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officio, and moreover there is nothing to show that, when the parties appeared before him on the 26th of June, when the case was re-heard and a fresh summons issued, the conditions requisite for initiating proceedings were not fulfilled and the Magistrate, therefore, was not empowered to take cognisance of the case under ss. 190 and 200 of the Code of Criminal Procedure.

For the reasons I have given, I agree in thinking that the answer which should be given to this question should be the answer stated by my Lord.

BRETT, J.—I would answer the question referred to us in the manner suggested by the learned Chief Justice for the reasons given by him in the case of *Queen-Empress* v. *Dolegobind Dass* (1), and in his judgment just delivered, with which I agree. I agree with the broad principle therein laid down that, when a **[676]** Magistrate is empowered by law to entertain a complaint, he should exercise that power, unless there is any bar to prevent his doing so. S. 190 of the Code of Criminal Procedure gives that power to all Presidency Magistrates and an order of discharge cannot operate as a bar to the exercise of that power (see s. 403, Code of Criminal Procedure). Nor can the provisions of ss. 435 or 439 of the Criminal Procedure Code, which are enabling sections, operate to limit the powers given to a Presidency Magistrate otherwise than under the law.

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APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Gupta.

ASHUTOSH NATH RAY (*Defendant*) *v.* ABDOOL (*Plaintiff*).*

[6th August, 1901.]

Bengal Tenancy Act (VIII of 1885), ss. 107, 109-A—Public Demands Recovery Act (Bengal Act I of 1895), s. 7—Limitation Act (XV of 1877), art. 14 and art. 120—Settlement of rent—Ex parte order—Admissible evidence—Res judicata—Certificate of Public Demands—Suit for cancellation or modification of certificate.

In some settlement proceedings *A* and *B* were arrayed against each other as plaintiff and defendant, but *B*, though notice was issued, did not appear or raise any objection. The Settlement Officer took evidence and decided the question of *B's* rent in May 1891. *A's* estate being under the management of the Court of Wards a certificate for the realization of arrears of rent due from *B* was issued in 1895-96, whose objection to the certificate was disallowed in January, 1897, and in July, 1897, he instituted this suit for its cancellation or modification.

Held: (1) That the Settlement Officer's decision had, under s. 107 of the Bengal Tenancy Act, the force of a decree, and, though it did not make the question of *B's* rent *res judicata*, it was admissible in evidence as to his rent.

(2) That *B's* suit was barred by the law of limitation under art. 14 or art. 120 of the Limitation Act (XV of 1877); he could not be allowed to bring **[677]** a suit after the period of limitation, for the alteration of his rent under the guise of a suit for the amendment of a certificate. It cannot be right or intended by the Legislature that, while tenants' rents after being settled by a Settlement Officer became final after the lapse of a certain time, if not

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* Appeal from Appellate Decree No. 784 of 1899, against the decree of Baboo Kartic Chandra Pal, 2nd Sub-Judge of Tipperah, dated the 11th January, 1899, affirming the decree of Baboo Girish Chandra Sen, Officiating Munsif of Brahmanbariah, dated the 28th June, 1898.

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impugned in the way provided by the law, tenants of Wards' estates should have the means of upsetting such settlements by bringing suits to cancel or modify certificates for arrears of rent.

ON the application of the defendant, appellant for a settlement of his tenants' rents, including that of the plaintiff-respondent, there was a settlement of the plaintiff's rent by a Settlement Officer in May 1891, who found that the plaintiff was in possession of excess land and therefore increased the plaintiff's rent from Rs. 7 to Rs. 9-12. He then did not appear before the Settlement Officer or raise any objection, as he might have done under s. 105 of the old Chapter X of the Bengal Tenancy Act, nor did he prefer any appeal to the Special Judge. The defendant's estates being under the management of the Court of Wards, a certificate under the provisions of Bengal Act I of 1895, was, in 1895, made for realization of the arrears of rent for 1303 and 1304, B. S., due from the plaintiff at the rate settled by the Settlement Officer. The plaintiff filed an objection under s. 12 of the Act to the certificate, but his objection was, on the 25th of January 1897, disallowed and the certificate was enforced and the money realized.

