

1935.

K. C.  
MUKHERJEE

v.

MUSAMMAT  
RAM  
RATAN  
KOER.SIR  
GEORGE  
RANKIN.

well have regarded as invidious or unnecessary. As substantive rights of landlords and their accrued causes of action were to be abrogated, respect for pending suits over old transfers cannot be assumed.

Again, if section 26 (O) be looked at, it will be seen that in the case of a transfer made after the 1st January, 1923, but before 10th June, 1935, the provision is that the transferee may pay or deposit the landlord's transfer fee and thus perfect his title. There is no suggestion that a transferee shall be incompetent to make the payment, or that the Collector shall refuse to receive the money in any case in which the transfer is impugned in a pending suit. If the saving to be implied in favour of pending suits is to attach to all suits brought prior to the coming into force of the Act, then the interval between the passing of the Act in November, 1934, and the coming into force of the Act in June, 1935, gave opportunity to any landlord to bring an ejectment suit and defeat the rights conferred by sections 26 (N) and 26 (O).

In their Lordships' opinion it is reasonably plain that no such saving can be implied. On this view the present appeal fails and should be dismissed. As the respondents have not appeared there will be no order as to costs.

Their Lordships will humbly advise His Majesty accordingly.

Solicitors for the appellants—*Downer and Lewis.*

### APPELLATE CIVIL.

*Before Macpherson and Khaja Mohamad Noor, JJ.*

NANAK PRASAD SAHU

v.

MUSAMMAT KASEDA KUMRI.\*

1935.

November,  
13.

*Revenue Sales Act, 1859 (Act XI of 1859), sections 2, 3 and 33—"kist", meaning of—kistbandi dates in Bihar,*

\* Appeal from Appellate Decree no. 1268 of 1931, from a decision of D. P. Sinha Sharma, Esq., I.C.S., Additional District Judge of Monghyr, dated the 13th June, 1931, reversing a decision of Babu Braj Bilas Prasad, Munsif of Begusarai, dated the 22nd August, 1929.

*whether invariably according to Fasli era—latest date of payment, what is—Bengal Tauzi Manual, Rule 1—exceptional cases where kistbandi dates found to coincide with latest dates of payment—suit to set aside revenue sale on the ground of fraudulent suppression of notices—question of jurisdiction raised for the first time in appeal—appellate court, duty of—appeal preferred to Commissioner out of time, whether is an appeal in the eye of law within the meaning of section 33.*

1935.

---

 NANAK  
PRASAD  
SAHU

 v.  
MUSAMMAT  
KASEDA  
KUMRI.

It is a well known fact that in Bihar the original kistbandis fixed under the engagement entered into with the proprietors for payment of the Government revenue were almost invariably according to the Fasli era, and the four dates in June, September, January and March now fixed for the payment of the Government revenue are the latest dates of payment determined by the Board of Revenue under section 3 of the Revenue Sales Act and could not possibly be kistbandi dates of the Fasli era. Where the original kistbandi under section 2 of the Act is unknown and forgotten, the latest dates fixed under section 3 are popularly known as the 'kist' dates; they are, however, not the kistbandi dates as provided by section 2 but only the latest dates of payment as fixed by the Board of Revenue under section 3 of the Act.

*Jadunandan Singh v. Srimati Savitri Devi*(1), followed.

Rule 1 of the Bengal Tauzi Manual sets out that the tauzi roll of a district is the list of the estates from which the land and police revenue of the district is collected, showing the revenue assessed upon each estate *divided into the amounts due on each latest day of payment*, and the word "kist" is defined in the introductory chapter to the Manual where it is set out that *in that Manual* the word indicates "the period between one latest day for payment of arrears of revenue and the next" and the word is not used therein in the restricted meaning assigned to it by section 2 of the Act.

The decision in *Jadunandan Singh v. Srimati Savitri Devi*(1) relates to cases in Bihar covered by the engagement in accordance with the Fasli era. There are, however, abnormal or exceptional cases, such as was found in *Saraswati Bahuria*(2), where the latest dates of payment under section 3, or popular kist dates, are found to coincide with the original

---

(1) (1933) I. L. R. 12 Pat. 750, S. B.

