

zemindar in allowing his ryot to transfer the lands, and the transferee to erect *pucca* buildings, without immediately attempting to stop him in so doing, amounted to an acquiescence in the transfer and to standing by while the tenant spent a considerable amount of money on the buildings.

We, therefore, think that the plaintiff is entitled to the relief he asked for, namely, to *khas* possession. We, therefore, decree his suit on the terms of the plaint, reversing the decisions of the Courts below, with costs to be paid by the defendant, respondent.

The 26th April 1872.

*Present:*

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

Limitation — Lakheraj Title — Dispossession  
(under color of Sale in Execution).

Case No. 861 of 1871.

*Special Appeal from a decision passed by the Additional Judge of Hooghly, dated the 26th April 1871, reversing a decision of the Moonsiff of Jehanabad, dated the 30th December 1870.*

Dedar Buksh (Plaintiff), *Appellant,*  
*versus*

Ake Cowree Singh and others (Defendants),  
*Respondents.*

*Baboo Woopendro Chunder Bose for*  
*Appellant.*

*Mr. J. S. Rochfort and Baboo Gopeenath*  
*Mookerjee for Respondents.*

The twelve years' and not the one year's limitation applies to a suit to establish plaintiff's title as *Lakherajdar* and to establish that the lands in question are not the lands of the judgment-debtor in execution of a decree against whom defendants purchased the land and under color of that sale ousted plaintiff.

*Kemp, J.*—We think that the decision of the Judge is wrong in this case, and that the decision of the first Court is perfectly correct. This is not a suit to set aside an order under section 246, but it is a suit by the plaintiff to establish his title as *lakherajdar* and to establish that the lands are not the lands of the judgment-debtor Imdad Ali in execution of a decree against whom the defendant purchased the land. Moreover, the objection of the plaintiff under section 246 which was rejected on the 8th of September 1868, was not followed by any process on the part of the decree-holder, the defendants in this case. The attachment was allowed to fall through and the case was struck off, and it was in execution of another decree that the attachment and

sale took place, and it was under colour of that that the plaintiff was ousted. It appears to us that the one year's limitation does not apply to this case but that the twelve years' limitation applies. The case must, therefore, go back with reference to plots Nos. 1, 2 and 3 for the Judge to find on the twelve years' plea and on the merits if necessary.

With reference to lot No. 4, it is clear that the plaintiff's suit was dismissed in the first Court, and no appeal was preferred by the plaintiff. That decision is, therefore, final and must stand. With this modification the appeal is decreed with costs in proportion.

The 26th April 1872.

*Present:*

The Hon'ble W. Markby, *Judge.*

Appeal to Privy Council — Valuation — Act VII. of 1870, s. 7 — Declaratory Decree — Consequential Relief — Irrigation — Power of High Court — Consolidation.

In the Matter of

Ajuas Kooer, *Petitioner,*  
*versus*

Mussamut Luteefa, *Opposite Party.*

*Mr. R. T. Allan* for Petitioner.

*Mr. C. Gregory* for Opposite Party.

In ascertaining whether or not there ought to be an appeal to the Privy Council, the High Court has only to look at the value of the question at issue in the litigation.

In a case of conflicting claims with regard to the waters of a flowing stream, the matter at issue so far as regarded the applicant, having been to have her lands irrigated in the way she claimed, the value of that matter, according to section 7 of the Court Fees' Act VII. of 1870, was held to be the extent to which her interests would be deteriorated if that right could not be established.

*Quere.*—Whether the Court had power to consolidate the two suits at this stage.

*Markby, J.*—This application is made with reference to two cases, one, in which Mussamut Luteefa sued Mussamut Ajuas Kooer and other persons to establish certain rights which she claimed in a stream flowing from the Mohabeer Hill, and the other a suit in which the defendants in the former suit were plaintiffs, and the plaintiff in the former suit was defendant, relating to rights which were also claimed in the same stream. The two suits were dealt with in the Mofussil Court together and one judgment was delivered. In this Court the appeals are said to have been heard separately; but here also only one judgment was delivered. The application now is to be at liberty to prefer one appeal to Her Majesty's Privy Council against the decision of this Court of the 21st December 1871, and that the two suits and