Then on the 7th of July, 1897, the plaintiff instituted the present suit for the cancellation or modification of the certificate issued as above. Both the Munsiff and the Subordinate Judge held that the plaintiff was not bound by the proceedings of the Settlement Officer, and that the latter had no right to enhance the plaintiff's rent and they therefore modified the certificate and gave the plaintiff a decree for the recovery of Rs. 19-12, which he had, according to them, paid in excess of what he was liable to pay. The defendant then preferred this appeal, contending that the order of the Settlement Officer, dated May 1891, had the effect of *res judicata*, and that the plaintiff's cause of action, if any, was barred by the law of limitation.

Babu *Boidya Nath Dutt* and Babu *Moorari Lal Majumdar* for the defendant-appellant.

Mr. *Rasul* and Babu *Jadu Nath Kanjilal* for the plaintiff-respondent.

[678] The judgment of the High Court (RAMPINI and GUPTA, JJ.) is as follows:—

The facts of this case are that there was a settlement of the plaintiff's rent by a Settlement Officer in May 1891. It is said the present defendant applied for a settlement of his tenants' rents, including that of the plaintiff, but his petition is not to be found on the record. However, it has been decided that the Settlement Officer has jurisdiction to settle the plaintiff's rent as he was found to be in possession of excess land. The Settlement Officer accordingly increased the plaintiff's rent from Rs. 7, odd, to Rs. 9-12. The plaintiff raised no objection under s. 105 of the old Chapter X. He preferred no appeal to the Special Judge. He remained perfectly quiet. The defendant's estates being under the management of the Court of Wards, a certificate for the amount due for the rent of 1303 and 1304, due from the plaintiff, was issued in 1895-96. The plaintiff then objected to the certificate, but his objection was disallowed on the 25th January, 1897. He accordingly instituted this suit on the 7th July, 1897, for cancellation or modification of the certificate, which he pleads was issued for an excessive amount.

Both Courts have held that the plaintiff was not bound by the proceedings of the Settlement Officer, that the latter had no right to raise the plaintiff's rent, and have accordingly modified the certificate and

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given the plaintiff a decree for the recovery of a sum of Rs. 19-12. The defendant appeals. On his behalf it has been contended, (1) that the order of the Settlement Officer, dated May 1891, has the effect of *res judicata*, and (2) that the plaintiff's suit for the alteration of his rent is barred by limitation.

It appears to us that the Settlement Officer's order of May 1891 has not exactly the effect of *res judicata*. The plaintiff contends it was an *ex parte* order, and was passed without notice to him. This does not appear to be quite correct. A general notice directed to him as well as to other tenants was issued under Rule 16 of the Government rules under the tenancy Act. The rules do not require the issue of any special notice to each individual tenant. Some of the tenants appeared before the **[679]** Settlement Officer. The plaintiff might have appeared, too, if he had pleased. In the settlement proceedings the defendant and the present plaintiff were arrayed against each other as plaintiff and defendant, though the present plaintiff did not appear. The Settlement Officer took evidence and decided the question of the plaintiff's rent along with those of other tenants, as he was entitled to do under the rules. His decision had, therefore, under s. 107 the force of a decree. But it was an *ex parte* decree, and though it was not executed, that was because it was in the nature of a declaratory decree, incapable of actual execution. Hence, though it may not make the question of the plaintiff's rent *res judicata*, it is certainly admissible in evidence, and is good evidence, as to the plaintiff's rent. It is a good decree, not being shown to have been obtained by fraud. The entry in the *khatian* of the plaintiff's rent has also the presumption of correctness attaching under s. 109 to an undisputed entry. However this may be, we think the appellant's second plea must prevail. The plaintiff's rent was settled by the Settlement Officer, who had jurisdiction to settle it, in May 1891. The plaintiff made no objection under s. 105. He preferred no appeal under s. 108. Under s. 111, he could bring a suit for the alteration of his rent as soon as the record of the rights was finally published. The period of limitation applicable would seem to be either art. 14, which allows one year for the setting aside of the act of a Government officer in his official capacity not expressly provided for, or art. 120, which prescribes six years as the period of limitation for a suit for which no period of limitation is prescribed elsewhere. Whichever article is applicable, a suit for the alteration of the plaintiff's rent would seem to be barred, as the present suit was instituted on the 7th July 1897, or more than six years after the plaintiff's rent was settled. The plaintiff ought not, therefore, to be allowed to bring a suit for the alteration of his rent under the specious guise of a suit for the amendment of a certificate. That this is the object of the plaintiff's suit is clear, for the Munsif says in his judgment: "It seems that three distinct prayers have been made in the plaint (1) for determination of the plaintiff's *jama*, (2) for cancellation of the certificate, (3) for realization of Rs. 19 odd as **[680]** compensation," and the Munsif has altered the plaintiff's rent, for he sent out an *amin*, who measured the land and he held on the *amin's* report that the plaintiff was liable to pay rent for 13 kanies only, instead of 15 kanies as found by the Settlement Officer. If the plaintiff had not been a tenant of a Ward's estate, he would not have been able to institute such a suit as he has done. It cannot be the intention of the Legislature, or right, that while tenants' rents after being settled by a Settlement Officer become

