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HAYWARD, J. :—I concur. It is clear from the deposition of the plaintiff that he never seriously denied the legality of the introduction of the survey settlement upon the application of the holder Raste. The question would not appear to have been specifically pressed either in the trial Court or in the two Courts of appeal. The application of section 217 of the Bombay Land Revenue Code has already been decided in the case of *Dadoo bin Bhatoo* v. *Dinkar Vishnu*[1] by a Bench of this Court.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

BHAGA MOTIJI (ORIGINAL PLAINTIFF), APPELLANT v. DORABJI SORABJI (ORIGINAL DEFENDANT) RESPONDENT*.

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Land Revenue Code (Bom. Act V of 1879), section 121—Boundaries—Collector's order—Adverse possession—Civil Court—Jurisdiction.

The plaintiff and the defendant were owners of adjoining survey numbers. The land in suit was situated between these numbers. The defendant having complained to Revenue authorities of an encroachment made by the plaintiff over the plaint land, the Collector found that the plaintiff was wrongfully in possession of the land and ordered his eviction therefrom under section 121 of the Land Revenue Code. The plaintiff, therefore, sued to recover possession on the ground that he had acquired a perfect title to the land in dispute by adverse possession. The lower Courts held that they had no jurisdiction to hear the suit. On appeal to High Court,

Held, that the order of the Collector adjudging that the plot in dispute formed part of defendant's survey number did not stand in the way of a civil Court going into the question of adverse possession.

Section 121 of the Bombay Land Revenue Code merely enables the Collector to evict summarily a landholder who is wrongfully in possession of land which

*Second Appeal No. 87 of 1919.

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has been adjudged by the settlement of a boundary. But whether the Collector's order would be legally correct or not would still remain to be determined by a civil Court if a suit were brought.

Bai Ujam v. *Valiji Rasulbhai*[1], considered.

SECOND appeal against the decision of W. Baker, District Judge of Surat, confirming the decree passed by T. N. Desai, Additional Subordinate Judge at Bulsar.

Suit to recover possession.

The plaintiff was the owner of Survey No. 419 and the defendant was the owner of Survey No. 420. The land in dipute measuring 19 gunthas lay between the two survey numbers. There was a dispute between the parties as to the ownership of the plot in dispute. On the 21st April 1913 the defendant presented an application to the Mamlatdar of Pardi complaining of an encroachment made by the plaintiff over the land in suit and praying that the boundary of the two Survey Nos. 419 and 420 might be determined and encroachment removed. Statements of the plaintiff and the defendant were recorded before the Patil and Talati and the Circle Inspector and finally the Collector of Surat decided on the 25th November 1914 that the plaintiff was wrongfully in possession of the land in question and he ordered his eviction therefrom under section 121 of the Land Revenue Code. An appeal was preferred from the said order to the Commissioner but it was rejected in about May 1915.

The plaintiff, therefupon, sued to recover possession of the land in suit alleging that he had become owner thereof by adverse possession for more than twelve years.

The Subordinate Judge held that he had no jurisdiction to hear the suit as it was not open to the plaintiff

[1] (1886) 10 Bom. 456.

to go behind the decision of the Collector. He was of opinion that under section 121 of the Land Revenue Code, the Collector had authority to decide question of prescription too while determining the question of boundary and the Collector should therefore be deemed to have decided in effect that the plaintiff was not entitled to hold the land even by adverse possession. He, therefore, dismissed the plaintiff's suit.

On appeal, the District Judge confirmed the decree holding that the Collector's decision was final: *Bai Ujam* v. *Valiji Rasulbhai*[1].

The plaintiff appealed to the High Court.

G. N. Thakor for the appellant.

K. N. Koyaji, for the respondent.

MACLEOD, C. J. :—The plaintiff sued to recover possession of the plaint land measuring 19 gunthas, said to belong to Survey No. 420, alleging that the land originally belonged to one Kasna Mavji exclusively, that even if the said Kasna was not the sole owner of that land, he had become the sole owner thereof by adverse possession for more that 12 years. The plaintiff was the owner of Survey No. 419. The defendant was the owner of Survey No. 420. The plaint land was situated between these two survey numbers. The question arose whether it formed part of Survey No. 419 or 420.