(2) (1931) I. L. R. 10 Pat. 496, P. C.

1935.

NANAK  
PRASAD  
SAHU  
v.  
MUSAMMAT  
KASEDA  
KUMRI.

kistbandi dates (or some of them) referred to in section 2. It is possible too that after a regular partition the Collector may, whether inadvertently or not, have made a new kistbandi in this manner.

*Damodar Prasad v. Musammat Wakilunnissa*(1) and *Haji Buksh Elahi v. Durlaw Chandra Kar*(2), referred to.

Plaintiff sued to have the sale under the Revenue Sales Act, 1859, held on the 6th June, 1927, in respect of his share in the estate in arrears set aside on the ground that the essential notices had not been served. There was no allegation, much less proof, that the sale had been held by the Collector without jurisdiction or that there had been no arrear of land revenue in respect of which it could have taken place. The trial court dismissed the suit, holding that there was no suppression of notice. The plaintiff appealed and for the first time at the hearing of the appeal raised the point that the Collector had no jurisdiction to sell the estate. By a notification, dated 6th August, 1910, made in pursuance of section 3 of the Act, the 12th January and the 28th March were fixed as the latest dates of payment of the revenue (in two kists) for the estate in question. It was, contended that the plaintiff's interest in the estate in respect of which there had been default as to the March kist was not liable to be sold until the expiration of the alleged last day of payment, namely, the 12th January, 1928, so that the sale by the Collector on the 6th June, 1927, was void for want of jurisdiction and the District Judge allowing the point to be raised, held that the sale was without jurisdiction, on the ground that the March kist for which the sale had taken place must be viewed in the light of the meaning of the word "kist" in section 2 of the Act: he was not prepared to assume from certain evidence before him that the arrear had already accrued due and that the 28th of March was the latest date of payment.

*Held*, in second appeal, (i) that the decision in a suit where the jurisdiction of the Collector to sell an estate is impugned, depends upon what is alleged and proved as to the estate not being liable for an arrear of revenue in respect of which the Collector could sell it on the date on which he did sell it;

(1) (1935) I. J. R. 15 Pat. 58.

(2) (1912) I. L. R. 39 Cal. 981, P. C.

(ii) that, therefore, if the District Judge at all permitted the question of jurisdiction to be raised for the first time in appeal, it was incumbent upon him in the circumstances to secure the materials upon which a decision could be safely arrived at, either by taking the necessary evidence or by directing the Court of fact to take it, since clearly the record neither purported to show nor did show that the 28th March was not the latest date of payment (after which the Collector could sell) and that it was the kistbandi date (in which case he could only sell after a subsequent "latest date of payment").

*Damodar Prasad v. Musammat Wakilunnissa*(1), distinguished.

It is very necessary that every discouragement should be given to an invention of new points at a late stage—points which might have been met if taken properly by adducing further evidence.

*Jonab Biswas v. Siva Kumari Debi*(2), followed.

In these circumstances the High Court remanded the case to the lower appellate Court for taking further evidence and deciding the point whether the 28th March, 1927, was the latest date of payment under section 3 or merely the date referred to in section 2 on which the revenue was due.

For the purposes of section 33 of the Revenue Sales Act, 1859, an appeal preferred to the Commissioner out of time is no appeal in the eye of the law.

*Pirthri Chand Lal Chaudhuri v. Raja Kirtyanand Singh Bahadur*(3), followed.

Appeal by the defendant.

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

*S. N. Bose*, for the appellant.

*L. N. Singh* and *G. P. Sahi*, for the respondents.

MACPHERSON, J.—This is the last of three second appeals which have been preferred from decisions in

(1) (1935) I. L. R. 15 Pat. 58.

(2) (1927) 46 Cal. L. J. 253.

(3) (1931) I. L. R. 10 Pat. 757.

1935.

NANAK  
PRASAD  
SAHU

v.

MUSAMMAT  
KASIDA  
KUMRI.

1935.

NANAK  
PRASAD  
SAHU  
v.  
MUSAMMAT  
KASEDA  
KUMRI.