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final, if not impugned in the way provided by the law for doing so, after the lapse of a certain time, tenants of Ward's estates should have the means of upsetting them, by bringing suits to cancel and modify the certificates issued against them for such rents.

We are, therefore, of opinion that this suit is not maintainable. We accordingly decree this appeal with costs.

Appeal allowed.

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28 C. 680.

Before Mr. Justice Rampini and Mr. Justice Gupta.

PURAN MAL AND OTHERS (*Decree-holders*) *v.* JANKI PERSHAD SINGH AND ANOTHER (*Judgment-debtors*)*. [22nd July 1901.]

Civil Procedure Code (XIV of 1882), s. 622—Revision, High Court's power of without application—Property, management of by Court.

Under the terms of s. 622, Civil Procedure Code, the High Court can deal with a case under that section without there being any application by any of the parties.

Golam Mahammad **v.** *Saroda Mohan Maitra* **(1) approved of.**

There is no law or procedure under which a Court can on the mere application of the parties interested take over the management of properties belonging to an estate and pass such orders as would place them entirely beyond the reach of the judgment-creditors of the estate.

TWO ladies, Mussummat Chatar Koer, wife of Janki Pershad Singh and Mussumat Surjdeo Koer, wife of Ram Rachhiya Singh, residents of Pandovi, Zilla Gya, by their joint petition, dated the 4th of January, 1900, applied to the District Judge of Gya **[681]** for the appointment of a guardian and manager of the properties of their respective minor sons, alleging that " the said Janki Pershad and the said Ram Rachchiya were totally unfit to manage their own properties, and much less to look after the interest of the said minors." The District Judge, after considering the matter, on the 6th of January passed an order that he did not see how the Guardian and Wards Act could apply when the fathers were living, and accordingly no order under the Guardian and Wards Act was made. Then, on the 8th of January, the said Janki Pershad and the said Ram Rachhiya, who are called the Pandooi Baboos, made an application also praying for the appointment of a manager.

On the 17th the District Judge recorded an order to the effect that the whole estate having come under the management of the Court owing to joint petitions of the owners and the guardians of the minor sharers, the Nazir of the Court was authorized " to raise any sum that might be required to pay off certificates, &c., on the security of the whole estate." The Judge also ordered the issue of *rubokaris* to the Collector and all the subordinate courts to the effect that, whereas the estate has been placed under the control of a joint receiver of this Court and time is required to appoint a proper person to liquidate its affairs, all demands on the estate should be notified to the District Court and all proceedings for sale, etc., stayed until that Court has time to pass final orders in the matter of the receivership. On the 22nd instant the Judge passed another order that nothing further would be done for the major Pandooi Babus, until they

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***Appeal from Order No. 91 of 1900, against the order of H. Holmwood, Esq., District Judge of Gya, dated the 22nd of January, 1900.**

(1) (1900) 4 C. W. N. 695.