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the proper decree to make; but, as no objection has been raised before us on this score, it is not necessary to say anything more on the subject, for the decree is substantially right.

The appeal will be dismissed with costs.

Appeal dismissed.

T. A. P.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

BAIJ NATH SINGH AND OTHERS (PLAINTIFFS) *v.* SUKHU MAHTON (DEFENDANT).*

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June 26.

Evidence Act I of 1872, *ss.* 35-74—*Public document—Regulation XII of* 1817, *s.* 16—*Rent, suit for.*

A "*Teis khana*" register prepared by a patwari under rules framed by the Board of Revenue under section 16 of Regulation XII of 1817 is not a public document, nor is the patwari preparing the same a public servant.

THESE appeals arose out of a number of rent suits, tried in two groups, by different officers, brought by the plaintiffs against a number of ryots of mouzah Miandarpur Kheronia in the district of Patna. The contested facts in these cases related to the rates of rent, the areas of the holdings, the jamas, that is, the amounts of rent payable annually for the holdings, and the payments. The main facts in both groups of cases being virtually the same, it will be sufficient to deal with one only of these cases so far as such facts and the findings of the lower courts are concerned.

Amongst the documentary evidence relied upon by the plaintiffs before the Munsiff, was a certain *Teis khana Register* (so called from the number of columns in the statement or register) touching the question of rates, purporting to have been submitted by a deceased patwari during the time of the former proprietors. This register was one of a number of registers which patwaris are bound to keep in accordance with certain rules of the

* Appeal from Appellate Decree No. 1454 of 1889, against the decree of Baboo Girish Chunder Chowdhry, Subordinate Judge of Patna, dated the 27th of March 1889, modifying the decree of Baboo Hari Kristo Chatterji, Munsiff of Patna, dated the 22nd of June 1888.

Board of Revenue (1) drawn up under section 16 of Regulation XII of 1817. On the question of the admissibility and weight to be attached to this document the Munsiff held that the statement was, strictly speaking, not a public document either under section 74 of the Evidence Act or under Regulation XII of 1817, and that the statement in question had "no independent probative force," and on the whole case decided that the plaintiffs had failed to prove their allegation regarding the jamas, and that the defendants had failed to prove their allegation as to payment; and he accordingly gave the appellants decrees for the amounts due according to the jamas admitted by the respondents, without deciding any question regarding the areas of the holdings and the rates of rent, which he thought were irrelevant.

The plaintiffs appealed to the Subordinate Judge, who upheld the Munsiff's decision; but on the question of the admissibility of the *Teis khana* register, said—"A good deal was said as to the non-admissibility and admissibility of the 23 khana register as evidence against the ryots of their rates or jamas. The register appears to have been prepared by the *patwari* and submitted to the Collector in accordance with the rules framed by the Board of Revenue under section 16 of Regulation XII of 1817, and may therefore be regarded as a register made by a person in performance of a duty specially enjoined by the law of the country in which such register is kept, even if it cannot be treated as a register kept by a public servant in the discharge of his duty. I think it is admissible under section 35 of the Evidence Act, but it seems to me that its weight against the ryots is not much. These registers are prepared behind the back of the ryots, and the patwaris who prepare them are generally under the influence of the zemindars, from whom they receive their pay, although their status under the law is somewhat different from that of a servant of the zemindar."

Against this decision affirming that of the Munsiff the (plaintiffs) appellants appealed to the High Court on, amongst other grounds, the ground that the lower Court had not adduced sufficient and satisfactory reasons for refusing to treat the 23 khana statements as furnishing materials on the question of rates.

(1) Revenue Officers' Manual, Chapter XIV, page 37.

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The Advocate-General (Sir *Charles Paul*), Mr. *R. E. Twidale*, and Baboo *Lal Mohan Doss* for the appellant.

Dr. *Rash Behary Ghose* and Baboo *Mohabeer Sahai* for the respondents.

The judgment of the Court (PETHERAM, C.J., and BEVERLEY, J.) was delivered by

PETHERAM, C.J.—These are two groups of second appeals. The first group begins with No. 1454 of 1889, and goes up to No. 1502 of 1889; the second group begins with No. 1438 of 1890, and goes up to No. 1470 of 1890, and includes another case, No. 1171 of 1890. They arise out of suits for rent brought in respect of land situated in an estate in the district of Patna. The first group were a number of cases instituted in the month of May 1887; the second group were a number of cases instituted in the month of May 1888. They are between the same parties, and in respect of the same lands, but the first set of cases was tried in the first instance by one Munsiff, and in appeal heard by one Subordinate Judge; the second set of cases was tried by another Munsiff, and the appeals from his judgment in those cases heard by another Subordinate Judge, and all these four officers have come to the same conclusion upon the facts.

