

I concur in the opinion recorded by Mr. J. F. M. Reid. The rule of limitations clearly prevents the Court from entertaining the suit for the talookah Dhoradhur and the garden land; that portion of the claim must therefore be dismissed; but this rule does not apply to the Shunkernundee lands,—the person in possession stating that he holds possession as plaintiff's farmer, which cannot be looked on as a "fair title conveying a right of property," the expression used in the regulation on this head; the claim to this land may therefore be heard. I find no sufficient proof of the farm for 51 years having been actually given, there being neither proof nor probability to support it. I would therefore reject the defendant's claim under the lease, and would award possession of 12 annas Shunkernundee to plaintiff.

Ordered therefore that the decree issue adjudging 12 annas Shunkernundee to plaintiff, with mesne proceeds from the date of the decree of the principal sudder ameen; the remainder of plaintiff's claim is dismissed—costs of the Zillah Court to be paid as laid down in the decree of the principal sudder ameen—costs of appellant in the Sudder Dewanny Adawlut (in proportion to the value of the portion of the claim adjudged to plaintiff) against defendant Goordass Bonnerjee—the whole of the respondents' costs in this Court against respondent.

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

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

CASE No. 23 OF 1845.

*Special Appeal from the decision of the Judge of East Burdwan  
dated 12th September, 1842.*

GHOSAIN DOSS, *Appellant v. GHOLAM MOHEEOODDEN AND ANOTHER,*  
*Respondents.*

[*Lakheraj—Burden of proof of rent-free tenure—Regulation II of 1819, section. 30—No necessity for zemindar to prove previous possession as mal—Limitation—Mere non-payment of rent—Regulation XIX of 1793—Regulation XI of 1805—Possession before decennial settlement.*

The burden of proving a rent-free tenure lies on the party who relies on it. Mere non-payment of rent for any length of time will not make the tenure a rent-free tenure. The Zemindar is not bound to prove previous possession of the disputed land as *mal*. In the absence of possession as *lakheraj* before the decennial settlement, the claim to hold as *lakheraj* cannot be allowed.

*Per Dick, J. (Dissentente).* A claim to assess land can be barred by limitation by the land having been held as rent-free land for 12 years prior to suit. Under Reg. XIX of 1793 and Regulation. XI of 1805 it is only cases coming under the head of fraudulent acquisition that are excepted from the law of limitation. Where the land has been shown to have been held as free for a long time, the absence of a registry of a sunnud is immaterial where the law requiring such registry had not been duly promulgated.]

*Claim—Possession of Bs. 5.—10, Garden Land in Alumgunge, held by the defendant, under an invalid lakheraj tenure, laid at 297 Rupees.*

THE claim is for the resumption and assessment of a small lakheraj tenure, held by defendant in Alumgunge, under Regulation II, 1819. The plaintiff grounds his claim on the circumstance that the defendant has no good proof that the land in question is entitled to be exempted from rent.

The defendant produces, in proof of his right to hold the land rent-free, three deeds of sale of the years 1204, 1207, and 1211, by which the land was transferred under the description of *lakheraj*, *aymah*, *mowroosee*: and states that

it has ever since been held free of rent, and that it was so held by Zoolfecar Khan before the decennial settlement. Several witnesses of great age, 70 and 80 years, are produced, who attest the possession of the defendant is rent-free as long as they can recollect.

The claim was thrown out, on the 22nd September 1841, by the Collector; and his decision was afterwards confirmed by the judge of zillah Burdwan, under date the 12th September 1842.

On the 14th December 1844, Messrs. Reid and Tucker admitted a special appeal on the following grounds:—"There is no proof in this case of possession under a *lakheraj* grant prior to the decennial settlement: subsequent possession is insufficient to sustain a claim to hold as rent-free, and on this the decision is grounded."

#### [21] JUDGMENT OF MESSRS. REID AND JACKSON.

In this case, the judge has erroneously assumed that it was incumbent on the plaintiff to prove previous possession of the land in dispute as *mal*, and he rests his decision mainly on the want of such proof, citing clause 4, section 30, Regulation II, 1819, as requiring it. That enactment however contains no such rule; on the contrary it directs that the holder of the tenure shall produce his papers to shew his right to hold rent-free; and the zemindar shall be allowed to comment on them. In this case, the plaintiff stands in the place of the zemindar, and unless defendant establishes his right to hold rent-free, the plaintiff is entitled to demand rent from him, and should gain his suit, unless there is any thing in the limitation of time in bringing such suits, which bars the admission of his claim. We know of no such limitation with regard to such suits. It has been already held by this Court, that the neglect to demand rent for 12 years does not deprive the zemindar of the right to demand it, when he pleases to do so. The documents and witnesses filed in this case prove that the land has been held since 1204 *lakheraj*; but there is no sunnud or grant of the land, nor does it appear that any such grant has been registered; there is therefore no proof that the land is rent-free, except occupation as rent-free since 1204, or considerably since the decennial settlement. Even the witnesses of 80 years of age cannot speak personally to possession before the decennial settlement. In the absence therefore of such proof, we do not think the defendant entitled to hold the land rent-free; and we adjudge to plaintiff the right to assess and demand rent under the regulations, reversing the decision of the zillah Judge. Costs against respondent.

#### JUDGMENT OF MR. DICK.

Under Regulation XIX, section 11, clause 2, 1793, no claim to hold land rent-free shall be heard in any Court of justice, if the land has been subject to the payment of rent during the 12 years previous to the institution of the suit. The converse must therefore in equity be held good—that no suit, for land held exempt during 12 years previous to the institution of the suit, can be heard.

I cannot concur in the opinion that suits to break rent-free tenures, in other words, for resumption, are not subject to the law of limitation. It seems to me in direct contradiction to clause 2, section 11, Regulation XI, 1805, which subjects "all claims on the part of Government, whether for the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption," &c. to the law of limitation of 60 years, and, of course, the claims of a like nature of individuals, who all hold of Government, to the law of limitation of 12 years applicable to them.

In the present instance the existence of the rent-free tenure has been proved nearly 50 years back, and it seems to me preposterous to expect more.

[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.

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  $3\frac{1}{2}$  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  $5\frac{1}{2}$  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  $5\frac{1}{2}$  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  $5\frac{1}{2}$  biswas of burmooter land in Lalmuneepeer, on the 15th Kartiok