

[22] As to their being no registry of the *sunnud* of the grant, as required under the law of 1793, there is no proof that the proclamation for such registry was ever duly promulgated under that law, or that registers were duly prepared for the purpose. It is notorious, that in some districts not a trace of the law having been duly published and the registers formed, exists. Consequently the law cannot be held binding, especially after such a lapse of time.

There are cases which, under Regulation XIX. of 1793, and Regulation III, 1828, are excepted from the law of limitation. They must, however, be classed under the general head of fraudulent acquisition; all of which are excepted by clause 3, section 11, Regulation II. 1805. But the *onus probandi* in them all rests on the plaintiff—in the former cases, proof of the acquisition of the tenure subsequent to the year 1790—in the latter, of possession by force or fraud: for unless “such violent or fraudulent acquisition be established to the satisfaction of the Court in which the claim may be preferred,” the claim is barred by lapse of time prescribed.

I have already shewn by reference to clause 2, section 11, Regulation XI. 1805, that the mere fact of the claim being for “the assessment of land held exempt from the public revenue,” without legal and sufficient title to exemption, forms no exception to the law of limitation, on the contrary, is positively and expressly subjected to it.

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*The 28th January, 1846.*

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

CASE NO. 134 OF 1837.

*A Regular Appeal from the decision of the Judges of Rajshahye.*

DOST MAHOMED KHAN CHOWDRY (*Plaintiff*) *Appellant* v. KASHEE-ISREE DEBEA, and after her death her son, ANUND PERSHAD RAI (*Defendant*), *Respondent*.

[*Lakhiraj—Burden of proof—Mere non-payment of rent—Limitation—Absence of registry—Possession before the dewanee—Regulation II of 1805, section 2.*

In the absence of a *sunnud* registered as required by the Regulation or of proof of possession before the *dewanee*, the claim to hold land rent-free cannot be established. Mere non-payment of rent does not bar by limitation the right to assess and demand rent.

*Per* DICK, J. (*Dissentente*). Claims to assess land on the part of Government being expressly subject to the bar of limitation by section 2, Regulation II of 1805, such claims on the part of zemindars who have only derivative rights are subject to the bar of limitation. Holding of land as rent-free for 12 years bars the zemindar's right to assess.]

THE plaintiff, the proprietor of a *kharijah* talook, consisting of 3½ annas of mouzah Goonaree Gaon, Lalmuneepeer *alias* Dutpara, [23] &c. instituted this suit in the zillah Court of Rajshahye, to obtain possession of 8 beegahs 5½ biswas of rent-paying land in Lalmuneepeer *alias* Dutpara from Moost. Kashee Isree Debea, on the plea that she had obtained possession thereof, with the aid of the police, in execution of the order of the magistrate under Regulation XV. 1824, which awarded to her possession thereof as 8 beegahs 2 biswas of burmooter land sold to her husband, Kishen Pershad Rai, by Kishen Nuravn Thakoor as his share of 17 beegahs 5½ biswas of burmooter land held in the names of Panch Kuroree Thakoor and Bhyroo Kunt Thakoor. Suit laid at 7 Rupees per beegah, Rupees 57, 12 annas on a stamp value 4 rupees.

Kashee Isree Debea pleaded that her husband having purchased the 8 beegahs 5½ biswas of burmooter land in Lalmuneepeer, on the 15th Kartiok

1231 B. S. for 94 rupees, from Kishen Nurayn Thakoor, ~~he~~ and herself had held possession till 1241, when the plaintiff illegally attaching it, she had recovered possession by order of the magistrate.

The suit having been referred to the Collector, under section 30, Regulation II, 1819, for report, that officer returned it, stating that though it had been pending before him for nine months, the defendant had not filed any proof of a rent-free tenure, which therefore he considered as not proved.

The acting Judge of Rajshahye, D. C. Heyland, dismissed the plaintiff's claim on the 13th January 1837, on the plea that he had adduced no proof that the land was *mal*; and that a decree of the zillah Court of Rajshahye, dated 22d May 1804, proved that, on the complaint of Chunder Nurayn Sirma Thakoor and Bhyroo Kunt Sirma against the former zumeendar, 17 beegahs 5 biswas of burmooter land in Lalmuneeppoor were decreed to the plaintiff; and the defendant's kubaleh, the fact that Kishen Nurayn Thakoor *alias* Panch Cowree, son of Chunder Nurayn Sirma, had sold 8 beegahs 2 biswas of that land in 1231 B. S. to the husband of the defendant. As the decree aforesaid had become final, he was of opinion that no one could afterwards impeach the validity of the rent-free tenure; and that moreover the possession of the defendant had been proved in the Regulation XV. 1824 case, in the course of which the mokhtear of the plaintiff had asserted his client had no claim over the land entered in the Kubaleh.

The plaintiff preferred an appeal to the Sudder Dewanny Adawlut. The appeal was taken up by Mr. Barlow, who, on the 12th February 1841, proposed to reverse the Judge's decree, on the ground that the decree of 1804 had merely determined the question of possession of the alleged burmooter land, without any investigation as to the validity of the tenure, and that the defendant had filed no sunnud to prove that the land was really rent-free.

M. Lee Warner, on the 1st March 1842, recorded his opinion that, though the rent-free tenure was not proved, the long possession of the party, from whom the defendant's husband purchased, and of the defendant herself, entitled her to retain possession, and proposed to decree that the plaintiff was at liberty to demand rent from the defendant at the pergunnah rates, and to oust her from possession only in the event of her refusing to engage for the rent on such terms.

The case next came on before Messrs. Lee Warner, Reid and Barlow, who, at a joint sitting, on the 2d July 1842, sent back the case to the Judge, with instructions to proceed under the rule laid down in the circular order of 20th August 1841, and require the plaintiff, by a supplementary plaint, to make up the amount of the stamp to 18 years' produce of the contested land.

The Judge having found the produce of 8 beegahs 5½ biswas to be 8 annas per beegah, or 4 rupees 2 annas 2 gundas per annum, of which 18 years' produce amounted to Rs. 74-7-1-2, the plaintiff filed a supplementary petition on an additional stamp value 4 rupees, and a similar supplementary petition of appeal was filed in this Court, and Anund Pershad Rai appeared to defend the appeal in the place of his mother, Kashee Isree Debea, who had demised. The case having been once before a full Court, it was thought proper that it should be finally decided by a full Court, and was accordingly brought on this day.

#### JUDGMENT OF MESSRS. REID AND JACKSON.

The decision of the register, filed in this case, dated 22nd May 1804, merely shows that the former zemindar admitted the right of the occupant to hold rent-free, and allowed him so to hold his tenure; but the present zemindar has the same rights as were possessed by the zemindar at the time of the decennial settlement, being the successor of an auction-purchaser. The

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