1931 of Mr. Sharma as officiating Additional District Judge of Monghyr in appeals arising from suits to set aside sales held under the Revenue Sales Act. The decisions in the others are in *Jadunandan Singh v. Srimati Sacitri Devi*(<sup>1</sup>) and *Damodar Prashad v. Wakilunissa*(<sup>2</sup>).

MACPHER-  
SON, J.

In the suit out of which the present appeal arises the plaintiff sued to have the sale under the Revenue Sales Act, 1859, held on the 6th of June, 1927, in respect of his ten annas odd share in village Nisabra bearing tauzi no. 761, set aside on the ground that the essential notices had not been served. It was averred that the defendant in collusion with Teni Sahu, his son-in-law, had fraudulently secured surreptitious service return of the notice and fraudulent sale of the plaintiff's share and purchase thereof and Teni Sahu in collusion with the Court peon had also prevented plaintiff from having any knowledge or information of the sale until the 22nd September following. The plaint sets out that an appeal against the said sale had been summarily rejected by the Commissioner of Bhagalpur. There was no allegation in the plaint that the sale had been held by the Collector without jurisdiction nor even that there had been no arrear of land revenue in respect of which it could have taken place and in particular there is no reference to any 'kist' or instalment whether in the restricted meaning of section 2 of the Act or in the signification of the term in the Tauzi Manual, the Tauzi Ledger and popular parlance.

Equally in the issues framed there is no mention of any question of jurisdiction or in particular of the sale having been held prior to the date on which the Collector could legally hold it. Further nowhere in the judgment of the first Court is there any mention of the question of jurisdiction or of 'kist'.

Thus until the stage of appeal the substantial question agitated was whether the sale was liable to

(1) (1933) I. L. R. 12 Pat. 750, S. B.

(2) (1935) I. L. R. 15 Pat. 58.

be set aside on the ground of fraud and suppression of notice. The learned Munsif decided the issue on that point in the negative. The appellate Court found itself in complete agreement with that finding and it is not contested before us. It differed indeed from the view of the first Court that a suit on the ground set out in the plaint was not entertainable by reason of section 33 of the Act which enables the Court to annul a sale only on a ground set out in the appeal provided by section 25 which appeal must moreover be preferred on or before the sixtieth day of sale and that the plaintiff's appeal being late, there was no valid appeal. The appellate Court is here in error, since an appeal preferred out of time is no appeal in the eye of the law as observed by my brother Mohamad Noor, J. in *Raja Pirthwi Chand Lal Chaudhuri v. Raja Kirtyanand Singh Bahadur*(1) and the trial Court's view that the suit as framed, would fail also on this ground is correct. Thus the suit, as framed, was bound to fail on these grounds of fact and law.

But the lower appellate Court allowed to be raised and accepted a point in favour of the plaintiff appellant admittedly raised for the first time at the hearing of the appeal.

The point is that the Collector had, in the circumstances of the case, no jurisdiction to sell the estate. The learned Judge sets out that the estate was sold for alleged arrears of Government revenue amounting to fourteen annas for the kist ending 28th March, 1927, and accepts the argument for the appellant that the share was not liable to be sold until the expiration of the last day of payment, namely, the 12th January, 1928, so that the sale by the Collector on the 6th June, 1927, was void for want of jurisdiction. His attention was drawn to a notification no. 2557-A., dated 6th August, 1910, made in pursuance of section 3 of the Sales Act, that

1935.

NANAK  
PRASADSARU  
P.MUSAMMAT  
KASEDA  
KUMRI.MACPHER-  
SON, J.

(1) (1931) I. L. R. 10 Pat. 757.

1935.

NANAK  
PRASAD  
SAMU  
v.  
MUSAMMAT  
KASEDA  
KUMRI.  
  
