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There is no indication that the prohibition is to extend to litigation of the wards which is already in progress when the Court of Wards assumes charge of the estate of the ward. And apart from the serious practical difficulties which would arise from the interpretation suggested both in the Courts and in the management of the estate, it would appear that the Act sufficiently provides for such a case in section 51 under which the Manager is to be named, as in the present instance, as next friend or guardian for the suit and to represent the ward.

Further, in the present instance the appellants accepted the intervention of the Manager as sufficient compliance with their objection to the maintainability of the suit and raised no issue on the point in their grounds of appeal to the District Judge so that the Courts would be warranted in refusing to allow the point to be raised. But apart from this consideration, it is a complete answer to the plea that section 55 does not contemplate anything but the initiation of the particular litigation and has no reference to pending litigation in respect of which the Court already possesses jurisdiction.

I would dismiss this appeal with costs.

DHAVLE, J.—I agree.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Khaju Mohamad Noor and Varma, JJ.*

KUMAR SITA RAM SINHA.

*v.*

KUMAR JOGENDRA NARAYAN SINHA\*.

*Court Fees Act, 1870 (Act VII of 1870), Schedule II, article 17, clauses (i) and (iii)—suit for declaration that*

\*Appeal from Original Decree no. 42 of 1933, from a decision of Khan Sahib Md. Shahabuddin Khan, Subordinate Judge of Pakur, dated the 6th August, 1933.

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*plaintiff was a sharer in the estate and that the Settlement entry was wrong—Santal Parganas Settlement Regulation 1872 (Reg. III of 1872), section 25A, scope of.*

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The plaintiff brought a suit for a declaration that he was a sharer in the Moheshpur Estate in Santal Parganas and that he was wrongly not recorded in the Settlement operation and paid court-fee as on a declaratory suit. The Subordinate Judge rejected the plaint on the ground that the plaintiff not being recorded in Land Registration and Settlement department was not a zamindar within the meaning of section 25A of the Santal Parganas Regulation and was not in possession and must pay court-fee as in a suit for possession.

*Held*, that the words " zamindar " and " proprietor " in section 25A mean a person who claims to be a zamindar or proprietor as against another zamindar or proprietor and covers cases in which the Settlement officer refuses to record the name of a claimant to a zamindari.

The fact whether plaintiff is or is not in possession and therefore, is or is not entitled to claim declaration, is a matter which has to be decided in the trial of the suit. For purposes of court-fee the court must look to the plaint only.

Whether the plaint is treated as one for a declaratory decree or a suit to do away with the effect of the decision of the Settlement Officer the court-fee payable is under Schedule II, Article 17(i) and (iii) of the Court-Fees Act.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

*Sir Sultan Ahmed* (with him *B. C. De* and *N. C. Ghosh*), for the appellants.

*S. M. Mullick* and *S. C. Mazumdar*, for the respondents.

**KHAJA MOHAMAD NOOR, J.**—This is an appeal against an order of the Subordinate Judge of Pakur rejecting the plaint of the appellant for insufficiency of court-fee, an order which is a decree under the Code of Civil Procedure. The plaintiff claims one-fourth share of the Maheshpur estate in the district

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of the Santal Parganas. During the Settlement operations of that district his name as a sharer of the estate was not recorded. He instituted the present suit paying a court-fee of Rs. 15 for a declaration that the decision of the Settlement Officer on his objection for recording his name was wrong and that the entries in the record-of-rights about the proprietary shares of the estate were incorrect inasmuch as the alleged one-fourth share of the plaintiff was not recorded therein.

Section 11 of Regulation III of 1872 bars the jurisdiction of the Civil Court regarding any matter decided by the Settlement Officer whose decision has the force of a Civil Court decree except as provided in section 25A, and subject to it the record-of-rights becomes under section 25 of the Regulation conclusive after six months of its publication. Section 25A of the Regulation runs thus:—

"Where only the rights of zamindars and other proprietors as between themselves are concerned, a suit may, unless it is barred by section 13 of the Code of Civil Procedure (relating to *res judicata*) be brought in a Court established under the Bengal, Agra and Assam Civil Courts Act, 1887, to contest the finding or record of the Settlement Officer, within three years from the date of the publication of the record-of-rights, or of the final order of the Revenue Court....."

