

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Gordon.

1894
July 24.

PERTAP UDAI NATH SAHI DEO AND ANOTHER (PLAINTIFFS) v. MAŠI
DAS (DEFENDANT.)*

Chota Nagpore Tenures Act (Bengal Act II of 1869)—Register prepared by a Special Commissioner appointed under the Act, Effect to be given to, as evidence—Conclusive nature of such Register.

A register of tenures prepared by a Special Commissioner appointed under Bengal Act II of 1869 (the Chota Nagpore Tenures Act) after it has been confirmed by the Commissioner of the Division, and such confirmation has been duly published in the *Calcutta Gazette*, is conclusive evidence of all matters recorded therein, and it is not open to a Civil Court to hold that, because a Special Commissioner did not rightly understand a decision of the Commissioner, and because the register was not prepared in accordance with such order, it is otherwise than conclusive; nor is a Court competent even to discuss the question whether a Special Commissioner, in preparing such register, rightly appreciated the Commissioner's decision, when his own order has been given effect to by the register prepared, and has been confirmed by the Commissioner under section 25 of the Act.

THE Maharajah of Chota Nagpore and his *ticcadar*, who were the plaintiffs in this case, sued, the one as proprietor and the other as *ticcadar* of the village of Arangi, to recover possession of 13½ annas of *done* or rice lands, which the defendant was alleged to have taken wrongful possession of during the Maharajah's minority, and which were claimed by the latter as his *majhahas* lands. The defendant admitted being in possession of the lands, but claimed to hold them as part of his *bhuinhari* lands.

Between the years 1877 and 1880 a Special Commissioner appointed under the Chota Nagpore Tenures Act (Bengal Act II of 1869) had made an investigation into the tenures existing in Arangi, in the course of which several proceedings were held and orders passed by him, and he had prepared, in accordance therewith, a register of all *majhahas* and *bhuinhari* lands. Against one of these orders an appeal was preferred by the defendant to the

* Appeal from Original Decree No. 67 of 1893, against the decree of Babu Aurito Lal Pal, Subordinate Judge of Lohardugga, dated the 12th of November 1892.

Commissioner of the Division, who modified the order of the Special Commissioner on the 5th May 1879. But a dispute having occurred as to the effect of the Commissioner's order, the matter came once more before the Special Commissioner on the 5th December 1879 when he passed his final order, embodying therein the construction which he put upon the Commissioner's order, and decreeing possession of the disputed lands to the minor Maharajah.

The register was prepared in accordance with the final order, and was confirmed by the same Commissioner on the 13th August 1880, and such confirmation was duly published in the *Calcutta Gazette* in accordance with the requirements of section 25 of Bengal Act II of 1869. The Subordinate Judge held that it was open to the defendant to show that the register, not being in conformity with the Commissioner's order of the 5th May 1879, had not been prepared in pursuance of section 25, and, moreover, that the suit was barred by limitation, and he dismissed the plaintiffs' suit. From that decree the plaintiffs preferred the present appeal.

Mr. *W. R. Donogh* and *Babu Karuna Sindhu Mukerjee* for the appellants.

Babu Kali Charan Banerjee for the respondent.

Mr. *Donogh*.—The *majhahas* register prepared on the 13th August 1880 is conclusive evidence that the Maharajah was in possession of the lands in dispute on that date (see section 26, Bengal Act II of 1869). It is an admitted fact that the defendant is now in possession. It follows therefore that he must have dispossessed the Maharajah at some time subsequent to the date of the register. Whatever the time was, it would be within twelve years of the date of institution of the suit. Consequently the suit is within time. The fact that the *majhahas* register contains these lands is conclusive that they are *majhahas* lands, and the absence of any mention of them in the *bhuinhari* register is equally conclusive that they are not *bhuinhari* lands. See *Kirpal Narain Tewari v. Sukurmoni* (1). Under Bengal

1894
PERTAP
UDAI NATH
SAHI DEO
v.
MASI DAS.

(1) L. L. R., 19 Calc., 91, see p. 103.

