APPELLATE JURISDICTION (*a*)

Regular Appeal No. 57 *of* 1864.

SRI KRISHNA DEVU GÁRU, Mokhásadár of Signapore..... } *Appellant.*

SRI RÁJA RÁMACHANDRA DEVU MAHÁRÁJULU GÁRU, Zamindár of Jeypore. } *Respondent.*

In a Suit brought by a Zamindár to recover either assessment at the rate of Rupees 5,000 per annum or a parganna, part of the plaintiff's Zamindári, the defendant pleaded that he had held the parganna as his own before and ever since the permanent settlement, and that the claim was barred by both the old and the new statutes of limitation. The Lower Court over-ruled both pleas, the first, because it held that under Regulation XXV of 1802, the Zamindár's title could not be questioned ; the second, because it considered that the decision in Suit No. 6 of 1821 prevented the application of the statute on the ground of subsequent hostile possession, and that the plaintiff had 12 years from the time he came into possession :—*Held*, first, that there is nothing in the Regulations relating to the permanent settlement showing an intention to affect rights of property in existence at the period of their being passed. Secondly, that the decision in No. 6 of 1821 will not be followed, at all events in a case in which the present claimant is the grandson of him against whom, as to property of a normal character, the statute would have begun to run.

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THIS was a regular appeal from the decree of D. F. Carmichael, the Agent to the Governor of Vizagapatam, in Original Suit No. 22 of 1864. The plaintiff stated that the parganna of Singapore was included in the assets of his Zamindári, on which the permanent settlement was fixed ; that for some time past it had been enjoyed as mokhásа by the defendant ; that the defendant refused to pay any rent. Plaintiff therefore sued for the parganna or a rent of Rupees 5,000.

The defendant answered that the disputed parganna was in possession of his family as lákhiráji before and ever since the permanent settlement, and that plaintiff's claim was therefore barred both by Regulation II of 1802, Section XVIII, Clause I, and by Act XIV of 1859, Section I, Clause 14.

(*a*) Present Holloway and Innes, J. J.

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The Lower Court decreed for the plaintiff for the following reasons :—Under the authority of Sadr Court decree No. 6 of 1808, the Court considers itself restricted from investigating the merits of defendant's claims to the proprietary right of the parganna. By Regulation XXV of 1802, the British Government, before fixing a permanent assessment on the lands, asserted for itself, as the ruling power, the actual proprietary right, and as it granted away that right in this instance to the Zamindár of Jeypore, its competency to do so cannot be questioned. The Court cannot listen to defendant, when he claims the proprietary right in the face of this grant, nor can any *laches* of his father, the late Zamindár, prejudice the plaintiff his son and successor, a doctrine first laid down in Sadr Adálat, No. 6 of 1821, and subsequently affirmed. The plaintiff has two years within which to bring his suit, and he has brought it within a third of the time.

The defendant appealed upon the grounds :—

I. That the Civil Judge is wrong in holding that the terms of the istimrar sannad preclude him from entering upon the question of the defendant's title.

II. That in any case the defendant was entitled to show that neither the plaintiff nor any of his ancestors had exercised any rights of property in the parganna, and that the suit was barred by the law of limitation.

III. That the Judge was wrong in treating the defence as resting on laches, whereas it was based upon the statutory bar.

Advocate General and *Sloan*, for the appellant, the defendant.

The Court delivered the following

JUDGMENT :—The suit was brought to recover either a parganna or assessment at the rate of Rupees 5,000 per annum. Plaintiff alleged the land to be part of his Zamindári.

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Defendant pleaded that before and ever since the permanent settlement, he had held the parganna as his own, and he pleaded both the old statute (*a*) and the new (Clause 14, Section 1) as barring the claim.

The Agent overruled both pleas, the first because he held the operation of the Government, under Regulation XXV of 1802, to be an asserting of their own right and a grant of that right to the Zamindár, whose title could not be questioned. The effect of this was to overrule the plea of the defendant as to his title previously to the permanent settlement. He further held the decision in No. 6 of 1821 to prevent the application of the statute on the ground of subsequent hostile possession. The Agent held in accordance with that decision that the plaintiff had 12 years from the time at which he came into possession.

