

1872
 Jan'y. 19.

[APPELLATE CIVIL.]

Before Mr. Justice Bayley and Mr. Justice Markby.

KRISHNA CHANDRA SANDYAL CHOWDHRY (DEFENDANT) v.
 HARISH CHANDRA CHOWDHRY (PLAINTIFF).*

Parties to a Suit—Suit for a declaration of Right to participate in a Permanent Settlement of a Mehal resumed under Regulation II of 1819 and for Possession—Limitation—Cause of Action.

Chur land was held by the proprietors of the adjoining estate. The chur was resumed by Government in 1835 and declared to be liable to assessment under Regulation II of 1819. The recorded proprietors of the adjoining permanently settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded. The chur was then held khas by Government for some time, and subsequently leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietors' rights to come in and take a permanent settlement on the expiry of the temporary settlements, and also reserved an allowance of 10 per cent. on the rent as malikana on their account, which sum had been kept in deposit in the Collectorate treasury. In 1867 the Government made a permanent settlement with the defendant, one of the recorded proprietors of the contiguous estate, of the entire chur, and refused the application of other shareholders in the estate to be joined in the settlement. The collector at the request of the defendant applied the deposit in his treasury in satisfaction of the Government revenue. An unsuccessful shareholder brought a civil suit against the defendant for possession and a declaration of his right to participate in the settlement. *Held*, that it was not necessary to make the Government a party; that the suit was not barred, the period of limitation commenced from the date of the settlement with the defendant.

A CERTAIN piece of land had been formed in the river Burhampootee, close to the permanently-settled estate of Roghorampore, which was held by the proprietors of this estate. On the 11th July 1835, Government resumed this land under Regulation II of 1819, as forming no part of the permanently-settled estate of Roghorampore. The old proprietors objected to the resumption on the ground that the land was a mere re-formation on the original site of a portion of their estate which

* Special Appeal, No. 869 of 1871, from the decree of the Subordinate Judge of Mymensing, dated the 27th April 1871, modifying the decree of the Moonsiff of that district, dated the 13th May 1870.

had been washed away. The resumption officers held the land in question was not a re-formation, being surrounded by a *sota* (water channel). After resumption the land remained in the khas possession of Government, up to 1841. From 1842 to 1867 the land had been leased by Government, by three successive leases, to parties who were strangers and had no concern with the permanently-settled estate of Roghorampore. In these temporary leases the Government reserved an allowance of 10 per cent. on the rent settled with the lessees as malikana due to the recorded proprietors of Roghorampore, which however was not paid to them, but kept in deposit on their account in the Collector's treasury; and in every one of the temporary settlements a clear and distinct reservation of the rights of the proprietors to come in and take the permanent settlement on expiry of the temporary settlement was recorded. In 1851 however, upon notice to them to come in and take a settlement, one Shambu Chandra, the father of the present plaintiff, appeared as the representative of the maliks and refused on their behalf to take a settlement at the jumma fixed. On the 24th of July 1867, Krishna Chandra Sandyal, who was at the time one of the recorded proprietors of the estate Roghorampore, having an 8 annas share in it, obtained a permanent settlement of this land from Government. The plaintiff, Harish Chandra Chowdhry, who was also a shareholder with Krishna Chandra Sandyal, applied to the Collector to have his name entered as one of the grantees of the settlement along with Krishna Chandra. This application was rejected on the 1st December 1868, and the order of the Collector was upheld by the commissioner. After the settlement with him, Krishna Chandra applied to the Collector, and got the malikana in deposit in the treasury to be taken in lieu of Government revenue. The plaintiff thereupon brought this suit against the defendant Krishna Chandra Sandyal for a declaration of his right to have a settlement jointly with the defendant to the extent of an 8 annas share, which he alleged was his share in the estate Roghorampore, on the ground that the land was a chur and a contiguous accretion to the estate Roghorampore. The plaintiff also asked for possession.

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The defence of Krishna Chandra Sandyal was that the suit was barred by lapse of time ; that such a suit would not lie, as the plaintiffs ancestor had failed in the resumption proceedings to establish that the lands were a re-formation ; that the plaint was vague, and not explicit ; that the Government having become an absolute proprietor of the land after resumption, [a Civil Court could not deal with the acts of Government as proprietor ; that the chur was not a contiguous accretion at the time of its formation, but an island thrown up in the middle of a navigable river ; and that the plaintiff was not entitled to an 8 annas share in the estate of Roghorampore. The other defendants were added as parties to the suit under s. 73 of Act VIII of 1859, and objected to the plaintiff's title and to his obtaining possession of the share claimed.

The Court of first instance, after taking evidence from both parties, rejected the plaint on the ground that it was not framed in the manner prescribed by s. 26 of Act VIII of 1859. The plaintiff appealed, and the Subordinate Judge held that the plaint was not so vaguely worded that it must be rejected, and that the suit was not barred, either by the resumption proceedings, or by the law of limitation. On the merits he found that the chur was not an island at the time of its formation, but a contiguous accretion to the estate of Roghorampore ; and that the plaintiff was entitled to a settlement and possession of a 4 annas share in the chur, and not 8 annas as claimed by him. He accordingly gave the plaintiff a decree for a 4 annas share.

Krishna Chandra appealed.

Baboos *Kali Mohan Das* and *Hem Chandra Banerjee*, for the appellants, contended that the Government was a necessary party. Since 1835 the plaintiff has not been in possession ; his cause of action dates from the order of resumption, which was more than twelve years prior to the date of suit. Before any question of title can be gone into the plaintiff must show that, within twelve years of the institution of this suit, he was in possession—*Kali Chunder Chowdhry v. Monikurnika Chowdhrain* (1).

(1) W. R., Jany. to July 1864, 149.

The effect of the resumption was to make Government an absolute proprietor of the lands. The plaintiff's ancestor contested the resumption, and there was an adjudication by the Special Commissioners that the land was an island, and that adjudication was final, Reg. III of 1828, s. 4, cl. 5. Whatever rights the plaintiff had, were extinguished by the resumption. The reservation by Government of an allowance of 10 per cent. on the rent, as malikana for the recorded proprietors was an act of grace of which the plaintiff or his ancestor never availed themselves, and the application of the amount in deposit by the Collector, after the settlement in 1867, at the instance of Krishna Chandra towards the payment of the Government revenue of the new settlement, was not any recognition on the part of Government of any title or right of possession on the part of the plaintiff. Further in 1851 the representative of the maliks of Roghorampore refused to make a settlement on the jumma demanded.

The plaintiff could not have brought an action to compel Government to make a settlement with him—*The Government v. Tekait Pokharun Singh* (1). He cannot then sue the party with whom Government has settled. A Civil Court has no power to declare that a property which has been resumed was not liable to be resumed. The decision of the revenue authorities that the chur was an island, cannot be disputed in a Civil Court. This land cannot be a contiguous accretion, for such an accretion cannot be resumed; see Regulation XI of 1825, which declares who is to be the proprietor of such an accretion.

But assuming that the chur is a contiguous accretion, then according to *Mussamat Budrunnissa Chowdhraïn v. Prosunno Kumar Bose* (2), there must be a finding that the chur was contiguous at the time of its formation, before the plaintiff can succeed. The finding of the Court below does not go to that extent, nor is there any evidence that the land is an accretion at all.

The Court desired the pleader for the respondent to confine his argument to the question whether the suit was barred.

(1) 7 W. R., 65.

(2) 6 B. L. R., F. B., 255.

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Baboo *Nallit Chandra Sen* for the respondent.

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Regulation II of 1819 and the resumption *rûbâkârî* (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 (DEFEND-
ANTS).*

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.