

Patna, under date the 12th July 1854, affirming that of Moulvee Moheecooddeen, acting additional sudder moonsiff of that district, under date 27th July 1853, in the case of Musst. Chundrawuttee, plaintiff, *versus* Thomas Pigou, defendant.

It is hereby certified that the said application is granted on the following grounds:—

Plaintiff sued the defendant, Mr. Thomas Pigou, for rent of certain land in the city of Patna. Defendant pleaded that the rent had been already paid to one Bolakee Lal, a coparcener of the plaintiff, who ought to have been party to the suit; that the estate, of which he was in charge, was under control of the registrar of the Supreme Court, and that the defendant was only acting as an agent on his part, the engagements which had been taken, having been in the name of Mr. John Pigou, deceased. The moonsiff overruled all these objections, considering that there was no necessity to make Bolakee Lal a party to the suit, and that the agent was liable for the rent under the engagement of the deceased John Pigou.

On an appeal to the principal sudder ameen, he confirmed the moonsiff's orders on the ground that the rent sued for was unliquidated, but without going into the objections as to defect of parties and as to the payments which were alleged to have been made to the absent coparcener Bolakee Lal. The special appeal is preferred on the ground that the principal sudder ameen had neglected to try any issues on the points raised in appeal respecting the absence of Bolakee Lal, or the non-liability of defendant on account of his being merely the agent in charge for the Supreme Court officer. It is further urged that the original engagement for Mr. T. Pigou had never been produced.

We consider that it was incumbent on the principal sudder ameen, in trying the appeal, to determine the issue raised in respect to the absence of Bolakee Lal, who is stated to have received the rent from the defendant, especially as plaintiff admits that he is a [819] coparcener, though an unregistered one. The other pleas raised as to the non-liability of the defendant, as being only the agent for the registrar of the Supreme Court, should also have been determined in appeal, and the kubooleut called for. We return the case for re-trial by the principal sudder ameen with advertence to the above remarks.

The 9th June, 1856.

PRESENT: J. S. TORRENS, C. B. TREVOR AND H. C. METCALFE, ESQRS.  
*Extra Judges.*

CASE NO. 236 OF 1853.

Regular Appeal from the decision of Syed Ahméd Buksh, Principal Sudder Ameen of Rungpore, dated 4th April, 1853.

CALICHUNDER LAHOOREE (*Plaintiff*), *Appellant* v. PRUSONNOCOMAR TAGORE (*Defendant*), *Respondent*.

[*Suit for possession of land—Adverse possession—Assertion of title by defendant in his own right for over 12 years—Plaintiff's knowledge and acquiescence—Limitation—Adverse possession complete—Suit barred.*]

Suit held to be barred under the statute of limitation where the party suing for the lands had remained silent in the assertion of his title in them during a series of litigation to which he had originally been made a party, in the resumption and special commissioner's court, extending over a period far in excess of 12 years.

*Vakeels of Appellant*—Baboo Bungeebuddun Mitter and Mr. R. T. Allan.  
*Vakeels of Respondent*—Baboos Ramapersaud Roy, Sumbhoonath Pundit, Kishen Sukha Mookerjea and Moonshee Ameer Alee.

SUIT laid at rupees 12,500.

Plaintiff is proprietor of 4-annas share in pergunnah Connyebaree in Goalpara, Assam, and instituted this suit on the 5th of August 1850, to recover possession from the respondent of that proportion in 2,500 boegas of alluvial land, which he claims as belonging to the above pergunnah, and situated to the east of the river Berhampooter, and west of a nullah, stated by respondent to lie in the original bed of that river. Plaintiff sued the respondent as in possession of the lands, making his (plaintiff's) co-sharers in the 12 annas of Connyebaree also defendants, as he alleges they had avoided themselves suing in collusion with the respondent, Prosannocoomar. Respondent claims the lands as belonging to pergunnah Patilladoho, to which he alleges they were originally attached, and had remained on the west of the old course of the Berhampooter, the real boundary between the two pergunnahs; a plea of limitation was put forward in the lower court, on the ground that respondent had been restored to possession of the lands ever since a decree passed by the special commissioner, under Regulation III of 1828, on the 18th [520] April 1838, in resumption suit, which had been brought by the Government, and that 12 years and upwards of 3 months having elapsed from such possession alone, plaintiff's action was barred. The principal sudder ameen, whilst he went into the merits of the case, and determined that the lands belonged to Patilladoho, the nullah to the east forming the boundary, nevertheless gave an opinion that 12 years, 3 months and upwards had elapsed since date of possession acquired by respondent after the special commissioner's decree and before date of suit.