If in any such suit it is found that the finding of the Settlement Officer is erroneous, the record shall be amended accordingly."

The question is what is the nature of the suit contemplated by this section, what is the court-fee payable on the plaint of such a suit, and whether the present suit is governed by this section. The learned Subordinate Judge is of opinion that as the plaintiff's name is not recorded in the Collectorate nor in the record-of-rights the suit is one for recovery of possession as the question of possession will arise in the suit. I am unable to understand what sort of suit can be instituted under this section by a man who has got his name recorded in the Collectorate and in the Settlement Department. He will have absolutely no necessity whatsoever to institute a suit. The learned Subordinate Judge

seems to be of opinion that as the plaintiff's name is recorded neither in the Collectorate nor in the settlement record he is not a " zamindar " within the meaning of section 25A. If this be so a person whose claim to have his name recorded is rejected by the Settlement Officer and who claims to have share in a zamindari will have no remedy as section 25A is the only section under which a decision of the Settlement Officer can be questioned by a person who is aggrieved by that order. The words " zamindars " and " proprietors " in the section mean persons who claim to be zamindars or proprietors as against another zamindar or proprietor. The section covers cases in which the Settlement Officer refuses to record the name of a claimant to zamindari. The fact whether the plaintiff is or is not in possession and, therefore, is or is not entitled to claim declaration is a matter which has to be decided in the trial of the suit. For purposes of the court-fee the Court must look to the plaint only. Court-fee cannot be demanded from a plaintiff on the ground that question of possession will arise in the suit.

It was laid down in the case of *Pirkait Thakur Narayan Singh v. Nawab Dildar Ali Khan*(1), in connection with the report of the Stamp-reporter of the Court, that the question of court-fee must be decided on the plaint and though it is open to the Court to say that the plaintiff has really asked for a consequential relief though he has tried to conceal it by casting the reliefs in a particular form, it is not open to the Court to say that the plaintiff should have asked for a consequential relief and should have paid the proper fee as in such a suit. The learned Subordinate Judge has not held, as he could not have possibly held on the face of the plaint, that the plaintiff has sought a consequential relief in the suit. What the learned Subordinate Judge has held is that the plaintiff ought to have sought consequential relief and paid court-fee accordingly. What turn this case will eventually take is not for me to

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say. It is sufficient for the purpose of this appeal to hold that the plaint simply asks for a declaration that the record-of-rights is wrong as it omits the plaintiff's name and the extent of his share. Though Specific Relief Act is not in force in the Santal Parganas, section 25A of Regulation III of 1872 contemplates a declaratory suit. The fact that the plaintiff's name has not been recorded by the Settlement Officer is no ground by itself for holding that he must sue for possession. The plaintiff claims to be a sharer of the estate as a member of a joint Hindu family. The utmost that can be said is that it is a suit to do away with the effect of the decision of the Settlement Officer. In either view of the matter the court-fee payable is Rs. 15 under Schedule II, Article 17(i) and (iii) of the Court-Fees Act.

The appeal must, therefore, be allowed. The learned Subordinate Judge will restore the plaintiff's suit to its original no. and proceed to dispose of it according to law. The appellant will be entitled to get half costs (exclusive of court-fee on the memorandum of appeal) from the contesting respondents. He will get a certificate under section 13 of the Court-Fees Act for receiving back from the Collector the court-fee paid by him on the memorandum of appeal.

VARMA, J.—I agree.

*Appeal allowed.*

## APPELLATE CIVIL.

*Before Courtney Terrell, C.J. and Saunders, J.*

SATYABADI SAHU

v.

MANI SAHU\*.

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 2—adjustment of decree, contract to do something in future, whether amounts to.*

\*Circuit Court, Cuttack. Appeal from Original Order no. 12 of 1935, from an order of Babu S. M. Das, Subordinate Judge of Cuttack, dated the 15th August, 1935.

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