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defendant, must be considered merely as remuneration for the trouble that he took in measuring the lands and enhancing the rents, but this is a mistaken view; but whatever it may be, it certainly did not, in any way, alter the character of that money which was to be paid to the zemindar. A full Bench decision, *Raja Nilmani Sing* v. *Annada Prasad Mookerjee* (1) has been quoted by the respondent to show that a case of the nature before us, is cognizable by the Civil Court; that case is entirely at variance with, and is by no means applicable to, the present case. We think the suit is one for rent, and is triable by the Revenue Court, but as there is no sufficient evidence to dispose of this case, we, therefore, remand the case to the Collector that evidence may be called for and the case disposed of on the merits. With regard to the rent of 1271, we concur with the opinion expressed by the Collector, that the claim for the rent of 1271 is barred by limitation. The costs of this appeal will follow the ultimate result of the case.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

MAHARANI BRAJA SUNDARI DEBI (PLAINTIFF) v. RANI LACHMI KUNWARI AND OTHERS (DEFENDANTS.)*

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Limitation—Act XIV. of 1859, ss. 2 and 5—Purchase—Name of Idol—Trustee—Benami.

See also 15 B. L. R. 176

In 1799 an estate was purchased in the name of an idol, and immediately afterwards was mortgaged. Subsequently, when the mortgage debt had been paid off, it was re-conveyed to the idol. After this the names of the idol and of its shebait were entered in the Collector's books as owners of the estate. In 1812, the purchaser again mortgaged the property, and in 1816 his widow executed a second mortgage of it, to pay off the mortgage of 1812. In 1820, the second mortgage was foreclosed. The defendants held the property under titles derived from the mortgage of 1816. The shebait's representatives, in 1867, sue to recover possession of the property as belonging to the idol, alleging that the purchaser was a mere trustee for the idol; that the present holders of the property were cognizant of this, or might have learnt it by reasonable enquiry, and therefore took the property subject to the trust that, accordingly, the suit now brought was a suit against trustees within section 2 of Act XIV. of 1859, and could not be barred by any length of time.

* Regular Appeal, No. 132 of 1868, from a decree of the Judge of the Small Cause Court exercising the powers of Principal Sudder Ameen of Zilla Rajshahye, dated the 20th April 1868.

(1) 1 B. L. R. (F. B.), 93.

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There was no evidence of a formal dedication of the property to the idol. *Held*, that the defendants claimed under purchasers who had purchased *bonâ fide* and for valuable consideration, within section 5 of (Act XIV. of 1859; and that, therefore, the period of limitation was 12 years from the date of purchase, and the suit was barred.

THIS was an appeal from the decision of Baboo Anand Chandra Banerjee, Principal Sudder Ameen of Rajshahye.

The suit was brought by the heirs of Gobind Chandra Roy, who sue as shebaits of a certain idol, Sham Sundar Thakur, to recover possession of Pergunna Sujanagar. It was found by the lower Court that Pergunna Sujanagar was purchased by Maharaja Biswanath Roy, at a sale for arrears of Government revenue, in 1799. The purchase appears to have been made in the name of the idol, by a person who described himself as the gomasta of the idol, but there is nothing to shew that the money with which the property was purchased, was money which came from the funds appropriated to the worship of the idol. One of the plaintiff's witnesses states that the idol was founded by Maharaja Biswanath Roy. Immediately after the purchase of the property in the name of the idol, it appears to have been mortgaged to one Bhikum Roy; and, in 1802, it appears, upon the plaintiff's own evidence, to have been re-conveyed by Bhikum Roy to the idol, Rs. 5,601 (apparently the loan) having been paid off. In 1804, Raghunath Nandy, who is described as the gomasta of the idol, executed an acknowledgment to Raja Biswanath Roy that the property belonged to the idol. Five years after, in 1809, a mutation of names took place, and the names of the idol and that of Biswanath Roy as shebait, were entered in the Collectorate books as owners. In 1812, it would appear that Raja Biswanath Roy mortgaged the property for Rs. 32,000 to Kamal Lochan Nandy. That mortgage is not in evidence, but it was recited in a petition put in by the widow of Raja Biswanath Roy. In September 1816, the widow of Biswanath Roy mortgaged the property to Raja Janakiram Sing, for a sum of Rs. 46,400, to pay off the former mortgage debt. In 1820, this second mortgage was foreclosed. The first named defendant, Rani Lachmi Kunwari, widow of Raja Krishna Chandra Roy, is in possession of the property under a title derived from the mortgagee. The present suit was instituted on the 11th of September 1867.

Mr. *Money* (Baboo *Bhairab Chandra Banerjee* with him) for appellant.

Mr. *Allan* and Baboo *Girija Sankar Mozumdar*, for respondents.

The judgment of the Court was delivered by—

NORMAN, J. (After stating the facts as above, continued):—The point that we are called upon to decide is, whether the suit which was instituted more than 46 years after the foreclosure, is or is not barred by limitation.

