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Then, as to the facts, we agree in finding that there is no legal necessity shown for debts to the extent of Rs. 7,400. There is no evidence and even no recital in the deed as to why these debts were contracted. The bond, however, sets forth that the sum of Rs. 3,600 was required to defray the expenses of the marriage of the mortgagor's daughter. The late Raja had three daughters. At the time of execution of the bond, he had one unmarried daughter, a girl of about 10 years old. There was therefore a legal necessity to marry her. But it is said she is still unmarried. This, however, would appear to be immaterial, for the creditor discharges his duty, if he shows that there was legal necessity for the loan. He is not bound to see to the application of the money. We are therefore of opinion that the Subordinate Judge's decree is right and that he was justified in giving the plaintiff a decree to the extent of Rs. 3,600 with interest and in dismissing the rest of his claim.

The plaintiff would seem to us to be entitled to interest at the rate specified in the bond up to the date of realization of this portion of his debt.

We accordingly decree the plaintiff's appeal to this extent with costs in proportion.

The defendant's appeal is dismissed with costs.

32 C. 162.

[152] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice.
Bodilly and Mr. Justice Mookerjee.

RADHA KISHORE MANIKYA v. DURGANATH BHUTTACHARJEE.*
[19th, July, 1904.]

Jurisdiction—Revenue Officer—Bengal Tenancy Amendment Act (III B. C. of 1898) s. 9—“Every settlement of rent or decision of a dispute by a Revenue officer”—Bengal Tenancy Act (VIII of 1885) ss. 102, 104—Settlement Officer, jurisdiction of.

The words “every settlement of rent or decision of a dispute by a Revenue Officer” are applicable only to those cases which a Revenue Officer has jurisdiction to try, and are not applicable to a decision of a Settlement Officer as to the validity of a *lakheraj* title under s. 104 of the Bengal Tenancy Act of 1895.

[Fol. 43 Cal. 547.]

APPEAL under s. 15 of the Letters Patent.

This appeal arose out of a suit for arrears of rent in which the defendant denied his liability on the ground that the land was *lakheraj*, and that no relationship of landlord and tenant had ever existed between himself and the plaintiff.

The Court of first instance held, that the onus of proof that the land was *lakheraj* lay upon the defendants, and that he had not been able to establish his claim. That Court further held that a decision of the Settlement Officer in a case under s. 104 of the Bengal Tenancy Act, 1885, (to which the defendant was a party) that the alleged rent-free title was false and that the land was rent-paying land, was final between the parties under s. 107 of the Act.

* Letters Patent Appeal No. 27 of 1904, in Appeal from Appellate Decree No. 1529 of 1901.

The Subordinate Judge, on appeal by the defendant, held, that the defendant was not bound by the decision of the Settlement Officer inasmuch as that officer had no jurisdiction under the Bengal Tenancy Act of 1885 to decide such a question, and that [163] s. 9 of the Amending Act III (B. C.) of 1898, which gave every decision of a Revenue Officer under the Bengal Tenancy Act, 1885, the force of a decree of a Civil Court, was therefore not applicable to the case; and that the defendants had established their claim that the lands were *lakheraj*; and dismissed the plaintiff's suit.

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The plaintiff appealed to the High Court. The second appeal was heard by PRINSEP, J., and his Lordship, on the 1st March, 1904, delivered the following judgment:—

PRINSEP, J. This is a suit for arrears of rent in which the defendant denied his liabilities stating that the land was held by him as *lakheraj*. The lower Appellate Court has found that the plaintiff has been unable to prove that the lands are *mal* lands, that is to say that he or his predecessor had at any time received rent on account of this land. It appears, however, that on the 30th April 1898, while proceedings were taken before the Revenue Authorities under sections 102, 104, (1) of the Bengal Tenancy Act the Settlement Officer, on an objection taken that the lands were rent-free, disallowed it and found that the lands were rent-paying and liable to pay a certain rent fixed by him.

Objection has been taken in this case that the Settlement Officer had no authority to determine the question whether the lands were *mal* or *lakheraj* and as authority for this, I have been referred to the judgment of the Full Bench of this Court in the case of *The Secretary of State for India v. Nitye Singh* (1), as well as to the fact that subsequent to that judgment and indeed at a time later than the judgment of the Settlement Officer, the law was altered so, as to give the Settlement Officer power to deal with this particular question. The alteration in the law is contained in the modification of section 102 of the Bengal Tenancy Act amended by Act III (B. C.) of 1898 and is to the effect that "if the land is claimed to be held rent-free whether or not rent is actually paid and if not paid whether or not the occupant is entitled to hold the land without payment of rent and if so entitled under what authority."