We are unable to agree with the first of these positions, because we could see nothing in the regulations relating to the permanent settlement, showing an intention to affect rights of property in existence at the period of their being passed. We found on the contrary several implicit declarations, and one very explicit, of the legislature, that they were not intended to affect rights of property at all.

As to the second point, the issue sent in Regular Appeal No. 23 of 1865(*b*) showed that the majority of the Court do not concur in this construction of the statute, at all events in a case in which the present claimant is the grandson of him against whom, as to property of a normal character, the statute would have begun to run. The issue shows this; but the judgments of the Chief Justice and of the dissenting Judge also show that there was no assent to the doctrine of the Sadr Court, that, on the ground stated by them, the statute will run against the grandfather and the father, but will only begin to run against the grandson upon his coming into possession.

On these grounds we referred to the Agent the following issues calculated to raise the question of the statute in the various ways in which the defendant had pleaded it.

(*a*) Reg. II of 1802, Sec. XVIII, Cl. I.
(*b*) III. M. H. C. Reps. p., 5.

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Issues :—I. Has the family of defendant held these six taluks under a claim of ownership, and consequently by a possession hostile to the family of plaintiff, ever since the permanent settlement ?

II. Were the taluks at the period of the permanent settlement in possession of the defendant's family on such claim of right ?

III. What right of ownership have the plaintiff's family exercised over these taluks ?

IV. Has the possession of defendant been for any, and if so, for what period, adverse ?

The Agent decided that there had never been hostile possession, that there had been payments in acknowledgment of tenancy. He finds against the defendant upon all the issues, and his finding upon the 3rd issue succinctly expresses his view of the effect of the evidence as to defendant's title. He says " that the plaintiff's father granted this parganna to defendant's father, partly for the grantee's maintenance, and partly on rent ; that the grant was further conditioned for service, and that such service was from the circumstances of the country, *bona fide* requirement, and not of the nature of grand or petit serjeantry."

We are unable to dissent from the Agent's view of the result of the evidence.

It is undoubtedly a circumstance of considerable weight in favor of the plaintiff's title that during the permanent settlement there is not a trace of the present claim.

The rebellious conduct of the defendant's grandfather, and his restoration to the management in 1828, also seem to be made out satisfactorily,

The evidence as to the payments is slender, but not therefore less satisfactory. Very clear and definite evidence of the transactions of a country in the most unsettled state would not have been satisfactory. The direct evidence of the witnesses is supported by extracts from the Zamindár's accounts, of course subject to the objection that they may have been made by the Zamindár fraudulently in his own

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[illegible]or. We can, however, see nothing in this case of the concoction of evidence, or of the improvement of genuine evidence by the addition of false matter.

In strictness the letters purporting to be the product of defendant's purohit are not shown by anything upon the record to have been receivable in evidence. They were perhaps admitted by the other side. That some dependent, rather than the defendant or his father, should have written such letters is eminently probable.

The same remark applies to the letter announcing that the Zamindár had, in consideration of their representations, allowed the payments to stop.

The only piece of evidence in answer to the plaintiff's case is a copper sannad and the evidence of the grantee that he has long held under defendant's ancestors and defendant. The singular thing would be if, during the long management confessedly held by the defendant's family, there were not such grants.

It is quite impossible not to hold that the Agent has correctly concluded that no hostile possession has been proved, and that there is satisfactory proof of a holding as tenant under the plaintiff.

No objection has been made to the sum at which the parganna has been assessed, and the objection that the Agent had not recorded the depositions, as required by the Procedure Code, was withdrawn at the hearing of the appeal. We understood that in supersession of the Agency rules the Civil Procedure Code had been introduced into the Agency tracts. If so, the evidence must, unless there is a consent to the use of the Agent's notes, be for the future recorded in the vernacular.

This appeal is dismissed.

Appeal dismissed