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enactment as to the old. The result is that the matter will go back to the learned Chief Judge, who will exercise his discretion as to granting the leave asked for. In exercising that discretion it will be well to bear in mind the case of *Collett* v. *Armstrong* (1) as well as *Wallis* v. *Taylor*.

Attorneys for the applicants: Messrs. *Sanderson & Co.*

H. L. B.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Hill.

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RAM CHURN SING AND OTHERS (PLAINTIFFS) *v.* DHATURI SING AND OTHERS (DEFENDANTS). *

Sonthal Pergunnahs Settlement Regulation (III of 1872), ss. 11, 25—Suit regarding matter decided by Settlement Court—Settlement Officer, finding of—Jurisdiction of Civil Court—Right of suit—Suit to set aside settlement and for possession.

Where a suit was brought to establish—by avoiding the instrument under which he held—that the defendant was not a tenant of the lands in dispute, and to oust him from possession, and he had been recorded in the record of rights made by the Settlement Officer as a tenant of such lands, *held* that the suit was "one regarding a matter decided by a Settlement Court" within the meaning of s. 11 of the Sonthal Pergunnahs Settlement Regulation (III of 1872), and was therefore not maintainable.

The introductory words of clause 4 of s. 25 of the Regulation which impose a personal limitation on the jurisdiction of the Civil Courts apply to suits of all the three classes to which the clause relates; so that the bar to the jurisdiction can take effect on a suit in the third of the three classes only when it is both "suit to contest the finding or record of the Settlement Officer," and involves also the determination of "the rights of zemindars or other proprietors as between themselves."

THE facts necessary for this report are sufficiently stated in the judgment of the High Court.

* Appeal from appellate decree No. 242 of 1889, against the decree of R. Carstairs, Esquire, Deputy Commissioner of the Sonthal Pergunnahs, dated the 11th of December 1888, affirming the decree of F. Grant, Esquire, Subdivisional Officer of Godda, dated 16th of April 1888.

(1) I. L. R., 14 Calc., 526.

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RAM CHUEN SING v. DHATURI SING.

Mr. *R. E. Twidale*, Baboo *Mohini Mohun Roy*, and Baboo *Kali Kissen Sen*, for the appellants.

Baboo *Hem Chunder Banerjee*, Baboo *Abinash Chunder Banerjee*, Baboo *Taruck Nath Palit*, Baboo *Golap Chunder Sirkar*, and Baboo *Raghoo Nundun Pershad*, for the respondents.

The judgment of the Court (PRINSEP and HILL, JJ.) was as follows:—

This appeal is from a decree of the Deputy Commissioner of the Sonthal Pergunnahs.

The suit was brought in the Court of the Subdivisional Officer of Godda (vested with the powers of a Sub-Judge) by the present appellants for possession of an 8 annas share of mouzah Dumria Kalun, and the avoidance of a mokurari pottah and a kobala, under the former of which the first defendant had held the lands in suit from the year 1857, until he, on the 29th January 1881, sold his rights therein by the kobala to the 2nd, 3rd, and 4th defendants.

Mouzah Dumria formerly belonged to one Raja Ajil Baram, who died many years ago without male issue. He had been twice married, and both his wives survived him. By his elder wife he had two daughters—Mussammut Parbutti and Mussammut Padmabutti. The 1st and 2nd plaintiffs are the sons, and the 3rd and 4th plaintiffs the grandsons through a deceased son, of Mussammut Parbutti. The 5th, 6th, and 7th plaintiffs are grandsons also through a deceased son of Mussammut Padmabutti.

The younger wife of the Raja, whose name was Bhulanbutti, was childless. She, however, many years after her husband's death adopted a son to him. This son, Chunder Dyal Baram, who is still in his minority, is the 8th plaintiff.

As to the facts of the case there is little dispute. In the year 1857, it seems Rani Bhulanbutti granted a mokurari pottah of the lands in suit to Baboo Dhaturi Sing, the 1st defendant. In the year 1876 she died, shortly after her adoption of Chunder Dyal. In the same year these lands were brought under settlement, under the provisions of Regulation III of 1872, and Chunder Dyal, who was then under the guardianship of the Court of Wards, was represented by it in the settlement proceedings. In the record

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of rights which was framed and published in the same year, 1876, the entry made with respect to these lands was as follows:—"Zemindar, Chunder Dyal Baram; Mokuraridar, Dhaturi Sing 8 annas share."

Not long after the death of Rani Bhulanbutti, the 1st, 2nd, and 5th plaintiffs, and the father of the 3rd and 4th plaintiffs sued the Court of Wards as the representative of Chunder Dyal, for recovery of a 12 annas share of the moveable and immoveable property left by Raja Ajit Baram, and to set aside the adoption of Chunder Dyal. Ultimately the suit was settled on the 19th January 1878 by a compromise, by which it was agreed that the then plaintiffs were to be the proprietors of the Raja's property to the extent of 12 annas, and Chunder Dyal the proprietor of the remaining 4 annas.

