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against the judgment-debtor which is still unsatisfied, and there is nothing in the law or in that decision which prevents him from proceeding as far as he likes, until that decree is satisfied, against the property of the judgment-debtor. The result is that the order of the Judge, in so far as it orders the Munsif not to confirm the sale of the properties other than the property originally sold, will be set aside, and the execution proceedings will be brought to a termination according to law.

The appellant is entitled to the costs of this appeal and of the lower Appellate Court.

*Appeal allowed.*

### FULL BENCH.

Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice L. S. Jackson, Mr. Justice Markby, and Mr. Justice Ainslie.

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 March 16.

MAHOMED ISRAILE (PLAINTIFF) v. WISE (DEFENDANT).\*

*Suit to set aside Settlement—Right of Action—Parties.*

In a suit by a person claiming certain lands which have been resumed by the Government, the plaintiff is entitled on the allegation that he is the rightful owner of the lands, and that the defendant obtained a settlement by false allegations of ownership and of possession, to an adjudication of his right to a settlement. It is not discretionary with the Collector under such circumstances to settle with any person he pleases for the land, nor is such settlement, if made, final as regards all claims.

*Semle.*—To such a suit the Government should be made a party.

The plaintiff brought this suit to obtain an adjudication of his right to a settlement of Mauzas Merandy, Kochooah, and an eight-anna share in Mauza Rosoolpore, and to be put in possession thereof. He stated that these mauzas belonged to him, and that he had been previously in possession of them as *lakhirajdar*; that Government having brought a resumption suit against him and his cosharers in respect of these lands, and having obtained a decree for resumption, settled with the plaintiff for the said lands, but that on appeal by the defendant,

\* Special Appeal, No. 882 of 1873, from a decision passed by the Officiating Judge of Dacca, dated the 28th December 1872, affirming a decree of the Subordinate Judge of that district, dated the 1st April 1872.

the settlement was set aside. Hence the suit was brought to complete the settlement.

The principal grounds of defence were that the Government was a necessary defendant in such a suit; that the plaintiff had not been in possession for twelve years previous to suit, and that the mauzas in question belonged to the defendant, and not to the plaintiff, and that the defendant was entitled to a settlement.

The Subordinate Judge dismissed the plaintiff's suit without making the Government a defendant, and held that the ground on which the plaintiff claimed a preferential right to a settlement, *viz.*, that he had been previously in possession as *lakhirajdar* had no force, inasmuch as his possession was not *bonà fide*; and that the defendant had proved that the lands in question belonged to him.

On appeal by the plaintiff, the Judge affirmed the decision of the first Court; and dismissed the appeal, holding, on the authority of *Bhikoo Singh v. The Government* (1), that it was optional with the Government to settle with the *ex-lakhirajdar* or not, and that the Civil Court could not call in question the reasons which induced the Government to refuse to settle with him,

(1) Special Appeal 1622 of 1867, decided on 8th June 1868, by Bayley and Macpherson, JJ., who dismissed the appeal, Macpherson, J., remarking that the circumstances of the case were similar to those in *Maharaja Joy Mungul Singh v. Tekaet Pokharun Singh* (a), and that the reasons for his decision were substantially the same as those of Norman, J., in the last named case, which he was quite prepared to follow. Bayley, J., in coming to the same conclusion, observed:—"Under Regulation II of 1819 the Government becomes the actual proprietor of the resumed mehal just as much as it would do in the case of an escheat of a Government pur-

chased mehal. It is true the Legislature has given the Government the power to confer certain privileges on the *ex-lakhirajdars* and others. But there is no law that I am aware of enacted that Government is bound in all cases, and under all circumstances, to divest itself of all proprietary right, or to preclude itself from making such arrangement as is made in this case with reference to the circumstances and position of the parties."

A review of this decision was afterwards granted. The Judgments on review in which the former decision was upheld are reported in 8 B. L. R. 529, note.

(a) 7 W. R., 465.

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though he might have a suit against the Government for depriving him of his property.

On a special appeal being preferred, the case was heard before Jackson and Mitter, JJ., who referred the question to a Full Bench:—"Whether, on the allegation by the plaintiff that he is the rightful owner of the lands which have been resumed by the Government, but that the defendant, by false allegation of ownership and of possession, has induced the Revenue Authorities to enter into settlement with him, he is entitled to an adjudication of his right to settlement, or whether it is discretionary with the Collector under such circumstances to settle the lands with any person he pleases, and such settlement is final as regards all claims?"

The question was referred with the following remarks by JACKSON, J. (who, after referring to the decision of Bayley and Macpherson, JJ., in *Bhikoo Singh v. The Government* (1), on the original hearing and on review, continued). Now, in respect of that view of the case, it appears to me, with great deference to the opinion of the learned Judges, that the circumstances of the case in *Maharaja Joy Mungul Singh v. Tekaat Pokharun Singh* (2) were very different from those of the case then before the Court. Norman, J., was dealing, as he understood it, with the case of resumed *altamgha madad-maash* or the like, which is a resumption of land granted either for service purposes or as a recompense.