The only objection taken in Second Appeal is whether the findings of the Settlement Officer on the 30th April 1898 arrived at before the Amending Act (III B. C.) of 1898 was passed are binding on the parties. It has been contended that a frivolous objection that the lands were rent-free could not under the laws existing before the Amending Act prevent the Settlement Officer from fixing the rent if it were found that rent had been payable by the tenant to the landlord notwithstanding the objection taken that the lands were held rent-free. It is not quite clear that this was how the matter was treated by the Settlement Officer, and as has been pointed out in the trial of the present case, no opportunity was given to the defendant in possession of the land to adduce evidence in support of his objection that he was not liable for any rent. However that may be, it seems to me that the matter is concluded by the judgment of the Full Bench which held, that the Settlement Officer had no power in this matter, and this is confirmed by the fact that the Amending Act was passed to give [164] him power to deal with such cases. The appeal is, therefore, dismissed with costs.

The plaintiff then appealed under s. 15 of the Letter Patent.

Babu Gobinda Chandra Das, for the appellant.

Babu Chandra Kanta Sen, for the respondent.

The judgment of the Court (MACLEAN, C. J., BODILLY and MOOKERJEE, JJ.) was delivered by

MACLEAN, C. J. We think the decision appealed against is right with reference to the argument raised on section 9 of the Bengal Tenancy Amendment Act III (B. C.) of 1898; we think that the words

(1) (1893) L. L. R. 21 Cal. 33.

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" every settement of rent or decision of a dispute by a Revenue Officer " can only properly apply to those cases which the Revenue Officer has jurisdiction to try. Here the Revenue Officer had no such jurisdiction. The appeal is dismissed with costs.

Appeal dismissed.

32 C. 165.

[165] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pargiter.

AMRITA LAL BAGCHI v. JATINDRA NATH CHOWDHRY.*

[17th August, 1904.]

Limitation—Cause of action, accrual of—Adoption—Limitation Act (XV of 1877) Sch. II, Art. 141—Reversioners, suit by—Hindu widow, alienation by—Minority, evidence of.

A Hindu widow alienated certain immoveable property belonging to her husband's estate, and after the alienation adopted K. in the year 1857 who died in 1862 after attaining majority, leaving his widow S. who succeeded him. S. died in 1899, and the plaintiffs, as reversionary heirs of K. instituted this suit for setting aside the alienation and establishing their right:—

Held, that the present suit was barred by the law of limitation, the cause of action having accrued to the adopted son K. during his lifetime; and that Art. 141, Sch. II of the Limitation Act (XV of 1877) did not govern this case.

Gobinda Nath Roy v. Ram Kanay Chowdhry (1) and *Prosanna Nath Roy v. Ajsolonnessa Begum* (2) doubted.

Lakshman v. Radhabai (3), *Nathaji Krishnaji v. Hari Jagoji* (4), *Moro Narayan v. Belaji Rughunath* (5) and *Bijoy Gopal Mukerji v. Nil Ratan Mukerji* (6) referred to.

[*Ref.* 21 C. L. J. 157 = 19 C. W. N. 1280 = 27 I. C. 954]

APPEAL by Amrita Lal Bagchi, the plaintiff.

Frankissen Bagchi, a Hindu inhabitant of Calcutta, died childless in 1852, leaving his widow Labangamoni and possessed of considerable immoveable properties, among which was one called Nunebheri in the district of 24-Parganas. Before his death Frankissen had executed an *anumatipatra* in favour of his wife, Labangamoni, authorising her to adopt to him two sons in succession. Shortly after her husband's death, Labangamoni adopted a son, named Baikantha, who however died within a few months of his adoption. In 1857 Labangamoni adopted another son named Kali Nath. Kali Nath died in 1862, leaving a widow named [166] Sukhoda, who succeeded him and who was then a minor. Before the adoption of Kali Nath took place and after the death of the first adopted son, Baikantha, namely on the 13th August, 1857, Labangamoni had granted a permanent lease of the Nunebheri property to the predecessors in interest of the defendants. Labangamoni died on the 3rd February, 1896, and Sukhoda died on the 7th August, 1899.

The present suit was brought by the plaintiffs on the 13th June, 1902 on the allegation that they were the reversionary heirs of Kali Nath, and that as such they were entitled to recover possession of the property or

* Appeal from the Original Decree, No. 865 of 1902, against the decree of Bhagabati Charan Mitter, Subordinate Judge of 24-Parganas, dated Aug. 11, 1902.

(1) (1875) 24 W. R. 183.

(2) (1878) I. L. R. 4 Cal. 523.

(3) (1887) I. L. R. 11 Bom. 609.

(4) (1871) 8 Bom. H. C. 67.

(5) (1894) I. L. R. 19 Bom. 809.

(6) (1903) I. L. R. 30 Cal. 990.