It is necessary only to add that on the 29th January 1881, Dhaturi Sing, as already indicated, transferred whatever rights he had in the lands in suit to his present co-defendants.

It was under these circumstances that the present suit was instituted, and the lower courts have concurred in holding that it is barred by the provisions of the Regulation referred to above, and have dismissed it accordingly. The court of first instance has concisely stated its view, in which the lower appellate court has agreed, in these terms:—"I dismiss the case simply on the ground that it is barred by the special Sonthal Regulation III of 1872, section 25."

This view is, however, in our opinion not correct.

The fourth clause of the section in question gives jurisdiction to the Civil Courts to find and determine the rights of zemindars and other proprietors as between themselves in suits which are classed as suits pending when the Regulation was passed; suits referred under section 5; and suits to contest the finding or record of a Settlement Officer. Suits of the third class are, however, barred by the operation of the 5th clause of the section if not instituted within three years from the publication of the record of rights. And it was to this last-mentioned clause, no doubt, that the Courts below referred when they held the suit to be barred by section 25.

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But the bar thus constituted does not operate unless the suit falls under the third class of suits dealt with by the fourth clause; and to bring it within that clause it must satisfy two conditions—one as to the character of the parties, and the other as to the nature of the suit, for according to the grammatical construction of the clause, the introductory words which impose a personal limitation on the jurisdiction of the Civil Courts must apply to suits of all the three classes to which the clause relates, so that the bar to the jurisdiction can take effect only when the suit is a suit to contest the finding or record of a Settlement Officer, and involves also the determination of the rights of the zemindars or other proprietors as between themselves. Now the present suit fulfils neither of these conditions. It is not a suit between zemindars or other proprietors, for although the plaintiffs may claim in one or other of these characters, yet the defendants are the recorded tenants of the land. Nor is it a suit to contest the finding or record of a Settlement Officer, the claim being for "direct" possession of the land, and for the avoidance of the instruments mentioned above. The grounds, therefore, on which the lower courts have disposed of the case are not sustainable.

But while this is so, we think, nevertheless, that the suit is, with reference to the provisions of section 11 of the Regulation, unmaintainable. That section is as follows:—"Except as provided in section 25, no suit shall lie in any Civil Court regarding any matter decided by any Settlement Court under these rules, but the decisions and orders of the Settlement Courts made under these rules regarding the interests and rights above mentioned shall have the force of a decree of Court."

Some difficulty arises in putting a construction on the terms "the decisions and orders of the Settlement Courts," here used, but we think it is to be inferred, not only from the nature of the suits which are made exceptions to the rule laid down by the section, but also from other parts of the Regulation, that the "findings of Settlement Officers," which ordinarily constitute the basis of the record of rights, were intended to be included under the "decisions and orders of Settlement Courts," and that consequently suits "regarding" the matter of such finding fall generally within the prohibition of the section. A reference to section 25 makes it

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apparent that suits falling under the third class of clause 4 of that section are alone within the exception to section 11, and they are suits to contest the finding or record of the Settlement Officer. And then turning to those sections which relate to the object and scope of a settlement and the machinery for carrying it into effect, the above conclusion receives, we think, further support. Section 9 declares the purpose of a settlement to be to ascertain and record the various interests and rights in the lands. The 10th section provides for the appointment of officers to carry out the settlement, and of other officers who are to exercise over them appellate and revisional powers. The 12th and 14th sections deal in detail with the matters which fall within the jurisdiction of the Settlement Officer. Then again by the 10th section the Lieutenant-Governor is empowered to make rules for the procedure of Settlement Officers and their appellate and revisional superiors, in the investigation into rights in the land and the hearing of suits. And then the 2nd clause of the same section, without discriminating between these two classes of functions, gives the Lieutenant-Governor power to revise any case decided in any Settlement Court, so that the terms "Settlement Court" would here seem to be used in a sense large enough to embrace the Settlement Officer, whether dealing with a suit, or exercising his more ordinary function of investigating rights in land. If we are correct in this view, then not only does the consequence follow to which we have already referred, but these "findings" acquire by virtue of section 11 the character of decrees of Court.

Now in the present instance what we have is this. The 1st defendant is recorded in the record of rights as a tenant of the lands in dispute, which involves a finding by a Settlement Officer that he fills that character. The suit is brought to establish, by avoiding the instrument under which he holds, that he is not a tenant and to oust him of his possession. And we think, therefore, that it must be held to "regard" a matter decided by a Settlement Court in the sense of section 11, and to be consequently unmaintainable. The appeal is therefore dismissed with costs.

Appeal dismissed.

J. V. W.