as the *chela* of his *guru*, is the holder of the hereditary office of *mahant* of this institution.

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COLDSTREAM J. BHIDE J.

[The rest of the judgment is not necessary for the purpose of this report.—Ed.]

BHIDE J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Tek Chand and Dalip Singh JJ.

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March 16.

CHANDA SINGH AND OTHERS (PLAINTIFFS) Appellants

versus

PRITHI SINGH AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 737 of 1934.

Res Judicata—*Judgment of a Settlement Officer, Ferozepore, in 1853—deciding a question of title—whether* res judicata *in a subsequent suit in a Civil Court.*

On a question of title between the ancestors of the parties to this suit, the Settlement Officer, Ferozepore held in 1853 that the defendants were the proprietors and the plaintiffs the occupancy tenants of the land in suit. In 1931 the plaintiffs filed a suit in the Civil Court for a declaration of title that they were owners of the same land. It was contended by the defendants that the question of title was *res judicata* by reason of the decision of the Settlement Officer given in 1853. The plaintiffs objected that the decision of the Settlement Officer on a question of title could not be *res judicata* as Civil Courts alone have jurisdiction to determine such questions.

Held, that in 1851-53 the Settlement Officer was the only judicial authority in that part of the Punjab competent to decide questions of title relating to agricultural land. Therefore the decision of 1853 was *res judicata*, and the question of title could not be re-agitated in a Civil Court now.

Barkley's "*Non-Regulation Law of the Punjab, 1871 Edition, page 41,*" referred to.

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v.
PRITHI SINGH.

First appeal from the decree of Lala *Shankar Lal, Senior Subordinate Judge, Ferozepore, dated 1st March 1934, dismissing the plaintiffs' suit.*

BADRI DAS and ACHHRU RAM, for Appellants.

NAWAL KISHORE and KHARAK SINGH, for Respondents.

The judgment of the Court was delivered by—

TEK CHAND J.—This appeal arises out of a suit instituted by the plaintiffs-appellants for a declaration that they and defendants 12 to 47 are the owners of the land in dispute and that the defendants 1 to 11 are merely *jagirdars*, but have been wrongly described as proprietors in the revenue papers. The suit has been dismissed by the Court below. The plaintiffs appeal.

In the revenue papers from the first settlement of the Ferozepore district to the last *jamabandi*, the contesting defendants Nos. 1 to 11, have been shown as owners, and the plaintiffs and the *pro-forma* defendants, as occupancy tenants under them. The plaintiffs contend that these entries are erroneous. The onus, therefore, lies heavily on them to prove the contrary.

It appears, that as early as the 27th December 1851 the predecessors-in-interest of the plaintiffs brought a suit in the Court of the Settlement Officer of Ferozepore claiming that they were owners of the land in dispute. In that suit a compromise was filed signed by the defendants and a few of the plaintiffs, in which it was admitted that the defendants were the owners and that the plaintiffs were the occupancy tenants, not liable to pay *malikana*, and possessing rights to plant trees and dig wells on the land, but

having no power to sell or mortgage the tenancy. The Settlement Officer accepted the compromise and ordered that entries in the revenue papers be made in accordance with its terms. From that order, some of the plaintiffs appealed to the Commissioner, who not being satisfied that the compromise represented a genuine agreement between all the plaintiffs and the defendants, remanded the case to the Settlement Officer for enquiry on the merits. Accordingly, the Settlement Officer held an elaborate investigation into the rights of the parties and passed an order on the 28th December 1853 holding that the ancestors of the present defendants were the original founders of the village and that during the Sikh rule they had granted the land in occupancy tenancy to the ancestors of the plaintiffs. Following this order, the defendants were entered in the revenue papers as proprietors and the plaintiffs as occupancy tenants under them, not liable to pay any *malikana*, but liable to pay the Government revenue, cesses and *malba*. No appeal against this order was made by the plaintiffs to any higher authorities.

