The 1st June 1871.

Present:

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

Valuation of suit—Auction price—Market value—Act XXVI of 1867.

Case No. 2644 of 1870.

Special Appeal from a decision passed by the Judge of Shahabad, dated the 25th August 1870, *affirming a decision of the Moonsiff of Buxar, dated the 2nd May* 1870.

Mussamut Soobudra (Plaintiff) *Appellant,*

versus

Rajah Ram Prokash Singh (Defendant) *Respondent.*

Baboos Romesh Chunder Mitter and *Taruck Nath Paleet* for Appellant.

Baboo Mohesh Chunder Chowdhry for Respondent.

In a suit for possession by an auction purchaser where plaintiff valued his claim at what he paid for the property, held that the valuation was *primâ facie* not incorrect, and until rebutted by evidence and the result of a proper enquiry, should be accepted as correct.

If the valuation was doubted, an enquiry should have been instituted under Act XXVI of 1867.

Kemp, J.—THE plaintiff in this suit is the special appellant before us. She sued to recover possession of a 5 annas share of a jote called Hoonkaha Toorkpoora, valued at rupees 906-10 annas. She alleges that this estate belonged to the Rajah of Buxar, that in execution of a decree against the Rajah the whole 16 annas of the parent mehal Chuckrowsee was sold on the 31st of July 1869 and purchased at auction for rupees 2,900 by the plaintiff and by Bhugwan Dass and Gokool Bhuggut, the plaintiff being the purchaser of a 5 annas share, Bhugwan Dass of a 7 annas, and Gokool Bhuggut of a 4 annas share. The plaintiff sues, as already stated, for possession of a 5 annas share of the jote. She alleges that on her amlah going to take possession, they were resisted by the defendant who set up a mokurruree under the judgment-debtor, the Rajah, and contended that the plaintiff was not entitled to khâs possession. The object of the plaintiff's suit, therefore, is to set aside this mokurruree, and she values her suit at rupees 906-10 annas, being the amount of auction-purchase money represented by her 5 annas share in possession.

The defendant objected to the valuation of the suit and contended that as the property was lakheraj property, it should have been valued at 20 times the net profits, and that if so valued the Moonsiff could not take cognizance of the suit.

Both the lower Courts have thrown out the plaintiff's claim without any enquiry whatever, holding that as the property is lakheraj it ought to have been valued at 20 times the net profits, and therefore that the suit must be dismissed.

Before proceeding to judgment in the case, we may observe that the first Court in the last part of its judgment says that whether the land be mal or lakheraj, the plaintiff had no right to put an arbitrary valuation upon it, but that according to the stamp law then in force she ought to have valued it according to the market value.

We think that the decisions of the Courts below are wrong. In the first place, the plaintiff assumes that the market value of the estate is what she paid for it at auction, and *primâ facie* such valuation would not be incorrect. It may be of course that the market value is much higher, but before summarily dismissing the plaintiff's case the Court below ought under the stamp law to have made an enquiry into the market value of the estate, and its decision after such enquiry would, with reference to the valuation of the suit, be final; but no such enquiry was made, and we cannot say that the plaintiff was wrong in valuing her suit at what she paid for the property at auction. We assume that to be the market value, and until rebutted by evidence and the result of a proper enquiry, such valuation was perfectly correct.

Then it is said that this being a lakheraj mehal, 20 times the annual profits of the estate must be assumed as the market value. We think that the lower Courts have come to a wrong finding with reference to this being a lakheraj mehal. It is clear that the Rajah, when in possession of the parent mehal Chuckrowsee, subsequently sold for arrears of Government revenue, held the disputed land as part of Chuckrowsee paying revenue to Government. Whether the auction purchaser obtained possession of the whole of Chuckrowsee is a matter with which he is concerned, and if any lands were withheld by the Rajah which ought to have passed to the auction purchaser, it is for the auction purchaser to seek his remedy. The

Government did attempt to resume these lands, but their attempt failed, and it was held by the Special Commissioner that these lands belonged to the mál estate, and therefore that although the auction purchaser might have a remedy the Government could not resume these lands, and they were accordingly directed to be released.

The stamp law in force when this claim was instituted was Act XXVI of 1867, and under note "*a*" Schedule "B" of that Act, in any suit for immoveable property whether paying or not paying revenue to Government the market value was to be assumed as the proper valuation. If it was disputed or doubted that that was the proper valuation the Court was at liberty to make an enquiry, and on the result of that enquiry the valuation of the suit was to be made, and the decision of the Court with reference to such valuation was to be final. We think that this course ought to have been pursued. If the Court of first instance was of opinion that the valuation of the suit by the plaintiff did not represent the fair market value of the estate in dispute, it ought to have made some enquiry on that point. We, therefore, remand the case. The Court of first instance, if *necessary*, will make such enquiry; and if the present valuation is a proper one, will proceed to try the case; if it is not properly valued, the Court must give the plaintiff an opportunity to make up the proper valuation and then proceed with the case. Costs to follow the result.

The 1st June 1871.

Present:

The Hon'ble H. V. Bayley and W. Ainslie, *Judges.*

Stamps—Documents—Admissability.

Case No. 194 of 1871.

Special Appeal from a decision passed by the Officiating Judge of Purneah, dated the 25th November 1870, *affirming a decision of the Subordinate Judge of that District, dated the 15th June* 1870.

Enayetoollah and another (two of the Defendants) *Appellants,*

versus

Shaikh Meajan and others (Plaintiffs) *Respondents.*

Mr. C. Gregory and *Baboo Rajendro Nath Bose* for Appellants.

Mr. R. E. Twidale for Respondents.

The provisions of the stamp law by which unstamped or insufficiently stamped documents are excluded, were framed primarily in the interests of the Government revenue, but were never intended to create or put an end to the rights of the parties. Where a document is admitted by the first Court as not requiring a stamp, its admissibility cannot be questioned in appeal.

Ainslie, J.—THE plaintiff in this suit sued as mokurrureedar to recover one-half of a certain mokurruree tenure from the defendant, who is the auction-purchaser in execution of a decree against the original *milikdar*, and who, subsequent to his purchase by means of certain proceedings under Act X of 1859, interfered with the plaintiff's possession. The plaintiff put forward a pottah of 1831 granted to 4 persons with a *ladavi* or deed of relinquishment executed by two of them in favor of the other two.

The defendant denied the genuineness of these papers; he objected that they were inadmissible on the ground of being unstamped or insufficiently stamped; he denied ever having dispossessed the plaintiff from his mokurruree tenure, and stated that the plaintiff never had possession within 12 years, and his claim was therefore barred by limitation.

The first Court admitted the pottah as not requiring a stamp under Regulation X of 1829, but did not admit the *ladavi;* and going into the whole of the case gave the plaintiff a decree.

The Lower Appellate Court has also found the pottah to be genuine and the objection on account of its being instamped immaterial. In respect of the *ladavi* the Lower Appellate Court agreed with the first Court that it was inadmissible, but held that the plaintiff's right under that deed was one which could only be questioned by the heirs of the grantors of the said deed, whereas those parties, although defendants in the case, did not take any such objection. The Lower Appellate Court also found that the pottah was genuine, that the plaintiff had possession under it and was dispossessed by the defendant, and therefore upheld the judgment of the first Court.

The points urged in special appeal are (1) that the pottah and the *ladavi* being unstamped and insufficiently stamped were not at all admissible in evidence; (2)