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PRATABCHANDRA BINWA v. RANI SWARNAMAYI

The following Judgment was given by

MACPHERSON, J.—The first ground taken by Mr. Allan for the appellant in this case is that six years' limitation will not apply in the present instance; because, although this suit was instituted in 1863, the former suit, which terminated with a decree for possession in favor of the plaintiff, was instituted long before the passing of Act XIV of 1859. But it appears to us that the present suit, having been instituted after Act XIV. of 1859 came into force, is subject to the provisions of that law, and that that law alone will apply; consequently we think that in no case can the plaintiff recover mesne profits for more than the six years preceding the institution of the suit.

The second ground of appeal is that the Deputy Commissioner is wrong in holding that the plaintiff cannot bring a regular suit for mesne profits which fell due within the period from the institution of the suit for possession in 1851 to the execution of the decree in 1866.

The Deputy Commissioner relies upon a decision of the Madras High Court, *Chennapa Nayadu* v. *Pitchi Reddi* (1.) That case does not accord with decisions of this Court; and there is no doubt that, according to the principle laid down in the decision of the Full Bench, in the case of *Madhusudan Lal* v. *Bhikari Sing* (2), as also in various later decisions of this Court upon this point, a regular suit for mesne profits will lie after a suit for possession, if in that suit no question of mesne profits was raised or decided. The plaintiff is entitled to a decree for such mesne profits as may have accrued within six years prior to institution of suit.

The case must be remanded to the lower Court, in order that it may ascertain the amount of mesne profits. Any claim or statement made by the defendant as regards the value or profits realised from the property will be admissible as evidence against him, though not conclusively.

Each party will bear his own costs of this appeal.

Before Mr. Justice E. Jackson and Mr. Justice Mitter.

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June 2.

HARLAL TEWARI (PLAINTIFF) *v.* THE COLLECTOR OF BHAGULPORE AND ANOTHER (DEFENDANTS.)*

Settlement—Powers of Revenue Boards.

A settlement of a resumed lakhiraj estate being made by the Collector with the plaintiff "subject to the orders of the Board of Revenue," the Board, or the Commissioner acting under rules laid down by them, may cancel the settlement at any time.

Mauza Tursua, a resumed laghiraj estate, was, from 1861 to April 1864 under measurement with a view to settlement. On 1st April 1864, the ex-

* Special Appeal, No. 2728 of 1868, from a decree of the Additional Judge of Bhagulpore, dated the 14th July 1868, reversing a decree of the Principal Sudder Ameen of that district, dated the 28th February 1867.

(1) 1 Mad. H. C. Rep., 453. (2) Case No. 249 of 1865, Sept. 15th 1866.

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lakhirajdar put in a petition in regard to the amount of rent to be paid, from which the Collector inferred that he declined settlement; and no other offers being made, the estate was on 29th June declared khas. On the 26th October the plaintiff in this suit took a 20-year's lease of the land, at a rent of rupees 371. In the amalnama, or possessory order, it was stated that this settlement would be subject to the orders of the Board of Revenue, but no such condition appeared in the kabuliat given by plaintiff. On 13th December, the ex-lakhirajdar made another offer which the Collector, on the 9th January 1865, declined to accept, as a settlement had been concluded. On the 7th February, the lakhirajdar appealed to the Commissioner, who on 13th October wrote to the Board saying that as more than three months had elapsed between settlement and the lakhirajdar's appeal, he was doubtful of his power to interfere, and therefore asked the Board to cancel the settlement with the plaintiff, which the Board did on 19th October 1865. The plaintiff then sued Government and the likhirajdar for recovery of possession and confirmation of his lease. The first Court held that the words "subject to the orders of the Board" were surplusage, and not intended to have real effect; that settlements under rupees 500 were by the Board's Rules confirmed by the Collector, subject only to revision by the Commissioner; and that the Commissioner must be held bound to exercise his power within a reasonable time which might be taken to be three months, the period within which the Collector's proceedings must be reported to him. The first Court gave the plaintiff a decree. The Judge on appeal held that the Board of Revenue could exercise powers of revision at any time in settlement cases. Regulation I. of 1829, section 4, clause 2, enables the Governor General in Council to lay down rules for the guidance of the Board. On 27th June 1842, the following rule was laid down: "The Board of Revenue is competent, with or without appeal, to call for, revise, or alter any proceedings of the Commissioner or other subordinate Revenue Authority, not made final by law." The Judge held that the Civil Courts could not determine the time within which the powers might be exercised, and that they could be exercised at any time. He further held that although section 29, Regulation VII. of 1822, prescribed three months as the period of appeal from a Collector's order, there was nothing to make that order final, and not open to revision after three months. He also overruled a contention that under the Board's Rules it was the Commissioner's business and not the Board's to revise a settlement under rupees 500. The Board's powers were not limited by such a rule. The Judge on these grounds reversed the decision of first Court.

Mr. *W. B. Money* and Mr. *J. S. Rochfort* and Baboos *Ashutosh Chatterjee* and *Chandra Madhab Ghose* for appellant.

