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must, under the circumstances, be in proving his case. Whatever may be these difficulties, it is evidently the plaintiff himself who has by long delay and sleeping over his case, allowed such difficulties to intervene in the proof of his suit.

JAGABANDHU DAS GAJENDRA MAHAPATRA v. DINABANDHU DAS GAJENDRA MAHAPATRA.

On special appeal it is urged before us, that the evidence upon which the Judge has decided that the plaintiff has proved his possession, is only general evidence to the fact that before the separation in 1261 (1854) the brothers were in joint possession. It is in not specific evidence; it does not allude to any specific acts of ownership; in fact, it in no way really proves that within 12 years of the date of suit the plaintiff had any possession in this particular property.

After hearing the pleaders for both sides, we are of opinion that this contention is good, and that the evidence is altogether insufficient. It may be that it is almost impossible to produce evidence on that point now, but for this the plaintiff has only himself to blame; he certainly has not produced sufficient evidence, and his case must be dismissed on the point of limitation. We, therefore, reverse the decision of the Judge, and decree this appeal with costs.

Before Mr, Justice L. S Jackson and Mr. Justice Markby.

SONATAN ROY AND ANOTHER (PLAINTIFFS) *v* ANANDA KUMAR MOOKERJEE AND OTHERS (DEFENDANTS.)*

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Feby. 6.

Jurisdiction—Kabuliat—Act X of 1859, s. 23, cl. 1.

A suit to set aside a decree passed by a Deputy Collector, for executing a kabuliat in favor of the defendant, and for a declaration that the land in suit pertains to the talook of a third party, is not cognizable by the Civil Court.

See also 15 B. L. J. 247.

By clause 1, section 23, Act X. of 1859, the exclusive cognizance of suits by a zemindar against his ryot to obtain a kabuliat, is reserved to the Court of the Collector.

THIS was a suit for the reversal of a judgment of the Deputy Collector, ordering the plaintiff to execute a kabuliat in favor of the defendant, and also for a declaration that the jummai land, the subject-matter of the present suit, appertains to Belia Kistobati, and not to Ramchunderpur, the estate of the defendants.

The defendants set up, in their written statement, that the suit was not cognizable by the Civil Court.

The Moonsiff held, that as the suit was not for rent, but for declaration of title to land, it was cognizable by the Civil Court, and throwing the onus of proof upon the defendants, passed a decree in favor of the plaintiff.

* Special Appeal, No. 1702 of 1868, from a decree of the Judge of West Burdwan, dated the 27th of March 1868 reversing a decree of the Moonsiff of that district, dated the 15th of January 1868.

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SONATAN ROY v. ANANDA KUMAR MOOKERJEE.

On appeal, the Judge reversed the decision, on the ground, that the onus of proof had been wrongly thrown on the defendant, and that the plaintiff evidence was insufficient to prove his case.

The plaintiff appealed to the High Court.

Baboo *Banshidar Sen* for appellant.

Baboo *Khettra Mohini Mookerjee* for respondent.

The judgment of the Court was delivered by

JACKSON, J.—This was a suit by Sonatan Roy and others, who occupied some parcels of land, to set aside a judgment of the Deputy Collector, by which they were ordered to execute a kabuliat in favor of the defendant, Ananda Kumar Mookerjee, and to have it declared that the lands in question belonged to an estate called Kistobati, and not to an estate called Ramchandrapur. This suit appears to have been entertained bythe Courts below, and to have been decided by the lower Appellate Court, on the merits, in favor of the defendant.

The plaintiff now appeals specially to us upon a ground which it seems to me it is unnecessary to go into, because, I am of opinion, that this suit could not be maintained in the Civil Court. The decision of the Deputy Collector, which it is sought to set aside, was a decision in a suit brought by a zemindar against his ryot to obtain a kabuliat, that is a suit of which the exclusive cognizance is reserved by clause 1, section 23, Act X. of 1859 to the Court of the Collector, and except by way of appeal as provided by that Act is declared to be not cognizable by any other Court, by any other officer, or in any other manner. That appears to me effectually to bar the cognizance of the Civil Court for the purpose of setting aside the decision.

I can easily conceive a case in which a neighbouring zemindar might find himself aggrieved by a decision of the Collector adjudging that a particular ryot is to execute a kabuliat in respect of lands held by him in favor of the zemindar of another estate, and in that case probably an action would be maintainable by the zemindar so aggrieved, in order to declare his title to the lands in question. That is not the present suit. I think this suit ought therefore, to have been dismissed, and that, consequently, the special appear must fail on this ground. The appeal, therefore, is dismissed with costs.

MARKBY, J.—I also think that this suit is not maintainable.

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Before Mr. Justice Bayley and Mr. Justice Hobhouse.

MIR HABIB SOBHAN (PETITIONER) *v.* MAHENDRA NATH ROY (OPPOSITE PARTY)*

Superintendents—Arrears of Rent—Revival of Suit—Act X. of 1859, s. 58.

A suit for arrears of rent was dismissed by the Deputy Collector for default under section 54, Act X. of 1859.

* Motion, No. 124 of 1868 against the order of the Additional Judge of Jessore, dated the 3rd August 1868.