1872

KRISHNA CHANDRA SANDYAL CHOWDHRY v. HARISH CHANDRA CHOWDHRY.

Baboo *Nallit Chandra Sen* for the respondent.

Regulation II of 1819 and the resumption *rùbàkàrì* (record) simply declare the right of Government to assess the land. The proprietary right of the proprietors of Roghorampore was never denied, and accordingly malikana had been reserved for them by the Government.

By the resumption the plaintiff's right to possess on agreeing to pay the revenue asked was not lost. The plaintiff does not dispute the right of government to assess the land. So long as there was no permanent settlement, possession was not affected. The plaintiff has brought his suit within 12 years of the date of the permanent settlement. The simple question is what is the plaintiff's cause of action? In this case it is the permanent settlement with the defendant Krishna Chandra Sandyal. From 1835 to 1867 the Government and the plaintiff were not in a hostile position. The temporary leases given by Government from 1842 to 1867 expressly recognised the right of the proprietors of Roghorampore to obtain settlement on expiry of the leases and to malikana.

Baboo *Kali Mohan Dass* in reply cited *Golack Chandra Chowdry* v. *Ali Mollah* (1) and *Bhiku Sing* v. *The Government* (2).

(1) *Before Mr Justice Bayley and Mr. Justice Hobhouse.*

GOLACK CHANDRA CHOWDHRY AND OTHERS (PLAINTIFFS) *v.* ALI MOLLAH AND OTHERS (DEFENDANTS).*

Baboo *Srinath Banerjee* for the appellants.

Moulvie *Syud Murhamut Hossein* for the respondents.

BAYLEY, J.—I am of opinion that this special appeal must be dismissed with costs.

The ground taken by the plaintiff, special appellant, is that, when he had for a long time been in possession of the lands in dispute, and had also, as an ijardar, a temporary settlement for five years, and had no notice of the settlement with Ali Mollah, the lower Appellate Court was wrong in dismissing his case.

I am of opinion, however, that the long possession of the plaintiff has in no way been found as a fact by the lower Appellate Court, nor do I find that the plea that long possession of the plaintiff gave him a title to settlement was ever pressed before the lower Appellate Court. But irrespective of all this, long possession itself does not give a title to settlement, if the parties, asking for the settlement,

(2) See *post*, p. 529.

* Special Appeal, No. 2976 of 1868, from a decree of the Subordinate Judge of Chittagong, dated the 27th June 1868, modifying a decree of the Moonsiff of that district, dated the 20th November 1867.

MARKBY, J.—The facts, as far as I have been able to gather them in this case from the statement of the pleaders, are as do not comply with the requirements of the law.

Now, by the law on this point, it is laid down that on issue of a notice, calling parties to settlement, all persons having any claims of any description are required to come forward and assert their respective claims to that settlement, but in the present case nothing has been shown that when the settlement took place the special appellant complied with the requirements of the law.

In this view I would dismiss this special appeal with separate costs to the Government and the other respondents who have appeared in this case.

HORHOUSE, J.—I agree in dismissing this special appeal with costs as above,

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*Before Mr. Justice Bayley and Mr. Justice Macpherson.*

*The 22nd August* 1868.

BHIKU SING AND OTHERS (PLAINTIFFS) *v.* THE GOVERNMENT AND OTHERS (DEFENDANTS.)*

Mr. *Woodroffe* (with him Baboo *Tarak Nath* Sen) for the appellants.

Mr. G. *Gregory*) with him Baboo *Krishna Kishor Ghose*) for the respondents.

BAYLEY, J.—This application for review of our judgment is made on the following grounds :—

1*st*.—That we are wrong in holding that the Government has any such absolute power in it as to entitle it to refuse a settlement with an ex-lakhirajdar whose lands have been resumed under Regulation II of 1819.

2*ndly*.—That we were also wrong in affirming the order of the lower Appellate Court which held that, on the ground of the Government having such absolute power of refusal, the plaintiff had no *locus standi* in Court.

3*rdly*.—That we were wrong in holding that limitation barred the suit, as the cause of action arose from the date on which settlement was made with Jai Prakash Sing on the 23rd December 1862, and this suit was instituted within three years of that date, *viz*.,on the 22nd December 1865.

It is stated by the lower Appellate Court that this land was resumed upon the rebellion of one Ekbal Ali, but when, is not stated nor shown to us. In fact, however, nothing has been pointed out to us to indicate that such was the cause of resumption. On the contrary, it is clear that,on the 22nd May 1826 the, lands were resumed under Regulation II of 1819 on account of the plaintiff's predecessors being unable to show that they held the land rent-free under any grant or title whatever.

The Government seems at first to have held the resumed lands khas, and then on the 22nd September 1840,a twenty years' settlement was made with parties alleged to be co-sharers with the plaintiff, but not with the plaintiff.

On the 22nd September 1847, *viz*., during the currency of the twenty years' temporary settlement, a petition was made by the plaintiff's predecessors begging that a settlement might be at once made with them,and if that could not be granted owing to the temporary settlement then existing and in force, there might be a recognition of their right to settlement,that is to say malikana might be allowed to them. The petition was refused by the Collector, who stated that he could not break in on the temporary twenty year's settlement,but that if the petitioners had any claim,they might take such further steps as they thought

* Application for Review, No, 205 of 1868, against the judgment of Mr. Justice Bayley and Mr. Justice Macpherson, on 11th June 1867 in Special Appeal No. 1622 of 1869.