In that case the land might fairly be held to return to the Government which granted it. In this case it is altogether different. But the judgment of Bayley, J., on the review refers to Regulations which do undoubtedly bear upon this point. As to Regulation XIX of 1793, Bayley J., states that in his opinion there is nothing in the terms of ss. 7, 8, or 17, which provides that settlement must, as a matter of course, be made with the *ex-lakhirajdar*. The pleader for the respondent before us today admitted that he was not prepared to support the decision of the Division Bench on which the lower Appellate Court relied in this case. And it seem to me,

(1) *Ante*, p. 119.

(2) 7 W. R., 465.

as at present advised, that the decision is not one which can be supported. It appears to me that, under Regulation II of 1819, and on the provisions of the Regulations of 1793 which have been referred to, the question for the Revenue Authorities, is whether or not the land in question ought to be assessed for the purpose of revenue to Government. Of course, in determining that question, the revenue authorities are justified in dealing, and must necessarily deal, with the parties whom they find in possession of the land ; but I conceive that, beyond the question of liability to assessment which is wholly within the decision of the Revenue Authorities, the question of proprietary right rests with the Civil Court, and that a party with whom settlement is not made, and who considers himself entitled to settlement, may bring a suit in the Civil Court to have his right to settlement declared. This being my present view of the matter, and the question being one of considerable importance which at any rate requires a fuller and more authoritative decision, I think this matter should be referred to the Full Bench.

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Baboo *Gopaul Lall Mitter* for the appellant was beginning to state his case, when the Court intimated their wish to hear the respondent's Counsel.

Mr. *Branson* for the respondent stated that he could not sustain the decision of the lower Appellate Court, as it was clear upon the Regulations that a suit of this nature would lie.

The following judgments were delivered by the Full Bench :—

COUCH, C.J.—(KEMP, JACKSON, and AINSLIE, JJ., concurring.)—I think the first branch of the question must be answered in the affirmative. If we look at the scope and object of these Regulations, I do not see how it could be supposed that the decision in a suit for assessment would do any thing more than affect the question, whether the land was to be held rent-free or not. In determining that question between the owner or occupier of the land and the Government, it was not intended to determine any rights between parties who might have conflicting claims to hold the land.

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In *Hurreeram Bukshee v. Ramchunder Banerjee* (1), this appears to have been decided. The judgment there is:—" In this case the right of plaintiff as proprietor has been admitted by the Munsif, on proof of the foreclosure of the mortgage, previous to the purchase of the defendant, with whom the settlement was made by the Collector in virtue of his being in possession. Both Courts, however on the precedent of *Hur Gobind Ghose* (2), have considered themselves restricted from interfering with any settlement made by the Revenue Authorities, and therefore dismissed plaintiff's claim. In this opinion both Courts have mistaken the decision in the precedent cited. It is therein recorded ' to decide on the question of assessment is peculiarly the province of the Resumption Courts ; to decide on the question of proprietary right is peculiarly the province of the Judicial Courts. Thus, in the case of a suit to resume a *lakhiraj* tenure, the Resumption Courts would pronounce upon the validity or invalidity of the tenure ; but the Civil Courts might still entertain a suit between parties claiming the proprietary right, and desirous of being admitted to enter into the settlement with Government.' " This is also the view which was taken by Paul, J., in the case of *Pratab Narayan Mookerjee v. Madhu Sudan Mookerjee* (3), and the Judicial Committee of the Privy Council in their judgment in *Gonga Gobind Mundul v. The Collector of the 24-Per-gunhas* (4) distinctly state this to be the law. In that judgment it is said :—" If, as the Government contends, these lands were rent-paying lands, the title of the Government was simply to the rent, the nature of which was that of a *jama* or tribute ; and if the holders of these lands asserted then, or subsequently, a groundless claim to hold them free of rent as *lakhiraj*, that claim would not destroy their proprietary right in the lands themselves, but simply subject their owners to "liability to be sued in a resumption suit, the object of which is, not to obtain a forfeiture of the lands, but to have a decree against the alleged rent-free tenure, involving the measurement and assessment of the lands,

(1) S. D. D., 1850, 407.

(3) 8 B. L. R., 197.

(2) S. D. A. Sum. Dec., 131.

(4) 11. Moore's I. A., 858.

and the liability of the person in possession, if he wishes to retain possession to pay the revenue so assessed." Therefore, we should answer the first part of the question in the affirmative. The question is put in such a way that the first part of it must be answered in the affirmative and the second in the negative.

It appears to me that there has been an error in the proceedings in holding that the Government was not a proper party to the suit. The Government having given a lease of the lands to another person, it was proper that it should have an opportunity of showing that this had been properly done; if the Government were a party to the suit, the person who got the lease from the Government, might be freed from liability upon it. Now another suit will be necessary to finally decide the matters between these parties, as the Government, being no party to this suit, will not be bound by the decision in it.

The decree of the lower Appellate Court must be reversed, and the case must be remanded to that Court for retrial. The defendant is in possession under a lease from the Government, and the Government should be made a party to the suit in order that (if it is clear that the plaintiff is entitled to the case) the defendant Wise may be released from liability.

MARKBY, J.—Upon the point referred I concur in the judgment delivered by the Chief Justice. Upon the question whether in a suit like the present it is necessary to make Government a party, I do not consider it necessary to express any opinion, as that point is not mentioned in the order of reference.

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