

even if the guardian had to institute a suit, the Court would have dispensed with the production of a certificate, because the expenses necessary to be incurred in obtaining a certificate and the permission of the Court, might have exhausted a quite undue proportion of the minor's property. It seems to me, therefore, that there is no ground for saying that this act of the natural guardian done for a legal necessity was done without authority. The special appeal must be dismissed with costs.

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Appeal dismissed.

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

TARU PATUR (DEFENDANT) v. ABINASH CHUNDER DUTT
(PLAINTIFF).*

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Jamabandi—Public Document—Reg. VII of 1822—Act I of 1872 (Evidence Act), s. 74.

A jamabandi prepared by a Deputy Collector while engaged in the settlement of land under Reg. VII of 1822, is a "public document" within the meaning of s. 74 of the Evidence Act.

It is not necessary to show that, at the time when such document was prepared, a ryot affected by its provisions was a consenting party to the terms therein specified.

THIS was a suit for declaration of right to receive the full rent of certain lands and to recover arrears of rent from 1280 B. S. (1873-74) to 1283 B. S. (1876-77). The lands in dispute had previously formed part of a Government khas mehal, and while so held, the whole estate was, between the years 1843 and 1845, measured and settled by a Government officer under the provisions of Reg. VII of 1822. A jamabandi embodying the terms of this settlement was, at the time, duly prepared, and

Appeals from Appellate Decree, Nos. 69 to 78, and 245, 246, and 256 of 1878, against the decree of T. Smith, Esq., Officiating Judge of Zilla Midnapore, dated the 28th September 1877, reversing the decree of Baboo Debendro Lal Shome, First Sudder Munsif of that district, dated the 5th January 1877.

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was subsequently approved of by the Commissioner of the District. The plaintiff having purchased the property, now sued to recover rent at the rate specified on this jamabandi. This document purported to bear the signature of the defendant in common with the names of other ryots.

The Court of first instance dismissed the suit on the ground that the plaintiff had failed to show that the rate mentioned in the jamabandi had been fixed in respect of the plot of land in dispute, in the presence of the defendant and that he had assented to it. The lower Appellate Court reversed the finding of the Court of first instance, holding that the jamabandi was a public document within the meaning of s. 74 of the Evidence Act. The Court further held that it did not consider the plaintiff's failure to prove that the defendant signed and assented to the jamabandi fatal to his case, because a ryot's assent does not appear to be essential to the validity of a settlement made by Government according to law. The defendant appealed to the High Court.

Baboo *Kashi Kant Sen* for the appellant.—This is in reality a suit for enhanced rent, and must fail on the ground that no previous notice had been served. It was imperative on the plaintiff to prove the signature and previous assent of the defendant to the rate of rent mentioned in the jamabandi; see *Enayetoollah Meah v. Nubo Coomar Sircar* (1). This was the more necessary as the signatures of the ryots on the document show that they were made by one and the same person. It was also essential to show that the ryots had paid rent as fixed by the jamabandi—*Wooma Moyee v. Kunuck Chunder Mookherjee* (2), *Grant v. Byjnath Tewaree* (3). Settlement papers of the khas mehal cannot be considered public documents. They have no more authority than the papers coming from a zemindar's private sherista—*Nawab Nazim of Bengal v. Ram Lal Ghose* (4); and must, therefore, be proved in the ordinary way.

Baboo *Mohini Mohun Roy* (with him Baboo *Mohendro Lall Mitter* and Baboo *Rash Behari Ghose*) for the respondent.

(1) 20 W. R., 207.

(3) 21 W. R., 279.

(2) 17 W. R., 418.

(4) 6 W. R., Act X Rul., 5.

—This is not an enhancement suit based on Beng. Act VIII of 1869; no previous notice was, therefore, necessary. The defendant nowhere asserts that he has not been paying rent according to the jamabandi. Rent not having been recovered under the jamabandi, does not make it ineffectual—*Doorga Churn Chatterjee v. Doya Moyee Dossia* (1). As found by the Judge in the lower Appellate Court, the jamabandi is a public document within the meaning of s. 74 of the Evidence Act; but even if this be not so, the document being over thirty years old, and produced from the proper custody,—viz., that of the Collector's record-keeper,—must, under s. 90 of the same Act, be presumed to be genuine. The defendant's name must, for the same reason, be taken to be signed by him, there being not the slightest evidence forthcoming to rebut such presumption.

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JACKSON, J. (TOTTENHAM, J., concurring).—Various questions have been raised on the part of the special appellant, one of which is that the plaintiff's suit must fail, because it was a suit for enhancement and no notice of enhancement had been served on the defendant. It seems manifest from the terms of the plaint and of the written statement also, that this is not really a suit for enhancement. What the plaintiff asks for is a declaration of right to receive the full rent of 20 bighas, and this prayer of the plaintiff is specially met by the defendant's averments that he had for a particular reason a right to hold the land at half the current rate. He also alleged that he had always been holding at this half rate. The plaintiff, who is a purchaser of the estate, which was formerly a khas mehal, produced, as evidence of what the rates were, certain proceedings of the Deputy Collector under Reg. VII of 1822. Those proceedings were commenced in 1843 and concluded in 1845. To that the defendant objects, in the first place, that the jamabandi, which is the principal document referred to, has not been proved; and secondly, that it is of no effect unless the assent of the ryots to it is proved. The Judge held, and I think quite correctly, that, for the purposes of the Evidence Act, this jamabandi was a

(1) 20 W. R., 243.

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public document. I think there can be no doubt whatever that the act of a Deputy Collector, in making a settlement or even an enquiry under the provisions of Reg. VII of 1822, is that of a public officer, whether it be judicial or executive; probably it partakes of both characters, and that the record of such acts is a public document. I also agree with the Judge in the opinion that there is no authority for holding, as the Munsif appears to have held, that such jamabandi was dependent for its validity on its being assented to by the ryots. We have, therefore, a record of the tenants' holdings and the rates of rent payable in 1843, and in that jamabandi the defendant's holding is described. The defendant seeks to avoid that by declaring that he is entitled to hold, and has always held, at half rates. On that the Judge observes that the defendant has given no documentary evidence whatever. He, therefore, considers that the defendant has failed to prove that which he set up. In these circumstances the plaintiff's case being supported by the public act and record of a Deputy Collector, and the defendant's plea being wholly unproved, it appears to me that the judgment of the lower Appellate Court is quite correct, and this appeal must be dismissed with costs. This judgment will apply to the other appeals.

Appeal dismissed.