

tenures in existence at the Permanent Settlement, whether held on valid or invalid tenures, are protected equally from both these classes of zemindars, to what class of cases does the Law of Limitation prescribed by clause 14 apply, unless it be to cases under section 10 of Regulation XIX. of 1793; These, it appears to us, are not protected from the auction-purchaser if he bring his suit within twelve years of his purchase; but they are protected from the zemindar who has slept over his rights.

Looking, then, at the wording of the clause, and the proviso with which it closes, we think that its provisions were intended to embrace all claims to resume or assess lands held rent-free, whether before or after the Permanent Settlement; that the Legislature did not rescind section 10 of Regulation XIX. of 1793, because there might be certain persons as auction-purchasers at sales for arrears of Government Revenue, who would be entitled to receive the estate, as it stood at the Permanent Settlement, free of all encumbrances subsequently created; that, if such party brought an action to recover within twelve years from the date of his title, no length of possession by the defendant, as lakherajdar subsequent to the Permanent Settlement, could be pleaded against him as barring the suit. But if it could be shewn by the defendant that the tenure had been held as lakheraj from the period of the Permanent Settlement, the suit, though within time, could not be maintained. The rule laid down is that every person claiming a right to resume shall bring his action within twelve years from the date when his title, or of the person under whom he holds, first accrued; and it appears to us to be a general rule applicable to all parties seeking to resume. The Court will look first to the time when plaintiff's title accrued. If the action be brought after twelve years from the date of plaintiff's title, it is barred by limitation, and probably nine-tenths of the suits instituted since Act XIV. of 1859 came into force are in this predicament.

Applying the above ruling to the case before us, we find that the plaintiff is a putneedar, deriving his title from the zemindar. The zemindar's title to resume commenced at the Permanent Settlement, and he never sought to resume these lands. He cannot revive a privilege which has become extinct by his own laches by creating a putnee, nor can he confer on the putneedar a power which he himself no longer possesses. As,

therefore, the right to resume has become extinct in the zemindar, we think it cannot be received in the putneedar who derives his title from the zemindar. We therefore hold that the present suit is barred by limitation; and, reversing the order of the lower Court, we dismiss the plaintiff's suit with all costs.

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The 19th May 1865.

*Present:*

The Hon'ble E. Jackson and F. A. Glover,  
*Judges.*

Mesne-profits (extent of).

Case No. 3704 of 1864.

*Special Appeal from a decision passed by the Judge of Shahabad, dated the 5th September 1864, affirming a decision passed by the Principal Sudder Ameen of that District, dated the 20th May 1864.*

Gossain Runjeet Geer (one of the  
Defendants), Appellant,

*versus*

Lalla Doorga Pershad (Plaintiff), Respondent.

*Baboos Romesh Chunder Mitter and  
Mohesh Chunder Chowdry for  
Appellants*

*Baboo Kalee Kishen Sein for Respondent.*

A plaintiff can obtain a decree for mesne-profits only as far as his title is proved.

THIS was a suit to obtain mesne-profits of 4 annas of certain landed estate. The lower Court has admitted that the plaintiff's title to more than 2 annas is doubtful, but on the ground of plaintiff's possession has given him a decree for wasilat for the 4 annas.

This is taken exception to on special appeal.

We think the decision cannot stand. The plaintiff can obtain mesne-profits only as far as his title is proved, *viz.*, as to 2 annas. The lower Court's decree is amended accordingly to mesne-profits on the 2 annas with interest from date of ascertainment (not from date of institution as stated by the first Court) to date of realization.

The respondent will pay the costs of this appeal.