MACPHER-  
SON, J.

the 12th January and the 28th March are fixed as the latest dates for payment of revenue exceeding Rs. 10 but not exceeding Rs. 50 in districts where the Fasli era prevails, as it does in this case, and the revenue of tauzi no. 761 (which, it may be observed, was the residue after partition in 1880) falls within those limits. He goes on to say that the record shows that the interest of the appellant in the estate was sold for the March kist, and that the March kist must be viewed in the light of the meaning of the word 'kist' in section 2 of the Sales Act though such could hardly be the case when the notification itself is expressly under section 3. He relied upon the decision in *Saraswati Bahuria v. Suraj Narayan Chaudhuri*(<sup>1</sup>) without, however, realising that that decision proceeded on its own facts as found, and went on to say that there was no evidence before him as to what the original kistbandi date was as contemplated in what he considers to be the conflicting decision in *Shyama Kant Lal v. Kashi Nath Singh*(<sup>2</sup>); and he was not prepared to assume from certain evidence before him that the arrear had already accrued due and that the 28th of March was the latest date of payment.

It is urged in second appeal that the lower appellate Court ought to have held that on the pleadings the question of jurisdiction did not arise and that if it admitted the argument to consideration that there were no materials upon which a decision was possible, and further that the actual decision is wrong on the facts. It is certainly clear that the learned Judge was hazy as to law and practice in respect of revenue dates, and in particular failed to distinguish the two meanings of the term 'kist' or to require the plaintiff to show which of them applied to his case. And certainly as Raukin, C.J. remarked in *Jonab Biswas v. Siva Kumari Debi*(<sup>3</sup>), "it is very

(1) (1931) I. L. R. 10 Pat. 496, P. C.

(2) (1926) 7 Pat. L. T. 747.

(3) (1927) 46 Cal. L. J. 258.

necessary that every discouragement should be given to an invention of new points at a late stage-points which might have been met if taken properly, by adducing further evidence."

A second appeal from another decision of Mr. D. P. S. Sharma came before a Special Bench of this Court in which the facts were very similar to those of the present litigation. The decision is reported in *Jadunandan Singh v. Srimati Savitri Devi*(<sup>1</sup>), the placitum to which runs:—"It is a well-known fact that in Bihar the original kistbandis fixed under the engagement entered into with the proprietors for payment of the Government were almost invariably according to the Fasli era, and the four dates in June, September, January and March fixed for the payment of the Government revenue are the latest dates of payment determined by the Board of Revenue under section 3 of the Revenue Sales Act and could not possibly be kistbandi dates of the Fasli era. It was pointed out in *Shyama Kant Lal v. Kashi Nath Singh*(<sup>2</sup>) that where the original kistbandi under section 2 of the Act is unknown and forgotten, the latest dates fixed under section 3 are popularly known as the kist dates. They are not the kistbandi dates as provided by section 2 but only the latest dates of payment as fixed by the Board of Revenue under section 3 of the Act." Where, therefore, it appeared that the original kistbandi fixed in respect of the estate in arrear was according to the Fasli era, and the 7th of June was not the kistbandi date under section 2 but the latest date under section 3 and the June instalment was not paid on the latest date, viz. the 7th of June, it was held that it was within the jurisdiction of the Collector to sell the estate after that date and that, therefore, the sale held on the 20th of September was a valid sale.

1935.

NANAK  
PRASAD  
SAHUc.  
MUSAMMAT  
KASEDA  
KUMRI.MACPHER-  
SON, J.

(1) (1933) I. L. R. 12 Pat. 750, S. B.

(2) (1926) 7 Pat. L. T. 747.



1955.

NANAK  
PRASAD  
SAHU  
v.  
MUSAMMAT  
KASEDA  
KUMRI.  
  
MACPHER-  
SON, J.

The decision in *Jadunandan Singh v. Srimati Savitri Devi*<sup>(1)</sup> was given after an opportunity had been accorded to the appellant to adduce evidence on the point. The plaint was in very much the same form as the present plaint and the learned District Judge had allowed the point of jurisdiction to be first taken on appeal. Kistbandi dates of the Fasli era under section 2 are usually eleven or twelve while latest days of payment under section 3 are usually the four dates in the English months of June, September, January and March mentioned above. In the present instance the notification of 1910 under section 3 of the Act merely reduced the four latest dates of payment to two in certain cases where the annual revenue being of small amount, it was not worth while for Government to insist upon four kists, so that the learned Judge was *prima facie* in error in inferring from it that the 12th January and 28th March were kistbandi dates contemplated by section 2 of the Act. They are shown as the instalment dates in the Tauzi ledger, as a copy now produced establishes, but in this connection reference is necessary to rule 1 of the Bengal Tauzi Manual which sets out that the tauzi roll of a district is the list of the estates from which the land and police revenue of the district is collected, showing the revenue assessed upon each estate *divided into the amounts due on each latest day of payment*, and to the definition of the word 'kist' in the introductory chapter to the Manual where it is set out that in that Manual the word indicates "the period between one latest day for payment of arrears of revenue and the next" and that the word is not used therein in the restricted meaning assigned to it by section 2 of the Act.