Baboos *Anukul Chandra Mookerjee, Jagadanand Mookerjee, Purna Chandra Shome*, and *Annadaprasad Banerjee* for respondents.

The following judgment was delivered by

JACKSON, J.—It appears to me that the decision of the lower Appellate Court is correct. The agreements entered into between the Collector and the

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special appellant were distinctly declared by the Collector at the time and so stated in the agreements to be not final, but subject to the consent of the Board of Revenue. Those agreements were subsequently brought by the Commissioner of the Division to the notice of the Board of Revenue. The Commissioner was of opinion that the arrangements proposed by the Collector were not proper arrangements, and the Board of Revenue concurring with the Commissioner refused to sanction the agreements entered into by the Collector, set them aside, and ordered other agreements to be made. It is said that great delay occurred in the action taken by the Commissioner and the Board of Revenue, and it is also said that the Collector in fact never intended that the agreements entered into by him should be subject to the consent of the Board of Revenue; that the agreement was drawn out in an old form which had been long abandoned, and in this way alone had the words "subject to the consent of the Board of Revenue" crept into it by accident; that in fact the Collector never submitted his proceedings for the sanction of the Board, but that under the rules promulgated by the Board itself the Collector had full authority to enter into agreements of this description of his own accord, and without obtaining the sanction of the Board. The lower Appellate Court has rejected all these objections, on the ground that the Board of Revenue had full power under the law to interfere in the act of the Collector, and that no time having been laid down in the law within which it was to exercise those powers, it could interfere at any time.

The agreements in this case referred to the settlement of some lakhiraj land which had been resumed. It had been settled from time to time with different parties, but the settlement had come to an end, and it was necessary to re-settle the land. The ex-lakhirajdar was the person entitled to the settlement.

He put in a petition asking for a settlement at lower rates than had been proposed. The Collector considered that this petition was a refusal to take the settlement at the rates proposed. The Collector accordingly entered into a settlement with the special appellant. The ex-lakhirajdar after some delay brought the matter to the notice of the Commissioner. That officer and the Board of Revenue considered that the ex-lakhirajdar had not refused the settlement, but was entitled to it, and ordered the settlement to be made with him. The special appellant has now brought this suit to recover possession of the resumed estate, alleging that the agreement with him was final, and could not be set aside. As the settlement made with the special appellant was distinctly declared to be subject to the order of the Board of Revenue, and it is not shown or proved in any way that that clause of the agreement crept into the settlement by mistake, we might decide upon that alone that the Board of Revenue had full power to interfere. If the rules of the Board of Revenue are to be looked to, then the Commissioner had full power to interfere, and did interfere in accordance with those rules, though it may be that as there had been some delay before the case was brought to his notice, and as the agreement distinctly referred to the consent of the Board of Revenue, he preferred to obtain the Board's consent before he passed orders

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in the case. The argument that if the Commissioner did interfere, he was bound to interfere within one month, because that is the period laid down for appeals to him, cannot in my opinion stand. It may be that appeals must be preferred within one month, but no time is laid down in the rules within which the Commissioner was bound to exercise his power of revision, and it was these powers of revision which he exercised in this case, and not his power on appeal. Whether then the Board of Revenue had power itself to interpose, in the settlement or not, it does not seem to be denied that it had authority to make rules under which Settlement Officers were to conduct settlement proceedings; and even under those rules the orders passed by the Commissioner were legal. The Commissioner had authority to set aside the settlement, and did do so. The plaintiff must fail in his suit even upon this ground. It is ot necessary under these circumstances to examine the law laid down by the Judge as regards the power of the Board of Revenue to set aside such a settlement as this. We dismiss this appeal with costs.

MITTER, J.—I concur. The plaintiff is bound by the terms of his lease and under those terms the Board had full power to interfere.

Before Mr. Justice Bayley and Mr. Justice E. Jackson.

MUNSHI GOLAM NABI AND OTHERS (PLAINTIFFS) *v.* BISWANATH KAR AND OTHERS (DEFENDANTS.)*

1869
June 3.

Wrongful Possession—Award—Limitation—Act XIV. of 1859, Cause of Action.

In a suit for recovery of possession of a share in a certain talook, on the allegation that the plaintiff had been dispossessed under an award passed under section 15, Act XIV. of 1859, the defence set up was that the plaintiff was not in possession of the property within 12 years of suit. *Held*, that the wrongful possession which the plaintiff held during the few months before he award under Act XIV. was no possession which could take his case out of the Statute of Limitation. That the dispossession under the award did not give him a fresh cause of action.

Baboo *Ramanath Bose* for appellants.

Baboo *Kali Krishna Sen* for respondents.

The facts are fully stated in the judgment of the Court, which was delivered by

JACKSON, J.—This suit was preferred by Munshi Golam Nabi and others to recover from Biswanath Kar and others possession of one-anna share of Kismut Nischinpore.

*Special Appeal, No. 203 of 1869, from a decree of the Additional Subordinate Judge of Mymensingh, dated the 10th November 1868, reversing a decree of the Moonsiff of that district, dated the 17th August 1867.