

co-sharers and the tenant are at liberty to enter into any fresh contracts which the law allows; but no Court of Justice ought to presume such a cancellation or determination of the lease, from the mere fact of a separate payment of rent to one or more of the co-sharers.

The right of one co-sharer to enhance the rent of his share separately must be governed by the same principles as his right to a kabuliat.

The Rent Law in our opinion does not contemplate the enhancement of a part of an entire rent; and the enhancement of the rent of a separate share is inconsistent with the continuance of the lease of the entire tenure.

In each of the special appeals therefore, 1713 and 2601, the judgment of the lower Appellate Court and of the High Court will be set aside, and the plaintiff's suit in each case will be dismissed, with costs in all the Courts.

APPELLATE CIVIL.

Before Mr. Justice L. S. Jackson and Mr. Justice Tottenham.

NARAIN CHUNDER (PLAINTIFF) v. TAYLER AND OTHERS
(DEFENDANTS).*

1878
June, 12.

Settlement by Revenue authorities—Right of Suit—Limitation—Effect of Order under Act IX of 1847.

Although a settlement made by the Revenue authorities under Act IX of 1847 is final, the fact of such settlement will not preclude a proprietor from seeking in a Civil Court to establish his right to the lands so settled.

In suits instituted by a purchaser to recover possession of an estate sold for arrears of Government revenue due in respect of such estate, the period of limitation cannot be calculated, under any circumstances, from a day anterior to the date of purchase.

THIS was a suit for possession of Turuf Hossainpore in Parganna Kakjote, and for wasilat. The plaint stated that the lands in dispute were permanently settled in 1793, and that, at the time of the revenue survey in 1848, the said lands lay on

* Regular Appeal, No. 268 of 1876, against the decree of C. F. Manson, Esq., Deputy Magistrate and Deputy Collector of Zilla Rajmahal, dated the 11th July 1876.

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GUNI
MAHOMED
v.
MORAN
AND
DOORGA
PROSHAD
MYTSE
v.
JOYNARAIN
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the north-east side of the River Ganges, and were so marked in the survey map; that, in the year 1862, the river altered its course eastwards, submerging the whole of the pargauna containing the lands in dispute,—these lands, between the years 1864—1873, gradually re-appeared on the old site, but were now situate on the western side of the Ganges; that the proprietress, one Chundraboli Debia, having failed to pay the Government revenue, the lands were put up for sale under Act XI of 1859, and, on the 21st May 1874, purchased by the plaintiff. The defendants, *inter alia*, contended that the lands in dispute were an accretion to, and formed part of, their zemindari, and were permanently settled with them by the Collector of Purnea, under Act IX of 1847; that such permanent settlement and assessment of rent made under the orders of the Board of Revenue were final according to law, and therefore beyond the jurisdiction of the Civil Court; that, at the time of the thakbust survey in the year 1865-1866, a question in respect of some of the lands now in dispute was raised by the then proprietor of Turuf Hossainpore, which was decided against such proprietor on the 28th May 1866 in a suit instituted under the order of the Settlement Officer between the parties. The defendants also contended that no regular civil suit having been brought within three years to set aside this finding, the present suit was barred, and further, that the defendants having been in possession of the disputed lands for upwards of twelve years, the plaintiff's suit was also for this reason barred by limitation.

The Court of first instance, without going into the facts, dismissed the suit on the ground of limitation, holding that the suit was barred on both the pleas taken by the defendants on this point. The Court also held that the suit could not be maintained, inasmuch as the assessment made by the Revenue authorities was final, and was of opinion that this view was supported by the decision of *Dewan Ram Jewan Singh v. Collector of Shahabad* (1).

Baboo *Annoda Persaud Banerjee* and Baboo *Nullit Chunder Sen* for the appellant.

(1) 14 B. L. R., 221; S. C., 18 W. R., 64.

Baḥoo *Taruck Nath Dutt* for the respondents.

The judgment of the Court was delivered by

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JACKSON, J. (who, after stating the facts, proceeded as follows):—The Extra Assistant Commissioner not going into the merits, threw out the plaintiff's suit, firstly, on the ground that the plaintiff was barred inasmuch as twelve years had elapsed from the time of the accretion of the land as taken possession of by the defendants; and, secondly, because three years' limitation applied from the date of the Survey Deputy Collector's award; and lastly, because by Act IX of 1847 the Court was debarred from maintaining the suit.

As to the first two grounds it is clear that the plaintiff would not be barred, because he is an auction-purchaser of the estate, and as such is entitled to recover it free of all encumbrances, and his cause of action, by whatever period of limitation it would be restricted, would arise from the time of his purchase, and the period of limitation is to be counted from that time; and it seems that the present suit is brought within three years from the date of the plaintiff's purchase.

As regards the objection under Act IX of 1847, the Judge has quite misconceived, it seems to us, the case of *Dewan Ram Jewan Singh v. Collector of Shahabad* (1), to which reference has been made, and there is an express authority—the case of *Collector of Moorshedabad v. Roy Dhunput Singh Bahadoor* (2)—for holding that while, no doubt, the action taken by the Revenue authorities as to a settlement is final and cannot be questioned, that by no means debars a proprietor from bringing before a Civil Court his right to hold the property under any settlement that may be made. The judgment of the Court below, therefore, must be set aside as erroneous, and the case must go back in order to be tried on the merits.

Case remanded.

(1) 14 B. L. R., 221; S. C.,
18 W. R., 64.

(2) 15 B. L. R., 49; S. C., 23 W. R.,
38.