The decision of the Special Bench relates to cases in Bihar covered by the engagement in accordance with the Fasli era which is the rule. There are, however, abnormal or exceptional cases such as was found in *Saraswati Bahuria's*<sup>(2)</sup> case where the latest

(1) (1933) I. L. R. 12 Pat. 750; S. B.

(2) (1931) I. L. R. 10 Pat. 496, P. C.

1935

NANAK  
PRASAD  
SAHUv.  
MUSAMMAT  
KASEDA  
KUMRI.MACPHER-  
SON, J.

dates of payment under section 3 or popular 'kist' dates are found to coincide with the original kistbandi dates (or some of them) under section 2, and the decision of the Special Bench sets out "That in some very rare cases the two dates fixed under sections 2 and 3 of the Act may coincide is illustrated by *Haji Buksh Elahi v. Durlav Chandra Kar*(1) which was a modern case in a Government khas mahal". It is possible too that after a regular partition the Collector may, whether inadvertently or not, have made a new kistbandi in this manner. In a recent decision of this Court in *Damodar Prasad v. Wakilunnisa*(2) also preferred from the decision of the same officiating District Judge, it was held that where the Government revenue of a certain estate which was payable (in one kist) on the 28th March, remained unpaid within the meaning of section 2 of Act XI of 1859, the sum did not become an arrear until the 1st of April following and as in that case the latest date of payment fixed under section 3 of the Act coincided with the kistbandi date, the estate could not be sold till the 28th March of the following year. The difference between that case and the present case and *Jadunandan Singh v. Srimati Savitri Devi*(3) is that the case of jurisdiction had been raised in the plaint where it was set out that the whole of the revenue "according to the terms of the kabuliati under which the mauza was held, was payable only once a year and that was on 28th of March" and the statement was not expressly denied in the written statement, and it was further found as a fact that in that case "as the kistbandi date was fixed by the kabuliati under which the estate is held and it is a mere coincidence that the kistbandi date and the date fixed by the Board of Revenue as the latest date of payment happen to be the same, the case cannot be distinguished from *Haji Buksh Elahi v. Durlav Chandra Kar*(1), etc." The case, therefore, was found to fall in the category of exceptional cases mentioned in the

(1) (1912) I. L. R. 39 Cal. 981.

(2) (1935) I. L. R. 15 Pat. 58.

(3) (1933) I. L. R. 12 Pat. 750, S. B.

1935.

NANAK  
PRASAD  
SAHU  
v.  
MUSAMMAT  
KASEDA  
KUMRI.  
MACPHER-  
SON, J.

Special Bench decision which are governed by the decision of the Judicial Committee in *Haji Buksh Elahi v. Durlav Chandra Kar*(1).

Manifestly, therefore, the decision in a suit where the jurisdiction of the Collector to sell an estate is impugned, depends upon what is alleged and proved as to the estate not being liable for an arrear of revenue in respect of which the Collector could sell it on the date on which he did sell it. Here there was no allegation at all that he had no jurisdiction to sell on the 6th June and no issue between the parties, still less any proof. The learned District Judge had not before him the materials upon which a decision on the point was possible. *Prima facie*, indeed, the 28th March was the latest date of payment of a previous arrear (or several previous arrears) of land revenue but conceivably the case was an exceptional one and indeed what has been suggested before us on behalf of respondents and denied on behalf of the appellant is that after the partition of 1880 there may have been a new kistbandi. We gave the respondent an opportunity to produce it but it is not yet forthcoming. Now if the learned District Judge at all permitted the question of jurisdiction to be raised in appeal, it certainly was incumbent upon him in the circumstances to secure the materials upon which a decision could be safely arrived at either by taking the necessary evidence or by directing the court of fact to take it since clearly the record neither purported to show nor did show that the 28th March was not the latest date of payment (after which the Collector could sell) and was the kistbandi date, (in which case he could only sell after a subsequent "latest date of payment".) At the least the defendant could not but be very seriously prejudiced. We have decided to adopt the course which the lower appellate Court should have taken. We set aside the decree under appeal and remand the appeal to the District Judge for decision after permitting the plaintiff-appellant

