

decision in question therefore is insufficient to establish the right to hold rent-free; besides this document, the Defendant has nothing but possession in which to found his claim to hold rent-free. He has no sunnud, nor is his tenure registered nor is there proof that he was in possession before the grant of the dewanee. We therefore consider the claim to hold rent-free not established, and, reversing the decision of the zillah Judge, decree to the plaintiff the right to resume and assess the land, and to collect the rents of the same under the regulations.

JUDGMENT OF MR. DICK.

I hold that claims, such as this, to assess lands held as rent-free, are subject to the law of limitation. Such claims on the part of Government are positively and expressly so subjected under clause 2, section 2, Regulation II, 1805: consequently, as a matter of course, all claims on the part of zemindars, &c., whose rights are derived from and dependent on the rights of Government. Since therefore there is unexceptionable proof the respondent's father [25] *bona fide* purchased the property in 1231 B. E. or 1824 A. D., from one who, it is also in proof, had possession in 1804, and that his father and mother had held quiet possession rent-free, under a *bona fide* legal title, upwards of 12 years, his right under clause 2, section 3, of the above cited regulation, cannot be questioned, and the Judge's decision should be upheld.

*The 28th January, 1846.*

PRESENT: J. F. M. REID AND A. DICK, *Judges*, AND W. B. JACKSON,  
*Offg. Temporary Judge.*

CASE NO. 177 OF 1843.

*Special Appeal from the decision of Mr. John Dunbar, Judge of Midnapore.*

BULRAM PUNDA AND BISHESHUR PUNDA, *Appellants v. SHEIKH GOOL MOHUMUD, and after his death, KUSSUDUT OONNISSA, his wife, Respondent.*

[*Lakhiraj—Burden of proof of rent-free tenure—Absence of valid grant—Limitation—Mere possession as rent-free land after the dewanee.*

Possession since the acquisition of the *Dewanee* gives no claim to hold rent-free. In the absence of proof of a good and valid grant, a suit to assess is not barred by limitation.

*Per Dick, J. (Dissentente).* Such suits are subject to the bar of limitation by long possession of the land as rent-free land.]

THE respondent sued the appellants, in the Collector's Court of Midnapore, on the 29th May 1833, under section 30, of Regulation II of 1819, to recover possession of 45 beegahs 16 kuttahs of rent-paying land, situated in the respondent's tenure, called mouzah Kooee and others, and which was fraudulently held by the appellants as rent-free land.

The appellants stated, that the respondent himself admitted, that he had obtained possession of mouzah Kooee and others in 1228; and they further urged, that for 22 years before, the respondent had been in possession of the same mouzah, as farmer, during the whole of which time he had never sued for rent, and that his action was accordingly barred by the rule of limitation. They pleaded that they and their ancestors had, for several generations, been in possession of 31 beegahs 5 kuttahs of rent-free land, and referred to papers, which, they asserted, had been filed in 1207, in which the [26] above land was entered as rent-free, and to a letter from the late Board of Revenue, dated

the 26th May 1803, stating that the rent-free land (in which it is asserted the disputed land is included) should be exempted from assessment.

On the 26th May 1841, the Deputy Collector decided for the plaintiff, with costs; the defendants having failed to produce any deed of grant, by which the validity of their alleged rent-free tenure could be upheld, and it not being apparent that the disputed land was included in that referred to in the Board of Revenue's letter, and the defendants' witnesses speaking only from hearsay to the point of long continued exemption from the payment of revenue.

This decree was confirmed by Mr. Dunbar, on the 24th February 1843.

A special appeal was admitted in this case, by Messrs. Tucker and Reid, on the 21st June 1843; because an action, under section 30, of Regulation II of 1819, ought to have been to resume, and assess, unlawful rent-free land, and not to obtain possession of the same; because the value was incorrectly laid; and because it was doubtful, whether the action were not barred altogether by the rule of limitation.

JUDGMENT OF MESSRS. REID AND JACKSON.

The case, this day, came to a hearing. It appears to Messrs. Reid and Jackson, that the suit is not barred by the rule of limitation; and further that no sufficient proof has been adduced by the defendant that he holds the land in question under a good and valid rent-free grant: no grant whatever is filed, and it appears that none has ever been exhibited. Possession since the acquisition of the dewanee gives no claim to hold rent-free. We are therefore of opinion that the claim of the plaintiff, to resume and assess the land in question, is established, and decree the same. Costs against the appellant.

JUDGMENT OF MR. DICK.

I hold that this suit too is untenable by lapse of time. My reasons are fully recorded in the cases Nos. 23 of 1845 and 134 of 1837, this day decided.

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[27] *The 28th January, 1846.*

PRESENT: J. F. M. REID AND A. DICK, *Judges*, AND  
W. B. JACKSON, *Offg. Temporary Judge*.

CASE NO. 178 OF 1843.

*Special Appeal from the decision of Mr. John Dunbar, Judge of Midnapore.*

KOOSE CHUCKERBUTTEE, *Appellant* v. SHEIKH GOOL MOHUMED, and after his death, his wife, KUSSUDUT QONISSA, *Respondent*.

[See Head-note in 2 S.D.A.R. 25, *supra*.]

THE circumstances of this case are similar to those set forth in the case No. 177 of 1843, both in respect of the pleadings of the parties, the grounds of the decisions of the Deputy Collector and the Judge, and the reasons of Messrs. Tucker and Reid for admitting a special appeal.

JUDGMENT OF MESSRS. REID AND JACKSON.

The same order was accordingly passed, and the plaintiff was declared competent to resume and assess the land in dispute. Costs against the appellant.

JUDGMENT OF MR. DICK.

The same as in No. 177 of 1843, this day decided.