The 12th June 1866.

Present:

The Hon'ble H. V. Bayley and E. Jackson, *Judges.*

Decision on Facts—Evidence—Reasons for Judgment.

No. 389 of 1865.

Application for review of judgment passed on the 22nd June 1865, in Special Appeal No. 1060 of 1865.

Tiluckdharee Singh (Plaintiff), *Appellant,*

versus

Somoodha Singh (Defendant), *Respondent.*

Baboos Onookool Chunder Mookerjee, Dwarkanath Mitter, and *Chunder Madhub Ghose* for Appellant.

Messrs. C. Gregory and *R. E. Twidale* for Respondent.

In deciding on the facts of a case, Judges should not base their decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides.

It is with great regret we find ourselves obliged to remand this suit to the Judge of Patna in order that he may record a clear decision on the question of limitation—not taking into consideration one single portion of the evidence in the case as he has done, but alluding to the whole of the material evidence, and, according to law, giving his reasons for the judgment he arrives at in rejecting and accepting the evidence offered on both sides.

The case has already been once remanded to the Judge of Patna, because the decision on limitation did not in any way allude to the evidence, but apparently took it for granted that, as there had been a decision under Act IV. of 1840 adverse to the plaintiff, he was entitled to date his cause of action from the date of that decision. As far as that decision went, it was evidence that the plaintiff was not in possession, not only on the date on which the decision was passed, but also had not been in possession on the date on which the dispute originated; for the Magistrate, finding he had not been in possession, dismissed his claim. It was necessary, therefore, that the Judge should look to the evidence as to the state of facts which existed before that decision was passed, and decide whether plaintiff had been able to prove dispossession within 12 years of the institution of the suit or not.

The Judge, on the remand, has relied upon one single document as proving that plaintiff was in possession, *viz.*, a judgment of the Civil Court in a suit for rents of the year 1846 on a claim preferred by the plaintiff founded on his title as mokurrureedar—the same title which he now sets up. The defendant put in this decision as proving that the plaintiff was, in 1846 and 1847, out of possession. The Judge says that, on the contrary, it is a proof that the plaintiff was in possession. The Judge does not state how it is evidence of possession. We, on a former hearing of this appeal, thought that it might be held as some evidence that the plaintiff was then setting up his title, and exercising rights of ownership. But, on reconsideration, we are of opinion that this view cannot be sustained. The mere setting up a title is no proof that the plaintiff then held possession of the land to which he set up the title—the more so as his claim on that title was dismissed, because he could not satisfy the Court that he had been, as owner, realising the rents which he claimed. As far as the judgment of the Court went, it did not declare that plaintiff was in possession.

The Judge says, however, that the defence which was set up in that action is identical with the defence set up now. This cannot in any way assist the plaintiff. The defence was that, though the plaintiff may have been, as a servant or agent of the Maliks, collecting rents for his masters, he had not been collecting rents as mokurrureedar. This is no admission that the plaintiff was in possession of his mokurruree right, or that he was in possession of the land at all on his own account. The defendants in the present case are in no way bound by the answer of the defendants in that action. If their answer in the present case is an admission of the plaintiff's possession within 12 years, it was quite unnecessary to go to the decision of 1849 at all. But it is manifestly no more an admission of plaintiff's possession than the answer of the defendants in that case was. A naib or gomashta is not in possession of his master's estate because he is deputed to collect its rents.

The decision in the rent-suit of 1849 is evidence to a certain extent against the defendants if it in any way told against them. But, as by it the plaintiff's claim to receive rents as mokurrureedar was dismissed, we fail to see what evidence it is of plaintiff's possession.

It is very much to be regretted that Judges will, in deciding on the facts of a case, base

their decision upon some isolated piece of evidence, instead of taking into consideration and recording their opinion on the whole of the evidence offered by the parties. Constant remands in special appeal are caused by this habit. In this case, more especially considering the long time it has been pending, and that it was remanded by this Court for re-decision, it was incumbent on the Judge to look to the whole evidence, and record his judgment, so that there could be no further doubt that it had been arrived at on a full consideration of all the facts.

The plaintiff here institutes a suit in 1860 to set up a title which, in 1848, he failed to establish in the Civil Courts, and under which, in 1850, he failed to prove possession before the Magistrate. He must very clearly prove that he held possession of his mokurruree rights within 12 years of the institution of the suit before his claim on the merits can be tried.

The decision of the Judge is reversed, and the case remanded to him for re-trial with reference to the above remarks. Costs of this special appeal to follow the final decision.

The 13th June 1866.

Present:

The Hon'ble C. B. Trevor and F. A. Glover, *Judges.*

Ghatwalee Lands (Assessment or Enhancement of)—Evidence (Adjudication of Competent Court 60 years ago).

Cases Nos. 305, 306, 342, and 381 of 1865.

Regular Appeals from a decision passed by Baboo Ram Taruck Roy, Principal Sudder Ameen of West Burdwan, dated the 15th June 1865.

Mr. James Erskine (Plaintiff), *Appellant,*

versus

Manick Singh Ghatwal and others (Defendants), *Respondents.*

Mr. R. T. Allan and *Baboos Dwarkanath Mitter* and *Bungshee Dhur Sein* for Appellant.

Baboos Kishen Kishore Ghose, Juggodanund Mookerjee. Poorun Chunder Mookerjee, Obhoy Churn Bose, and *Mohesh Chunder Bose* for Respondents.

Suit laid at Rupees 9,007-7-6.

Long possession (presumably from the Decennial Settlement) and gradual cultivation by a ghatwal on payment of a quit-rent (and not merely possession without cultivation) are evidence of an implied grant which protects the ghatwal from enhancement or assessment on the land so cultivated.

An adjudication by a competent Court made 60 years ago, dismissing the landlord's claim to rent from the ghatwal, is evidence of the highest order as to the right of the ghatwal in the suit now brought by the landlord for a declaration of right to take rent in future.

THE plaintiff in the cases out of which the two appeals now before us have arisen, who is a putneedar, sues to oust defendants from a certain quantity of land, which is in their possession, as trespassers, it being not included within their ghatwalee lands, and they refusing to enter into engagement to pay rent for the same.

The ghatwals, in their written statements, assert that the suit is barred by limitation; that the land in suit has been ghatwalee from before the Decennial Settlement, and that neither plaintiff nor the zemindar have ever had possession of them; that the lands in suit have been held by defendant and his predecessors as ghatwalee on payment of a rent, and have been so demarcated by the survey; that the Issumnovisee on which the plaintiffs rely to prove their case is not the ghatwalee title-deed, but was prepared by the police on the statement of the then ghatwals without enquiry or measurement, and is, therefore, no legal evidence; that no boundaries have been given in the Issumnovisee, and the plaintiff has marked off a piece of land according to his discretion, and has left him a quantity altogether insufficient for the support of the ghatwals.

The Government assist the statement of the ghatwal.

The lower Court, after other remarks, observes in two of the cases before us—Nos. 342 and 381—"that the judgment of the "16th December 1863, in which the present "plaintiff was respondent, mainly approaches "the circumstances of the present case, and "requires careful consideration. In that "judgment, it is said that 'the Issumnovisee "is admittedly a document filed in 1819 "by the police-officer empowered to receive "and transmit to his superiors the informa"tion that it contains; that it is notorious "that, in cases of the kind before the "Court, these Issumnovisees are almost "universally produced, and have in some "instances been relied upon by the Govern"ment in suits to restrain the rights of the "ghatwal, and that they would not have "remained for so many years in the Office "of the Collector without some contradic"tion or notice on the part of the ghatwal,