before him to amend his plaint if he so desires and whether he desires so or not to adduce evidence on the issue: " Was the sale by the Collector of Monghyr of the estate in suit on the 6th June, 1927, without jurisdiction? " The evidence may be either taken by himself or by the trial court at his discretion. It is necessary to impress upon the lower appellate Court and upon the parties the urgent necessity of placing the full history of the tauzi before the Court and in particular any change which may have taken place in the kistbandi which is referred to in section 2 of the Act. Substantially the point will be whether the 28th of March, 1927, was the latest date of payment under section 3 or merely the date under section 2 on which the revenue was due. If it was the latest date of payment within the meaning of section 3 and the Tauzi Manual, it is clear that the Collector had jurisdiction to sell. If it was merely the " kist or instalment of any month of the era according to which the settlement or kistbandi of the mahal has been regulated ", then he had no jurisdiction to sell, as it had not become " an arrear of revenue " within the restricted definition of that term in section 2 and the Collector would have to wait for the latest date of payment prescribed under section 3. Upon decision of this question of jurisdiction the lower appellate Court will determine the appeal. No other point falls to be considered by that Court.

It is hoped that he will find time to deal with this long-pending matter with the least possible delay. If there is obscurity or difficulty in tracing the history of the tauzi or in regard to the revenue payable and the dates for payment thereof, we feel sure that he can rely upon the good offices of the Collector to enable him and the parties to elucidate them. In this connection we may refer to replies produced before us which were given to certain applications for information filed by the plaintiff-respondent. Prima facie, the information supplied does not seem to have been given by a person of understanding. No doubt, on

1936.

---

NANAK  
PRASAD  
SAHU  
v.  
MUSAMMAT  
KASEDA  
KUMRI.

MACPHER-  
SON, J.

1935.  


---

 NANAK  
 PRASAD  
 SAHII  
 v.  
 MUSAMMAT  
 KASEDA  
 KUMARI.  
 MACPHER-  
 SON, J.

his attention being drawn to it, the Collector will have the replies furnished by a reliable officer who understands the difference between a kist of the "engagement" (doul or kabuliat) and the kist date in the sense of the Board of Revenue's latest date of payment under section 3 of "an arrear of revenue", as defined in section 2 for the peremptory purposes of the Act [that is to say, of any part of a kist or kists of the "engagement" which was unpaid (and so already an arrear in the ordinary sense) on the first day of the month following the month of the era in respect of which the kist was fixed], to save the estate from summary sale.

The appellant is entitled to his costs up to this stage. Future costs will be in the discretion of the court below.

KHAJA MOHAMAD NOOR, J.—I agree.

*Appeal allowed.*

*Case remanded.*

### FULL BENCH.

*Before Courtney Terrell, C.J., Wort, Macpherson, Khaja Mohamad Noor, Dhabic, Agarwala and Varma, JJ.*

GABRIEL CHRISTIAN

1935.

v.

November,  
 18, 19, 22.

CHANDRA MOHAN MISHRA.\*

*Limitation Act, 1908 (Act IX of 1908), section 12—  
 "time requisite", meaning of—time taken in preparation of  
 decree, when should be allowed.*

No period which may be under the control of the appellant between the date upon which judgment is pronounced (which is the date of the decree under the Civil Procedure Code) and the date on which the appeal was filed can be

\* Appeal from Appellate Decree no. 1216 of 1932, from a decision of Babu Kshetra Nath Singh, Special Subordinate Judge of Ranchi, dated the 20th May, 1932, confirming a decision of Babu Nirmal Chandra Ghosh, Munsif of Ranchi, dated the 6th December, 1930.