

had no power to award possession of those plots, but it is difficult to find how this affects the petitioners; it is a matter between the first party and those who were admittedly in possession.

The fourth point argued by the learned Counsel for the petitioners, namely, that the petitioners were induced to execute *kabuliyats* in favour of the first party by their properly constituted agent, and that therefore the first party were estopped from giving evidence to show that they, and not the petitioners were in possession, raises no question of jurisdiction, and apart from this, the finding being that effect was not given to the *kabuliyats*, they do not stand in the way of evidence being given to show what the actual possession was at the time proceedings were taken.

I would dismiss the application.

Ross, J.—I agree.

*Application dismissed.*

## APPELLATE CIVIL.

*Before Das and Adami, J.J.*

RAKHYAPAL SINGH

v.

LAL BIR SURJODAY SINGH DEO.\*

1921

Nov. 22.

*Central Provinces Land-Revenue Act, 1881 (Act XVIII of 1881), sections 76, 132(h) and 153—Cesses determination of rate of, and of zamindar's right to—levy of cesses sanctioned by Board of Revenue—rates not so sanctioned—whether cesses recoverable.*

Where, under section 76 of the Central Provinces Land-Revenue Act, 1881, the Settlement Officer has determined and recorded the village cesses which are leviable in accordance with village custom and the rates at which they are so leviable,

\* Circuit Court, Cuttack. Appeal from Appellate Decree Nos. 45 and 47 of 1920, from a decision of Babu Radha Kanta Ghose, Sub-Judge of Sambalpur, dated the 19th August, 1920, confirming a decision of Babu Surjyamani Das, Munsif of Bargarh, dated the 21st November, 1919.

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and the Board of Revenue has sanctioned the levy of such cesses, held, that the cesses so sanctioned are recoverable by the landlord and that the Act does not require the sanction of the Board as to the rates at which the cesses are leviable.

The facts of the case material to this report were as follows :—

Plaintiff, the *zamindar*, instituted the present suits, Nos. 466 and 467 of 1919 against two *mafidars* for the recovery of certain *abwabs* amounting to Rs. 7 from each defendant for the years 1916, 1917 and 1918. The *abwabs* claimed were *Srabar Puni Tica*, Re. 1; *Dasarah Puni Tica*, Re. 1; *Dasarah Punai Ghee*, Re. 1/8/-; *Dasarah Punai goat*, Rs. 2/8/-; and *Pous Punai Tica*, Re. 1. The cases were tried together and decided by one judgment.

Plaintiff alleged that the *abwabs* claimed had always been paid to the *zamindar* except in the three years mentioned above. The defendants pleaded that the plaintiff was not entitled to recover the *abwabs* claimed by him and that in fact no *abwabs* had ever been paid to him; that since the abolition by Government of the *patwari* and *raiyat patwari* cesses the plaintiff had been realizing only the settlement cess and not any of the *abwabs* now claimed, and that neither the plaintiff nor his ancestors had made any claim for *abwabs* before any of the three settlement officers who had held inquiries for the purpose of determining the rights and liabilities of the *zamindar* and *mafidars*, etc.

The trial court found that although the documentary evidence adduced by the defendants shewed that the *mafidars* paid "cesses" and "cess, etc" to the *zamindar* they did not shew that any question regarding the payment of *abwabs* had ever been raised in the settlement proceedings. On a consideration of the plaintiff's evidence, however, the court came to the conclusion that the *abwabs* claimed were payable, and decreed the suit.

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The defendants appealed to the Subordinate Judge who held that the *abwabs* claimed were village cesses within the meaning of the Central Provinces Land-Revenue Act, 1881, section 4(3). Clause (XII) of Appendix B of the *wajib-ul-arz* of the Settlement Report made by Mr. Dewar shewed that no cess other than *patwari* cess, the *Dasarah Tica* and *pushpuni* or *raki* were leviable by the *zamindar* except with the sanction of the Board of Revenue. The *patwari* cess had been subsequently abolished by Government. It was admitted by the appellants that the sanction of the Board had been obtained for levying the *Dasarah*, *Sraban* and *pushpuni ticas* and that these cesses were collected. The court held that the sanction of the Board for the rates to be levied was not required by law and affirmed the decree of the trial court.

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The defendants appealed to the High Court.  
*Subodh Chandra Chattarji*, for the appellants.  
*Brajraj Chowdhury*, for the respondent.

DAS, J.—The learned *vakil* for the appellants has put the point very concisely and very forcibly before us, but we are unable to say that the view taken by the lower appellate Court is erroneous. He concedes that the suit for the plaintiff was in respect of cesses. He concedes that the Settlement Officer, to be more accurate, in this particular case, did determine the village cesses which were leviable in accordance with village custom and the rates at which they were leviable and he concedes that the suit is in accordance with the determination of the Deputy Commissioner. He also concedes that the Board of Revenue has sanctioned the proposal of the Deputy Commissioner as to the levy of the cesses, but he urges before us that as the Board of Revenue did not sanction the rates at which such cesses were leviable, the plaintiff is not entitled to maintain the action.

Now in order to determine the point which has been argued before us, it is necessary to consider the provisions of certain sections of the Central Provinces

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Land-Revenue Act. Section 76 of the Act authorizes the Settlement Officer to determine and record the village cesses, if any, which are leviable in accordance with village custom, and the persons by and from whom, and the rates at which, they are leviable; and it directs that such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly. Section 132 of the Act gives a similar power to the Deputy Commissioner if he has to determine the matter when the settlement is not in progress. Section 153 provides that—

“no suit shall lie in a Civil or Revenue Court for the recovery of any village cess which has not been sanctioned by the Chief Commissioner and also either recorded at a Settlement or under section 132, clause (h)”.

The argument of the learned vakil is that the Chief Commissioner must not only sanction the village cess, but must further sanction the rates at which such cess is leviable. I am unable to agree with this contention. It seems to me clear on a reading of section 76 of the Central Provinces Land-Revenue Act that all that the Board of Revenue has to do is to sanction the levy of the cess, not the rate at which such cess is leviable. In my opinion the view taken by the learned Judge is right.

These appeals must be dismissed with costs.

ADAMI, J.—I agree.

*Appeals dismissed.*

## APPELLATE CIVIL.

*Before Adami and Das, J.J.*

KANHAI ROUT

v.

JOGENDRA ROUT.\*

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Nov. 23.

*Letters of Administration—person entitled to special citation, effect of not issuing citation on.*

\* Circuit Court, Cuttack. Appeal from Original Decree No. 8 of 1920, from a decision of D. H. Kingford, Esq., District Judge of Cuttack, dated the 24th April 1920.