As I said just now, these are suits for rent, and the only question which had to be tried was, what was the rate of rent which the defendants were to pay to the plaintiffs for the occupation of their holdings. The plaintiffs in all these cases gave a certain amount of evidence, and all four officers—both the two Munsiffs who heard the suits in the first instance, and the two Subordinate Judges who heard the appeals—have absolutely disbelieved the plaintiffs' case. They have come to the conclusion that the case as presented on the part of the plaintiffs was untrue, that the evidence which was laid before them was of a fictitious kind, and that it was impossible to act upon it, and consequently they have come to the conclusion that the only decree they could give in favour of the plaintiffs was a decree for the amount of rent admitted by the defendants; and no doubt that is the position which the plaintiff, the landlord, must find himself in when he attempts to prove the rate of rent by evidence which cannot be relied upon;

he then necessarily occupies the position of claiming rent for a holding of which he has given no evidence that can be relied upon, and the consequence of that is, that the only thing the Court can do is to give him a decree for the rent admitted by the defendant. These being second appeals, these findings of fact are binding upon this Court unless the first Court of appeal has committed some error in law in arriving at those findings which gives us jurisdiction to interfere.

The first point that has been raised—and that is with reference to all these cases—is, that the learned Munsiffs and the learned Subordinate Judges have committed an error of law in not giving proper effect to certain registers known as the *Teis khana* registers.

It appears that both the Munsiffs and the Subordinate Judges have held that these were public documents within the meaning of section 35 of the Evidence Act, and were evidence, but they considered that, having regard to their nature, their value as evidence upon this point was very slight, and that it was impossible to act upon them if the rest of the plaintiffs' case were concocted.

As to that we think that the lower Courts are right. We think that even if these papers are evidence, they are not conclusive evidence, and as to their probative value, that was a matter for the Judges who had to try the question of fact; and both the Judges and the Munsiffs thought that though they were evidence, their probative force, having regard to the mode in which the registers were kept, was slight, and therefore it was not safe to act upon them; and we cannot say they were wrong. But in saying this it must not be supposed that we think they are public documents at all under section 35 of the Evidence Act. They are documents which are prepared in the zemindar's *serishta* by a person who is called the *patwari*, who is paid by the zemindar but approved by the Collector, and these registers are no doubt kept for the information of the Collector. The question is, does that make them public books or records kept by a public servant in the discharge of his official duty? So far as we can see, they are not official or public documents, and a *patwari* does not appear to us to be a public servant or to have any official duty. He is a person

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who is a servant of the zemindar; his duties are performed in the *serishta* of the zemindar on information supplied by the zemindar and nobody else. It is true that the object of the books is to afford information to the Collector, but that does not make them binding as official records of the facts contained in them, so far as we can see. It appears to us that quite sufficient amount of importance was given to these documents, and it cannot be said that any error of law has been committed in not acting upon them.

The other point was, that in the first set of cases which were instituted in 1887, the Munsiff declined to allow certain questions to be put to some of the witnesses, and the Subordinate Judge, in dealing with that objection, says he thinks that the questions ought to have been put, but does not think it necessary to remand the cases on that ground, because in his opinion, even if the answers had been what the appellant expected them to be, that would not have affected the merits of the case.

If the matter had stood there alone, no doubt a good deal might be said on behalf of the appellants to have the cases remanded in order to have those questions put to the witnesses; but, as I said just now, the same points that arose in those cases were tried over again in the other suits which were instituted in the year 1888. In these suits, those questions were put to the witnesses and answers obtained from them, but the answers did not affect the conclusions as to the facts which were arrived at both by the Munsiff who heard these cases in the first instance or by the Subordinate Judge who heard them in appeal, they being different officers to those who heard the cases which were instituted in 1887.

We think that these are nothing but questions of fact which have been decided in these cases by the first Court of appeal; that no error in law has been committed by that officer which has affected the decision of these questions of fact; and that all these appeals must be dismissed with costs.

Appeal dismissed.

T. A. P.