fact, the Collector never submitted his proceedings for the sanction of that Board, but that, under the rules promulgated by the Board itself, the Collector had full authority to enter into agreements of this description of his own accord, and without obtaining the sanction of the Board. The Lower Appellate Court has rejected all these objections, on the ground that the Board of Revenue had full power *under the law* to interfere in the acts of the Collector, and that, no time having been laid down in the law within which it was to exercise those powers, it could interfere at any time.

The agreements in this case referred to the settlement of some lakheraj land which had been resumed. It had been settled from time to time with different parties, but the settlement had come to an end, and it was necessary to re-settle the land. The ex-lakherajdar was the person entitled to the settlement. He put in a petition asking for a settlement at lower rates than had been proposed. The Collector considered that this petition was a refusal to take the settlement at the rates proposed. The Collector accordingly entered into a settlement with the special appellant. The ex-lakherajdar, after some delay, brought the matter to the notice of the Commissioner. That officer and the Board of Revenue considered that the ex-lakherajdar had not refused the settlement, but was entitled to it, and ordered the settlement to be made with him. The special appellant has now brought this suit to recover possession of the resumed estate, alleging that the agreement with him was final, and could not be set aside.

As the settlement made with the special appellant was distinctly declared to be subject to the orders of the Board of Revenue, and it is not shown or proved in any way that that clause of the agreement crept into the settlement by mistake, we might decide upon that alone that the Board of Revenue had full power to interfere. If the rules of the Board of Revenue are to be looked to, then the Commissioner had full power to interfere, and did interfere, in accordance with those rules, though it may be that, as there had been some delay before the case was brought to his notice, and as the agreement distinctly referred to the consent of the Board of Revenue, he preferred to obtain the Board's consent before he passed orders in the case. The argument that, if the Commissioner did interfere, he was bound to interfere within one month, because that is the period laid down for appeals to him, cannot, in my opinion, stand. It may be that appeals must be preferred within one month, but no time is laid down in the rules within which the Commissioner was bound to exercise his powers of revision, and it was these powers of revision which he exercised in this case, and not his powers on appeal. Whether, then, the Board of Revenue had power itself to interpose in the settlement or not, it does not seem to be denied that it had authority to make rules under which settlement-officers were to conduct settlement-proceedings; and, even under those rules, the orders passed by the Commissioner were legal. The Commissioner had authority to set aside the settlement, and did do so. The plaintiff must fail in his suit even upon this ground. It is not necessary under these circumstances to examine the law laid down by the Judge as regards the powers of the Board of Revenue to set aside such a settlement as this. We dismiss this appeal with costs.

Mitter, J.—I concur. The plaintiff is bound by the terms of his lease, and under those terms the Board had full power to interfere.

The 2nd June 1869.

Present:

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

Declaratory decree—Cause of action—Joint Hindoo property—Onus probandi.

Case No. 2951 of 1868.

Special Appeal from a decision passed by the Judge of Tirhoot, dated the 19th June 1868, affirming a decision of the Subordinate Judge of that District, dated the 17th December 1867.

Gopee Lall (Plaintiff), *Appellant,*

versus

Mohunt Bhugwan Doss and others (Defendants), *Respondents.*

Mr. C. Gregory and *Baboo Khettur Mohun Mookerjee* for Appellant.

Baboos Kalee Mohun Doss and *Romesh Chunder Mitter* for Respondents.

The fact of joint property standing upon the Collector's register in the name of the elder brother is no slur on the title of the younger, and no ground for a suit on the part of the latter for declaration of title.

In a suit to recover possession of a share of joint property sold in execution, on the ground that the judgment-debtor (plaintiff's brother) was the owner of only

a portion, where defendant pleaded that the whole property had been made over by the grandfather, by a deed of gift, to the judgment-debtor: HELD that the plaintiff was entitled to the presumption of co-partnership, and the *onus* lay with the defence to prove that the property had passed absolutely to the judgment-debtor.

Glover, J.—THE plaintiff in this case sues to recover possession of a 3 annas 1 pie share of Mouzah Waree from the hands of defendant No. 1, Mohunt Bhugwan Doss, a purchaser at an execution-sale, on the ground that the judgment-debtor, plaintiff's brother, the defendant No. 2, Ram Bullub Lall, was the owner of half the property only, the other moiety belonging to plaintiff. His allegation is that the property, along with other lands, belonged to his grandfather Kanhya Lall, from whom it descended to his (plaintiff's) father, Madhub Lall, from whom again it came to plaintiff and his brother in equal shares.

The plaintiff also sues for confirmation of his possession and a declaration of his title in a 2-annas share of Mouzah Himmutgunge. This part of the suit refers only to defendant No. 2.

The defendant No. 1 replies that the whole of Kanhya's interest in Mouzah Waree was made over by that individual by deed of gift to his grandson Ram Bullub Lall in 1834, and that neither plaintiff nor his father Madhub Lall had ever been in possession.

The defendant No. 2 filed no answer. The first Court held that the gift by Kanhya to Ram Bullub was proved; and that, so far as Mouzah Waree was concerned, plaintiff had no case. His suit for confirmation of possession in respect of Mouzah Himmutgunge was dismissed on the ground that it disclosed no cause of action against the defendant No. 2.

The Judge took up the question of general limitation, which had not been decided by the Principal Sudder Ameen, and held that, as the plaintiff had not been able to show any possession in himself or in his father for 12 years preceding the suit, his case was barred. With regard to Mouzah Himmutgunge, he agreed in opinion with the first Court.

