

Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

KRISHNA CHANDRA DAS *v.* MOHAMED AFZAL.*

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June 11.

Survey Award—Limitation—Act XIV.—of 1859, s. 1, cl. 6.

A. appealed from the award of a Survey Officer to the Commissioner, who summarily rejected the appeal. The order of the Commissioner was confirmed by the Board of Revenue, without entering into the merits. *Held*, the period of limitation ran from the date of the order of the Board of Revenue.

THIS was a suit to establish the title of the plaintiffs by setting aside a survey award. They alleged that the land in dispute had been first surveyed and mapped out as appertaining to their Mouza Garoory, but that, by the order of the Commissioner, the Deputy Collector of Survey included it within Mouza Sheer Mungul; that this proceeding had been confirmed by the Commissioner and by the Board of Revenue; and that they, the plaintiffs, were still in possession.

The defendants, Mohamed Afzal and others, raised the defence that the plaintiffs' claim was barred by limitation; and that, of the disputed land, Kitta No. 1 appertained to Mouza Sheer Mungul and Kitta No. 2 appertained to an unsettled Mehal belonging to Government, and was situated in Kitta Goolur Koona.

Government, as a defendant, also raised the defence of limitation, and claimed Kitta No. 2 as its property.

The Principal Sudder Ameen held, that limitation did not bar the plaintiffs' claim, inasmuch as they were still in possession of the lands in dispute. On the merits, he decided in favor of the plaintiffs, and declared their title and right to possession of the lands in dispute.

On appeal, the Judge, without entering into the merits of the case, dismissed the plaintiffs' suit on the ground of limitation. He found the following facts in connection with the survey proceedings:

That the land in dispute was originally surveyed as appertaining to the plaintiffs' estate; that, on the defendants preferring an

* Special Appeal, No. 2287 of 1867, from the decision of the Judge of Sylhet, reversing the decision of the Principal Sudder Ameen of that district

appeal to the Commissioner, the case was remanded for re-investigation; and that the Deputy Collector, on the 31st July 1862, declared that the lands belonged to the defendants; that on appeal, this order was, on the 13th November 1862, upheld by the Superintendent of Survey; that the plaintiffs then appealed to the Commissioner who, on the 15th May 1863, passed the following order: "The case has been fully inquired into. If any further enquiry or interference is required, it must be obtained by a suit in the Civil Court." This order of the Commissioner was confirmed by the Board of Revenue on the 9th July 1863. The present suit for setting aside the award was instituted on the 6th July 1866. The Judge held, that because the Commissioner and the Board declined to enter further into the question, and summarily rejected the plaintiffs' appeals, the orders so made did not constitute an award; that the final award in the case was that made by the Superintendent of Survey on the 13th of November 1862; and that the plaintiffs were bound to sue within three years from the date of that award.

The plaintiffs appealed on the ground that the lower appellate Court was wrong in holding that the suit was barred by limitation, and in calculating the period from the orders of the Superintendent of Survey, and not from those of the Board of Revenue.

Baboos *Gopal Lal Mitter* and *Chandra Madhab Ghose* for appellants.

Baboo *Jagadanand Mookerjee*, on behalf of Government, respondent.

Baboos *Srinath Das* and *Debendra Narayan Bose* for the other respondents.

The judgment of the Court was delivered by

JACKSON, J.—The question raised before us is whether, in a case of award by a Survey Deputy Collector, and confirmed by the Superintendent of Survey, an appeal having been made successively to the Commissioner of Revenue and to the Board of Revenue, both of whom declined to go into the merits of the

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case, the three years within which a suit may be brought to get rid of the award, is to be calculated from the date of the Survey Officer's award, or that of the final decision. The Judge has held that, because the Commissioner and the Board of Revenue had summarily thrown out the appeal, the only real award was that made by the Survey Officer, and that the plaintiff was, therefore, bound to sue within three years from the date of that award. On this point the special respondent has not addressed any arguments to the Court, and has left the question in our hands. We think that there can be no doubt about it. This being a suit brought for the purpose of contesting the justice of an award made by the Survey Authorities, also for the purpose of obtaining a declaration of the title of the party concerned, the period of limitation is to run (cl. vi., sec. 1, Act XIV. of 1859) for three years from the date of the final award or order in the case. There can be no doubt whatever that the final order is that of the Board of Revenue. The law admits an appeal successively from the award of a Survey Officer to his immediate superiors, and to the Commissioner and the Board of Revenue, and the fact that the Board summarily dismissed the appeal without entering into the merits of the case, does not make it the less a final order. In our opinion then, this suit, being brought within three years from the date of that order, was within time.

Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

TULSIRAM DAS v. MOHAMED AFZAL *alias* MIRZA.*

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A. and B. were similarly affected by a survey award. A. appealed, but B. did not. *Held*, in a suit to set aside the award, B. could not compute the period of limitation from the date of the order on A.'s appeal. Also *held*, B.'s co-sharers, who did not appear in the proceedings of award, if the award gave them a cause of action, ought to have sued within three years.—

THE Survey Deputy Collector demarcated certain lands in one plot as belonging to defendant's land. Two parties objected to this, Krishna Chandra Das and Bairagi Das. Krishna Chandra appealed to the superior authorities, and his appeal was

* Special Appeal, No. 2290 of 1867, from a decree of the Judge of Sylhet, reversing a decree of the Officiating Principal Sudder Ameen of that district