when they are allotted to the *takhta* of one of his co-sharers.

In my opinion these appeals should be allowed with costs, the decision of the learned Judge set aside and the decree of the Subordinate Judge restored.

ADAMI, J.—I agree.

*Appeals allowed.*

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## APPELLATE CIVIL.

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*Before Coutts and Das, J.J.*

RAM LOCHAN MISRA

v.

PANDIT HARINATH MISRA.\*

1922.

April, 27.

*Evidence Act, 1872 (Act I of 1872), sections 63(3) and 64—copy of document admitted without objection—whether objection may be taken in appellate court.*

Where a copy of a document has been admitted in evidence in the trial court without objection, its admissibility cannot be challenged in the appellate court.

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\* Appeal from Appellate Decree No. 1128 of 1920, from a decision of H. Foster, Esq., District Judge of Patna, dated the 16th April, 1920, reversing a decision of M. Muhammad Zahur, Subordinate Judge, Patna, dated the 4th June, 1919.

Omission to object to its admission implies that it is a true copy and, therefore, it is not open to the appellate court to consider whether the copy was properly compared with the original or not.

1922.

RAM LOCHAN  
MISRA.v.  
PANDIT HARI-  
NATH MISRA.

*Chinnaji Govind Godbole v. Dhinkar Dhandev Godbole*(<sup>1</sup>), *Lakshman Govind v. Amrit Gopal*(<sup>2</sup>) and *Kishore Lall Goswami v. Rakhal Das Banerjee*(<sup>3</sup>), approved.

Appeal by the defendants.

The facts of the case material to this report are stated in the judgment of Courts, J.

*Kulwant Sahay, Siveshwar Dayal, Netai Chandra Ghosh and Achalendra Nath Das*, for the appellants.

*Ram Prasad, Janak Kishore and Bhagwat Kumhar Sinha*, for the respondents.

COURTS, J.—This is an appeal by the defendants against the decision of the District Judge of Patna. The plaintiffs and the defendants are admittedly agents of one Nathuni Missir. The plaintiffs brought a suit for a declaration that the defendant No. 1 had renounced the world and had become a Sadhu and that thereby the plaintiffs had become entitled to a half share of the heritage, or, in the alternative, if it was found that the defendant No. 1 had not renounced the world the plaintiffs claimed one-third of the property. The suit was dismissed in the Court of first instance but on appeal to the District Judge the plaintiffs were declared to be entitled to joint possession of Nathuni's heritage along with the defendant No. 1. Against this decision the defendants have appealed.

The sole question for decision in the suit was whether the plaintiffs and the defendants were in fact agents of Nathuni Missir and the first question argued in appeal before us is whether a certain document on which the defendants relied was admissible in evidence or not. This document, which is *Ext. D.*, is a genealogy. It is admittedly a copy and part of it

(1) (1887) I. L. R. 11 Bom. 320. (2) (1900) I. L. R. 24 Bom. 591.

(3) (1904) I. L. R. 31 Cal. 155.

1922.  
 RAM LOCHAN  
 MISRA.  
 v.  
 PANDIT HARI-  
 NATH MISRA.  
 COUTTS, J.

is probably a copy of a copy. The document was admitted without objection by the plaintiffs in the Court of first instance and it was relied on by the learned Subordinate Judge who decreed the suit in favour of the defendants. On appeal to the District Judge he has held that although this document was admitted without objection still the plaintiffs were not stopped from contesting the document subsequently. In this view I am unable to agree. It has been held in a number of cases [*Chimnaji Govind Godbole v. Dinkar Dhondev Godbole* (1), *Lakshman Govind v. Amrit Gopal* (2) and *Kishori Lal Goşwami v. Rakhal Das Banerjee* (3)], that when a copy of a document has been admitted in the Court of first instance without any objection, the appellate Court is not entitled to allow any objection to be taken to its admissibility at the appellate stage. This is undoubtedly the correct view of the law. It is, however, contended that the learned District Judge has considered the question from another point of view and has held that even if the document is admissible it is not entitled to any value because the comparison of the copy with the original has been found by him to be unsatisfactory. Here again the learned District Judge appears to have fallen into an error. The document was admitted as secondary evidence, that is to say, it was admitted as being a true copy; and, in view of the decisions to which I have already referred, it was not open to the learned District Judge, at the appellate stage, to consider whether in fact the provisions of the section had been complied with or not when it was admitted without objection. The learned District Judge was, therefore, not entitled to consider the evidence which was offered subsequent to the admission of the document in regard to comparison with the original.

There are other points in this appeal but we have not heard arguments on them because on this ground

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alone it is necessary to set aside the decree of the learned District Judge and to remand this appeal for rehearing. The whole appeal is to be reheard. Costs will abide the result.

DAS, J.—I agree.

*Appeal remanded.*

1922.

RAM LOCHAN  
MISRA.

2.  
PANDIT HARI-  
NATH MISRA.

## APPELLATE CIVIL.

*Before Coutts and Das, J.J.*

GOBARDHAN DAS DWARKA PRASAD

v.

SATISH CHANDRA RAI.\*

1922.

*April, 28.*

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rules 15 and 22—Execution of decree, defective application for—notice issued, whether is a step-in-aid of execution—Limitation Act, 1908 (Act IX of 1908), Schedule I, Article 182(5) and (6).*

Where notice under Order XXI, rule 22, of the Code of Civil Procedure, 1908 has been issued on an application in accordance with rule 15(1) such application is a step-in-aid of execution within the meaning of Article 182(5) of the Limitation Act, 1908, even though the application was in fact defective, and even though the court failed to comply with the requirements of rule 15(2).

The issue of a notice under Order XXI, rule 22, gives a fresh starting point for limitation under Article 182(6) even though the application on which notice was issued was defective.

The decree-holder appealed.

The facts of the case material to this report are stated in the judgment of Coutts, J.

*C. C. Das* (with him *Bindeswari Prasad*), for the appellant.

\* Appeal from Appellate Order No. 212 of 1921.