In April 1913, the defendant presented an application to the Mamlatdar of Pardi complaining of an encroachment made by the plaintiff over the land in suit, and praying that the boundary of the two Survey Nos. 419 and 420 might be determined, and the encroachment removed. Statements of the plaintiff and the defendant

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were recorded before the Patel and the Talati and the Circle Inspector, and finally the Collector of Surat decided, on the 25th November 1914, that the plaintiff was wrongfully in possession of the land in question, and he ordered his eviction therefrom under section 121 of the Land Revenue Code. The Collector in his decision said :

"This is clearly a case to which the provisions of section 121 (2) of the Land Revenue Code might properly be applied. Dorabji had a complete and perfect title to the whole survey number, but finding that he was in actual possession of too small an area he paid for measurement, he had the proper boundaries of his holding determined by the Collector under section 119, clause (2). As the result of that determination I find that Bhagoji Motiji (i.e., the plaintiff in this case) is wrongfully in possession without any proper title, and I order his eviction under section 121 in favour of Dorabji".

An appeal was preferred from the said order to the Commissioner but it was rejected about May 1915.

All that was decided then was that the boundary line between these two Survey Nos. 419 and 420 was as contended by Dorabji, and as Dorabji had a complete and perfect title to the whole Survey Number, the Collector came to the conclusion that the plaintiff was wrongfully in possession of that portion which was in dispute, and which had been in the inquiry held to belong to Survey No. 420.

The plaintiff's suit, therefore, was to recover possession on the ground that he had acquired a perfect title to the land in dispute by adverse possession. Both Courts have held that they had no jurisdiction to hear the suit.

The learned appellate Judge considered that the decision of the Collector was final, relying upon the case of *Bai Ujam* v. *Valiji Rasulbhai*[1]. In that case the Collector had settled the boundaries between the two survey numbers, and the Court held that as the

[1] (1886) 10 Bom. 456.

defendant did not claim to have acquired, since the Collector's decision, the right to hold the plaintiff's land except by adverse possession, which the Subordinate Judge found not proved, the plaintiffs were entitled to have the possession of it restored to them.

A very similar point came before us in *Manak* v. *Narayan*[1]. There had been a dispute between

[1] S. A. No. 472 of 1917, decided on 7th August 1919, wherein the judgments were as following :—

MACLEOD, C. J. :—The plaintiff sued to recover possession of four acres of land out of Survey No. 676 situated in Thalner, alleging that he owned Survey No. 678 which is adjoining Survey No. 676 ; that the plot in dispute was separated from Survey No. 676 by a Bandh and included in his survey number ; that he had been in possession of the plot in dispute for about fifty years ; that Survey No. 676 was measured about twelve months ago at the request of the defendant by the Revenue authorities ; that they found out that the plot in dispute formed part if Survey No. 676 which belonged to the defendant, and that accordingly he was dispossessed by the defendant in July 1915. He claimed that he had acquired title to the plot in dispute by adverse possession, and prayed, therefore, that possession might be restored to him.

It has been found in both Courts that the plaintiff had been in possession adversely of the plot in dispute for more than twelve years. But it been has contended that the order of the Revenue authorities adjusting the boundaries of Survey No. 676 was a bar to the present suit. We cannot agree with that contention. Reliance has been placed for the argument on section 121 of the Land Revenue Code. But it does not follow that because the Collector placed the boundary mark of Survey No. 676 at the place where it ought to be in accordance with the survey map, that he in any way adjudicated upon the plaintiff's claim to be possessed of the plot in dispute by adverse possession. It is quite true that the fixing of the boundaries of these two Survey Numbers would show what land belonged to the persons in whose name survey numbers were registered. But that would not in any way affect the right of any one of those parties to show in a civil Court that he had acquired a title by adverse possession against a registered occupant. I agree, therefore, with the opinion of the learned Assistant Judge that the order of the Deputy Collector adjuding that the plot in suit formed part of Survey No. 676 does not at all stand in the way of a civil Court going into the question of adverse possession. Therefore I think the order of the lower appellate Court was right and the appeal must be dismissed with costs.