The first question which we have to take up in appeal is, whether the statute of limitation applies, and whether plaintiff is shown to have been out of possession more than 12 years before suit. It appears that the Government resumption suit for the lands was instituted on the 1st of April 1828; that on the 10th of January 1834, they were resumed, attachment taking place six months afterwards. In the resumption suit, in the first instance, plaintiff did not appear, nor yet after the decree or attachment. The (defendant) respondent however did so, and defended the resumption suit throughout, so also, after decree, he appealed to the special commissioner, plaintiff also in that court, though cited, not appearing. On the 18th of April 1838, distinct orders were passed by the special commissioner, directing, on the appeal of this respondent, that the lands should be restored to his possession and collections refunded to him. It is argued by the pleaders of appellant that though the orders of the special commissioner directed possession to be given to respondent, on the date stated, he could not show that he had then actually entered on such possession; that this entry did not take place until Aghun 1245 B. S., or November 1838, which left plaintiff several months of the 12 years to bring his suit. Respondent's pleader challenges appellant to show that possession was not entered on until the date alleged, and contends that the special commissioner's orders, in the absence of anything to the contrary to show that possession did not then take place, must be taken as the true date; that these orders directed respondent to enter on collections of the mehal from the commencement of 1245, or April 1838, and that even taking the date of the collector's perwannah, giving effect to the orders and dated the 1st August 1838, the suit was beyond time. Plaintiff (appellant), we observe, with advertence to the above argument, cannot show that respondent acquired possession only in Aghun 1245, and under all the circumstances, and in the absence of proof of any more recent possession, we think the date of the special commissioner's orders appear the safest and the most binding, in determination of the point as put. We consider, moreover,

that plaintiff not having appeared in the resumption suit, or in appeal after the date of attachment of the lands in 1834, he cannot maintain his having held any real or constructive possession even from that [521] date so far from his being able to do so. It appears to us, that there was a constructive possession held during the period intervening the attachment by the collector, and the release ordered by the special commissioner, by respondent, who had appeared as the party in the resumption suit, the collector holding the possession during the interval for the party who eventually gained the suit, and who must be considered to have appeared in it alone, and so defended it, after what was in fact a relinquishment made by non-appearance of the (plaintiff) appellant. We confirm the orders of the lower court as dismissing the claim, but do so without going into the merits, as on the above ground we find the case barred under the statute; appellant liable to costs.

The 11th June, 1856.

PRESENT: A. SCONCE, ESQ., *Officiating Judge* AND C. B. TREVOR, ESQR.,  
*Extra Judge.*

PETITION NO. 1782 OF 1855.

[*Practice, parties—Dispute between ryots of same zamindar regarding title to land as appurtenant to this or that village of zamindar—Zamindar, if necessary party.*]

*Held* that in a matter of litigation between two ryots as to whether the land in dispute belongs to this or that village of the same zamindar, it is not necessary to make the zamindar a formal defendant, his right being in no way affected; nonsuit consequently reversed, and suit remanded for investigation on the merits.

*Vakeels of Petitioners*—Moonshee Ameer Alee and Moulvee Aftabooddeen.

*Vakeel of the Opposite Party*—Baboo Gobindchunder Mookerjee.

IN THE MATTER OF THE PETITION OF RUGOONATH ROY AND OTHERS, filed in this court on the 18th December 1855, praying for the admission of a special appeal from the decision of Maulvee Mohamed Rooknooddeen Khan Bahadoor, principal sudder ameen of Shahabad, under date the 5th September 1855, reversing that of Syed Akbar Alee, moonsiff of Buxar, under date the 23rd April 1855, in the case of Rughoonath Roy and others, plaintiffs *versus* Bahadoor Sha Khan, defendant.

It is hereby certified that the said application is granted on the following grounds:—

Rughoonath Roy and others, petitioners, sued defendant for 22 beegas as belonging to mouza Chilhurree; the defendant pleaded that the land was his, and appertained to the village of Khosalpore; Raja Mohessurbuksh Singh, who is the zamindar of both the above mentioned villages, presented a petition before the lower court, stating that the land in dispute was within the village of Khosalpore.

The moonsiff gave plaintiffs a decree; on appeal, however, they were non-suited by the principal sudder ameen, because they had not formally made Rajah Mahessurbuksh Singh a defendant in the case.

[522] Plaintiffs now appeal specially and urge that in the dispute between the defendants and themselves, as to whether the land belonged to this village or the other of the Rajah, it was not necessary to make the Rajah a formal defendant, and consequently that the order of nonsuit, passed by the principal sudder ameen, is incorrect.