About fourteen years later, the predecessors of the present defendants brought a suit against the predecessors of the plaintiffs for recovery of Rs.26 as *malikana*. The latter denied that they were occupancy tenants, and also pleaded that they were not liable to pay *malikana*. That case was eventually decided by a Division Bench of the Chief Court on the 13th February 1868 (Civil Appeal No.954 of 1867), who held that the question that the relationship between the parties was that of landlord and occupancy tenant and also the question that the latter were not liable to pay *malikana* were *res judicata* by reason of

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the decision of the Settlement Officer dated the 28th December 1853 above referred to.

In 1889, in the course of the revised settlement of the Ferozepore district, the predecessors of the present defendants again raised the question of the liability of the plaintiffs to pay *malikana*. The plaintiffs resisted the claim on the strength of the decision of the 28th December 1853. The Settlement Officer, Mr. Francis rejected the plea holding that the order of 1853 to the effect that no *malikana* was payable held good during the currency of the first regular settlement only and was not intended to be a perpetual bar to the levy, or enhancement, of *malikana* by the defendants from the plaintiffs. He accordingly passed a decree that the present plaintiffs were occupancy tenants under section 5 (*a*) of the Tenancy Act and that they were liable to pay the present defendants *malikana* at the rate of two annas per rupee of the land revenue assessed, with effect from *kharif* 1888. This order was duly given effect to in the revenue papers, and it appears from certain proceedings before the Tahsildar held on the 20th January 1890 that the rent (*malikana*) for the previous harvest was actually paid at the rate fixed. The parties are not agreed as to whether rent was paid between 1891 and 1929. The plaintiffs allege that they never paid it, while the defendants have produced their account books showing such payments during this period at regular intervals. It appears, however, that in 1929 and 1930 the defendants brought several suits against the plaintiffs in Revenue Courts for recovery of the rent at 0-2-0 per cent of the *jama*. In defence the plaintiffs again denied that they were tenants under the defendants, but their pleas were overruled and the suits decreed.

In order to have the question of title determined, the plaintiffs have instituted the present suit in the Civil Court for a declaration that they are the owners of the land and not occupancy tenants as shown in the revenue papers.

The lower Court has held the question of title to be *res judicata* by reason of the decision of the Settlement Officer dated the 28th December 1853.

In the memorandum of appeal presented by the plaintiffs in this Court, it was urged that the decision of the Settlement Officer on a question of title could not be *res judicata*, as Civil Courts alone have jurisdiction to determine such question. It appears, however, that in 1851-53 the Settlement Officers in this part of the Punjab had exclusive jurisdiction to decide questions of title relating to agricultural land. It is no doubt true, that under (Bengal) Regulation VII of 1822, a defeated claimant before a Settlement Officer was given the right to contest his decision on a question of title in a Civil Court, and this Regulation was brought in force in Ferozepore district after its Annexation about 1845. But at the request of the Board of Administration of the Punjab, conveyed in their letter No. 94 dated the 14th August 1849, these provisions of the Regulations were modified by the Government of India so far as the Cis-Sutlej and Trans-Sutlej territories of the annexed districts were concerned, and it was ordered that the decisions given by the Settlement Officers on the merits of all disputes relating to land be made final, subject to the usual revenue appeals. These orders will be found in letter No.1602, dated the 1st September 1849, from the Secretary to the Government of India to the Board of Administration for the Affairs of the Punjab (*See*

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Barkley's "*Non-Regulation Law of the Punjab*" page 41 (1871 ed.). It appears that these orders remained in force till 1865, when Civil Courts were given exclusive jurisdiction to decide such questions.

It is thus clear that in 1851-53 the Settlement Officer was the only judicial authority competent to decide questions of title relating to agricultural land. In view of this, Mr. Badri Das conceded before us that the decision of 1853 is *res judicata*, and the question of title cannot be re-agitated in Civil Courts now.

This concludes the plaintiffs' appeal. It may, however, be remarked that even if for any reason the Settlement Officer's decision on above-mentioned were held not to bar the present suit, the plaintiffs, on whom the *onus* admittedly lay to prove the revenue entries, which have been repeated in the various settlements and *jamabandis* for more than eighty years, are incorrect, have failed to produce any evidence to prove their claim.

The appeal fails and is dismissed with costs.

P. S.

Appeal dismissed.