The contention of the plaintiff has been that this is a suit against a trustee. Before proceeding to the point which we have to decide in this case, it is well that we should state our view of the evidence which would go to shew that Raja Biswanath Roy was a mere trustee for the idol in respect to this property. No evidence has been given to shew that there ever was any formal dedication of the property to the idol. It is a mere purchase in the name of an idol. From the time of the purchase of the property, Raja Biswanath Roy appears to have dealt with it as his own. In 1802 it was conveyed or mortgaged to one Bhikum Roy, and in 1812 it was mortgaged apparently for the Raja's purposes. There is no proof that either the first or the second mortgage was executed in any way for the purposes of the worship of the idol, or for the performance of any trust connected with it. For all that appears, the money was raised for the private purposes of the Raja. No evidence has been given to show that the revenue of the property was expended for the purposes of the idol, and the pleader for the appellant, when arguing the case before us, was not prepared to go into evidence upon that point. We do not, therefore, mean to rest our decision of the case on that point. But we may observe that we do not see any reason to doubt the correctness of the decision of the Principal Sudder Ameen that there was no real endowment.

The learned Counsel for the appellant referred to section 2 of Act XIV. of 1859, and he contended, citing a case *Luteefun* v. *Bego Jan* (1), that if the defendants, at the time of taking their several interests, were cognizant of the trust affecting

(1) 5 W. R., 120.

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the property, or if reasonable inquiry would have made them so, they took the property subject to the trust (notwithstanding that they paid full value for it) and in all respects stood in the same position as the original trustee; that they are not *bona fide* purchasers from a trustee within the meaning of section 5 of Act XIV. of 1859, but actual trustees within section 2. We think, however, that the plaintiff has failed to establish a case on which such an argument can be based. We think we may assume that Raja Janakiram must, or at least may, have known that the property stood in the name of the idol, but it does not follow that he knew, or must be taken to have known, that there was a dedication of the property to the idol. The purchase in the name of the idol may have been a mere fictitious, benami transaction, Raja Biswanath Roy being himself the real purchaser and beneficial owner. Our own impression is that such was really the fact. Raja Janakiram, if treated as having notice of the proper title of the idol, must be taken to have known what was also the fact, viz., the property had been from the date of the first purchase dealt with by Raja Biswanath Roy as his own, and mortgaged by him on two distinct occasions. We see no reason to suppose that he knew, or had any good reason for believing, that Raja Biswanath Roy was a mere trustee for the idol; and upon the facts which would come to his knowledge, he certainly was not bound to assume that such was the case. He advanced a large sum of money on mortgage, apparently in the full belief that the security was a good one. He, therefore, stands in the position of a *bona fide* purchaser for valuable consideration, and is within the protection of section 5 of Act XIV. of 1859. Under that section and clause 12, of section 1, which must be read in connection with it, the suit should have been brought within 12 years from the date of the purchase. The cause of action so far as it would seek to set aside the mortgage and rights acquired under it, must, under section 5, be deemed to have arisen from the date of the mortgage in 1816, and so far as it seeks for possession, from the date when possession was obtained by the mortgagee subsequent to the foreclosure in 1820. No reason has been assigned for the delay in bringing the suit. No reason has been assigned why

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plaintiff's father, who seems to have attained his majority in 1829, did not bring the suit. The present suit is, therefore, barred by section 5 of Act XIV. of 1859.

The result is that the appeal will be dismissed. The respondents will recover their costs in proportion to their respective interests.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

RANI SARATSUNDARI DEBI (PLAINTIFF) *v.* WATSON AND OTHERS (DEFENDANTS.)*

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Suit for Kabuliat—Fractional Share in Undivided Estate—Act X. of 1859.

A proprietor of a fractional share of an undivided estate, though receiving a definite portion of the rent from the ryot, is not entitled to maintain against him a suit for a separate kabuliat in respect of such undivided share.

Baboo *Debendra Narayan Bose* for appellant.

Messrs. *Allan* and *Rochfort* for respondent.

THE facts of this case appear sufficiently from the judgment of the Court, which was delivered by

NORMAN, J.—This was a suit for a kabuliat. The plaintiff alleged that the portion of the land occupied by the indigo factory of Messrs. Robert Watson and Company, included within specific boundaries given at the foot of the plaint, appertain to 5½-anna share of Laskarpore, of which the plaintiff is the proprietor of one-half. The first Court dismissed the suit upon the ground that the defendant had been in possession, and held the premises at an uniform rent from the time of the permanent settlement. The Judge, on appeal, held that the plaintiff was not entitled to a kabuliat, because that the plaintiff had given no evidence that the specific portion of land described 12 bigas belonging to the 5½-anna shareholders of Laskarpore, was a distinct and separate holding; and he said that the suit should be dismissed, the plaintiff's suit having been instituted to obtain a kabuliat in respect of that which appears to be an

* Special Appeal, Nos. 1339 and 1341 of 1868, from decrees of the Judge of Rajshahye, dated the 4th March 1868, affirming decrees of the Deputy Collector of that District, dated the 31st October and 30th November 1867.