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the owners of two Survey Numbers, and after the Survey Numbers had been measured by the Revenue authorities, it was found that the plot in dispute belonged to the Survey Number which belonged to the defendant. The plaintiff claimed that he had acquired a title to the plot in dispute by adverse possession, and prayed therefore, that possession might be restored to him. We came to the conclusion that the order of the Deputy Collector adjudging that the plot in dispute formed part of Survey No. 676, which belonged

HEATON, J.:—I also think that the appeal must be dismissed with costs. The words of sub-section (*b*), clause (1) of section 121 of the Land Revenue Code are not perfectly clear, and are not free from difficulty. They might be construed as meaning that when the Collector has determined the boundary he has also determined all the rights of ownership. But I do not think that this is what they do mean, and I do not think it is what the words express, when we remember that they appear in the Land Revenue Code. The words are these: "The settlement of a boundary shall be determinative of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings". I think the rights that are finally determined by the fixing of the boundaries are those rights which flow from the fact that the land is incorporated in a particular survey number, and I do not think they mean more than this. Land may be in one survey number, and yet may become by adverse possession the property of the owner of an adjoining survey number. That is what is found to have happened in this particular case. I think the Land Revenue Code itself provides the very soundest reasons for taking this view. In giving to the Revenue authorities power to fix the boundaries it says in section 119 that "the boundaries would be fixed by the Collector who shall be guided by the Land Records, if they afford satisfactory evidence of the boundary previously fixed, and, if not, by such other evidence as he may be able to procure." It is quite inconceivable to me that those words should have been used had anything more been intended than that the Collector should fix the boundary and so determine finally what land is to be incorporated in a particular survey number. He is not to inquire into the rights of ownership, but is to inquire into the position of the boundary, and nothing else. That being so, it is to my thinking quite impossible to suppose that the words of sub-section (*b*) gave to the Collector's decision a finality as regards those rights of ownership which are not dependent on the circumstance whether the land does or does not form part of particular survey number.

to the defendant, did not stand in the way of a civil Court going into the question of adverse possession. The meaning of section 121 of the Land Revenue Code was considered, and we held that when the settlement of a boundary was made by the Collector, it did no more than establish where the boundary line lay, and that the owners of the respective survey numbers were entitled to their property according to the boundary lines as fixed by the Collector. But we held that it did not prevent one of the disputing parties filing a suit in a civil Court on the ground that he had acquired a portion of his neighbour's survey number by adverse possession. Therefore in my opinion both Courts were wrong in coming to the conclusion that they had no jurisdiction to hear the suit, and that they ought to decide whether the plaint property was as a matter of fact the property of the plaintiff or of the defendant according to the facts proved in the case. They have jurisdiction to decide those questions, and it depends on the findings of fact whether the plaintiff is entitled to succeed.

It was argued that the Secretary of State was a necessary party to the suit, and that if he was not a party, then the Court had no jurisdiction. But that point was never taken at the hearing, and no issue was raised. It may be, the Courts may hold that the plaintiff before he can succeed must get the order of the Revenue authorities set aside. But that again is a question which is entirely apart from the question of jurisdiction. The appeal must be allowed, and the case remanded to the trial Court to be heard on the merits. The appellant to get costs in both appeal Courts. Costs in the trial Court to be costs in the cause.

HEATON, J.:—I concur. The judgments from which we are hearing this appeal were delivered before our

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decision in *Manak* v. *Narayan*[1]. However our decision in that case really settles the point which arises here. It is perfectly true that the decision of the Collector is final as to the boundary line between two Survey Numbers. Nevertheless as we held in *Manak* v. *Narayan*[1] one party or the other may by adverse possession acquire a title to a portion of his neighbour's Survey Number. In my judgment in that case I discussed pretty fully the reasons which led me to that conclusion, and I need not repeat them. It is argued that clause (2), which was in the year 1913 added to section 121 of the Land Revenue Code makes a difference. I do not, however, think that it makes any difference whatever to the reasoning, or to the decision, in *Manak* v. *Narayan*[1]. It merely enables the Collector to evict summarily a landholder who is wrongfully in possession of land which has been adjudged by the settlement of a boundary, and no doubt the Collector might after inquiry decide that he ought to evict a person who had encroached upon his neighbour's Survey Number. But whether the Collector's order would be legally correct or not would still remain to be determined by a civil Court if a suit were brought. The Courts below have based their decision on the view that they had not any jurisdiction to determine whether the plaintiff had or had not acquired a title as against the defendant by adverse possession. That is contrary to our previous decision, and I think is wrong. So the decrees of the lower Courts must be set aside, and the case must be remanded to be tried according to law.

Decree reversed and case remanded.

J. G. R.

[1] *Vide* pp. 71-72 *note* [1] *ante.*