The objections urged before us in special appeal are two—

(1) That there was a sufficient cause of action to the plaintiff as regards Mouzah Hmmutgunge; and

(2) That the issue of limitation could not, under the circumstances, be properly decided without going into the question of the genuineness of the alleged gift from Kanhya to Ram Bullub.

The first objection appears to us untenable. Neither of the defendants have at any time disputed the plaintiff's right to the share he claims in Himmutgunge, nor has anything been done by either of them to cast a slur upon his title.

Ram Bullub's name is in the Collector's Register, he being the elder brother, and the plaintiff being till quite lately a minor. If the plaintiff thinks it better to have his own name registered as joint proprietor, he can apply to the Collector, but he clearly has no ground of action in a Civil Court against defendants.

In deciding the second point of special appeal, regard must be had to the peculiar circumstances of this case, and the first question is, on whom does the *onus probandi* lie. The Judge has followed the ordinary rule, and laid it on the plaintiff, and this we think was an error. The plaintiff dates his cause of action from the day on which the defendant No. 1 took possession of the entire 3 annas 1 pie share of Mouzah Waree. The defendant No. 1 dates his from the day on which Kanhya is alleged to have made the gift to his grandson, *viz.*, in 1834. Now, applying the ordinary test for settling the question of *onus*, and looking to the position of both parties, had no evidence been given, it is clear to us that the plaintiff must have gained the verdict, had neither side offered evidence.

The family is not alleged to have separated, and is, therefore, at this time presumably joint. The ostensible proprietorship of Ram Bullub no way incompatible with the existence of joint rights in his younger brother, and the possession of Ram Bullub would *primâ facie* be the possession of Gopee Lall.

Unless this presumption were displaced by evidence that Ram Bullub held separately and of his own right, we think that the plaintiff would be entitled to the benefit (which the Hindoo law gives to all members of a joint family) of being legally presumed to be in co-partnership with Ram Bullub, and that there was no necessity on the plaintiff to prove by direct evidence either his own or his father's possession. It must not be forgotten, moreover, that up to within a

short time of suing the plaintiff was a minor and incapable of showing possession in any other way than that he was maintained out of the family estate, and as his father Madhub Lall died when the plaintiff was six years old, it is not easy to see how he could have proved his father's possession.

The Judge below has, no doubt, found as a fact that Madhub Lall never was in possession, but this of itself is not enough to do away with the presumption of Hindoo Law that Ram Bullub's possession was that of his brother also.

It appears to us that, before the plaintiff could be declared barred by limitation, the defendant No. 1 was bound to show that the property had passed absolutely to Ram Bullub in 1834.

This he did to the satisfaction of the first Court, and the Judge, we think, should have followed the same course as the Principal Sudder Ameen, and have tried the issue in bar and the issue of fact together.

We remand the case to him for re-trial accordingly. Costs to follow the result.

The 3rd June 1869.

Present:

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

Limitation—Possession—Section 15, Act XIV., 1859.

Case No. 203 of 1869.

Special Appeal from a decision passed by the Additional Subordinate Judge of Mymensingh, dated the 10th November 1868, reversing a decision of the Moonsiff of that District, dated the 17th August 1867.

Golam Nubee and others (Plaintiffs), *Appellants,*

versus

Bissonath Kur and others (Defendants), *Respondents.*

Baboo Ramanath Bose for Appellants.

Baboos Kalee Kishen Sein and *Nuleet Chunder Sein* for Respondents.

Where plaintiffs had been out of possession for more than 12 years before the institution of a suit to recover immoveable property, it was held that forcible possession for a few months prior to dispossession under Section 15, Act XIV. of 1859, gave them no fresh cause of action.

Jackson, J.—THIS suit was preferred by Moonshee Golam Nubee and others, plaintiffs, to recover from Bissonath Kur and others, defendants, possession of one anna share of Kismut Nischinpore.

The plaintiffs stated that they had purchased this property on the 30th Bysack 1273; that they had obtained possession of it, but that the defendants had brought a suit against them under Section 15, Act XIV. of 1859, and under that and by the decision in that suit they had been dispossessed—and the plaintiffs alleged that their cause of action was their dispossession by the defendants under that decision.

The defendants alleged that neither the plaintiffs nor the plaintiffs' vendor had been in possession of the estate in dispute at any time within 12 years of suit, and that the plaintiffs' suit was barred by limitation.

On the point of limitation, the first Court decided that as the plaintiffs were in possession for a few months previous to the decision passed under Section 15, Act XIV. of 1859, they were in possession for those few months within 12 years of the institution of the suit, and their claim, therefore, was not barred by limitation.

The Appellate Court has reversed that decision. The Appellate Court has found that the plaintiffs' cause of action did not originate in the decision under Section 15, Act XIV. of 1859, but that for 16 or 17 years before that decision, the plaintiffs' vendor had been out of possession. The Appellate Court, therefore, considered the few months' forcible possession which the plaintiffs had obtained to be no possession at all, and in no way to bar the effect of the Law of Limitation.

The case of the plaintiffs was that their vendor and the defendants were joint members of an ijmalee Hindoo family, but that they separated in 1263; that the property now in dispute was purchased by the family prior to the separation; and that, therefore, the plaintiffs' vendor had been entitled to a share of this property along with his other