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the judgment-debtor by applying within the prescribed period of limitation to ensure that his payments out of Court are taken into account in those proceedings. It could not have been intended that in circumstances like those of the present case the Court, though free to believe the payment, should be unable to recognize it for the purpose of stopping the execution which an honest decree-holder would not even have applied for. It seems to me that in such circumstances it is not only open to the Court, but also incumbent upon it, to treat the judgment-debtor's petition of objection as an application under sub-rule (2); if this is done, the bar under sub-rule (3) cannot come into operation. The order of the learned District Judge must, I think, be read in this light, for he reversed the order of the Munsif that the execution was to proceed.

The appeal is thus without merit, and I would dismiss it. As the respondent has not entered appearance, there will be no order for costs.

JWALA PRASAD, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

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July, 16.

Before Das and James, JJ.

RAI SAHIB KHARAG NARAYAN

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.*

Cess Act, 1880 (Beng. Act IX of 1880), sections 26, 41(2) and 102—cess, assessment of, by Collector—section 41(2)—appeal to Commissioner dismissed—suit for declaration that assessment wrong, whether maintainable—Civil Court, jurisdiction of.

*Appeal from Appellate Decree no. 1477 of 1926, from a decision of Babu Ram Chandra Chowdhury, Subordinate Judge of Monghyr, dated the 1st September, 1926, confirming a decision of Babu Badri Narayan Ray, Munsif of Begusarai, dated the 6th July, 1928.

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Section 26, Cess Act, 1880, provides :

" If it shall appear to the Collector that any person on whom a notice has been served under section 24 has been wrongly classed in the return as a cultivating raiyat, the Collector may direct that the entry be corrected, and that such person be classed as a tenure-holder; and thereupon such person shall be deemed to be a tenure-holder for the purposes of the assessment and levy of the cess in respect of the lands held by him."

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Section 41(2) of the Act then lays down :

" Every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included, the entire amount of the local cess (1) calculated on the annual value of the land comprised in his tenure at the rate which may have been determined for such cess for the year as in this Act provided, less a deduction to be calculated at one half of the said rate for every rupee of the rent payable by him for such tenure."

Section 102 provides for an appeal to the Commissioner against the order of the Collector.

Held, that the Civil Court has no jurisdiction to entertain a suit for the variation or annulment of the valuation made by the Collector and that the Commissioner's order passed on appeal is final.

R was described in the record-of-rights as a tenure-holder and valuation of his tenure was made in due course under section 41(2) of the Cess Act, 1880. Subsequently, at a Cess Revaluation proceeding he claimed that he should be assessed as a cultivating raiyat, but the Collector made the assessment under section 41(2) of the Act. *R* appealed to the Commissioner who dismissed the appeal. He then instituted the present suit for a declaration that the tenure in question constituted his raiyati jote and not a tenure within the meaning of the Act and that it was not liable to assessment as a tenure.

Held, that the suit was not maintainable.

Appeal by the plaintiff.

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

B. C. Mitter, for the appellant.

Government Pleader, for the respondent.

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JAMES, J.—The plaintiff in this suit was described in the record-of-rights as a tenure-holder and valuation of his tenure was made in due course under section 41(2) of the Cess Act (IX of 1880). At the recent revaluation he claimed that he should be assessed as a cultivating raiyat, on the ground that he had ejected the tenants who occupied holdings under his tenure; but the Collector made the assessment under section 41(2). The plaintiff appealed to the Commissioner under section 102 of the Act; but his appeal was dismissed. He then instituted the suit with which we are here concerned for a declaration that the tenure in question constituted his raiyati jote and not a tenure within the meaning of the Cess Act; and that it was not liable to assessment as a tenure. The Munsif of Begusarai held that he had no jurisdiction to entertain the suit since the question of valuation under the Cess Act was exclusively a matter for the revenue courts; and his decision was affirmed on appeal by the Subordinate Judge of Monghyr.

On behalf of the appellant it is argued that although section 102 of the Cess Act may provide that the decision of the Commissioner on appeal will be final on a question of valuation, yet a person, who is aggrieved by the status which has been accorded to him by the Collector, is entitled to institute a suit for a declaration that the decision of the Collector was wrong. Under section 26 of the Cess Act the Collector determines whether any person is to be classed as a cultivating raiyat or tenure-holder for purposes of assessment and levy of cesses: and if the Collector directs that any person be classed as a tenure-holder, then for these purposes he is a tenure-holder. If he is aggrieved by the Collector having made the valuation otherwise than in accordance with his own return, he may appeal to the Commissioner and the Commissioner's decision will be final, subject to revision by the Board of Revenue. A regular appeal is thus provided in the Revenue Courts, which alone can decide whether the Collector has properly used his discretion in exercise of the jurisdiction conferred

upon him by Chapter II of the Cess Act. The civil court has no jurisdiction to entertain a suit for the variation or annulment of the valuation made by the Collector.

The learned Advocate for the appellant attempts to draw a distinction between the present suit and a suit for variation of the Collector's order in the matter of valuation. He says that he is praying for a declaration that his status is that of a cultivating raiyat and not that of tenure-holder; and that on that account his suit should be regarded as maintainable. But he does expressly ask as a consequential relief that the orders of assessment of cess by the revenue officers may be set aside; and this question of status which the appellant seeks to raise in the civil court has no meaning outside the Cess Act. That is to say, he only desires that it should be declared that he is a cultivating raiyat in order that the decision of the Collector that he is a tenure-holder for the purposes of the Act, a decision which is entirely within the jurisdiction of the revenue authorities, should be set aside. The suit was rightly dismissed by the Courts below and the appeal fails and is dismissed with costs.

DAS, J.—I agree.

Appeal dismissed.

SPECIAL BENCH.

Before Das, Kulwant Sahay and Dhable, JJ.

ASKARAN BAID

v.

DEOLAL SINGH.*

Bengal Tenancy Act, 1885 (Act VIII of 1885), section 147A—compromise decree in contravention of section 147A,

*Letters Patent Appeal no. 23 of 1928, from the judgment of the Hon'ble Mr. Justice Wort, dated the 1st May, 1928.

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