1894
 PERTAP
 UDAI NATH
 SAHJ DEO
 v.
 MASI DAS.

Act II of 1869 the Special Commissioner is empowered to investigate and ascertain the titles and tenures of lands alleged to be *majhahas* or *bhuinhari* and to demarcate the same under section 3; and further to record who is the occupant of the land, and to satisfy himself that the occupation has existed for at least twenty years before the passing of the Act; sections 5, 6, and 8. The registers are therefore also conclusive as to the possession of the occupant whose name is recorded. These registers show that at the time when the Special Commissioner prepared them the records of the various proceedings, and also the decisions and orders passed in them, were all before him, so that it must be presumed that he revised and corrected them in accordance with those decisions and orders, as directed by section 25. The registers are certainly in accordance with his own final decision of the 5th December 1879 passed after his local investigation, and in which he construed the decision of the Commissioner dated the 5th May 1879. His construction may or may not be correct, but it was confirmed by the very Commissioner whose decision was so construed. The fact that he confirmed it is the strongest proof of its correctness. In any case the registers are in accordance with the Special Commissioner's view of all the orders which were passed. His decision is moreover final, as no appeal was made from it. The correctness of his view, or of the register prepared in accordance with that view, should not now be called in question after it has been confirmed by the Commissioner and the confirmation duly published in the *Calcutta Gazette*.

Babu Kabi Charan Banerjee.—Every order or decision passed by a Commissioner under this Act is final, unless varied or altered on review, sections 15 and 20. The Commissioner's order of the 5th May 1879 is therefore a final order, inasmuch as it has not been so varied or altered. It is clear that the register is not in conformity with that order, so the register could not have been revised and corrected in accordance with it as required by section 25. That being so, it cannot be said to be a register prepared according to the provisions of section 25. It is therefore not a valid register, nor binding on the defendant. No doubt it has been confirmed by the Commissioner, but mere confirmation is not

enough, and it is always open to the parties to show that a register is at variance with any decisions or orders passed. An incorrect register cannot be said to be conclusive evidence of the matters which it contains. In this case, therefore, the register is not evidence that the lands in dispute are *majhahas*. Nor is it conclusive that the Maharajah was ever in possession. It nowhere indicates that possession was given to him, nor does section 5 at all contemplate a finding by the Special Commissioner as to possession. There was no proceeding held under section 6. On the contrary there is evidence to show that Masi Das has all along been in possession, and the rent receipts filed by him show that he paid rent for the lands to the Court of Wards. The suit is barred by limitation, as it is clear that Masi Das has been in possession for more than twelve years.

1894

 PERTAP
 UDAI NATH
 SAHI DEO
 v.
 MASI DAS.

Mr. *Donogh* was heard in reply, and referred to the Statement of Objects and Reasons for the Act.

The judgment of the High Court (GHOSE and GORDON, JJ.) was as follows:—

The plaintiff in this case, Maharajah Sri Pertap Udai Nath Sahi Deo, is the proprietor of *mouza* Arangi in the district of Chota Nagpore, and, as such proprietor, is entitled to hold certain lands as *majhahas* which, as the preamble to Bengal Act II of 1869 states, are lands reserved for the use of the proprietors of the villages and at their absolute disposal. The defendant Masi Das holds certain lands in the same village Arangi as *bhuinhari*, which are lands held by persons claiming to be descendants of the original founder of the village. The plaintiff's father Maharajah Juggernath Sahi Deo died in July 1869, and upon this event taking place, the zemindari of the plaintiff was taken charge of by the Court of Wards. When the estate was in the hands of the Court of Wards, a dispute arose before the Special Commissioner appointed under Bengal Act II of 1869 between the parties with regard to the lands which they were respectively entitled to hold as *majhahas* and *bhuinhari*; and it would appear that upon that occasion Masi Das claimed 12 *powas* of land. The Court of Wards, on the other hand, alleged that Masi Das was only entitled to 4½ *powas* of land at a *jama* of Rs. 32. The Special Commissioner, in his

1894
 PRETAP
 UDAI NATH
 SAHI DEO
 v.
 MASI DAS.

decision of the 23rd July 1879 in the case entitled "Dispute case No. 84 of 1877-78," held that the *bhuinhar* was only entitled to $4\frac{1}{2}$ *powas* of land at an annual rent of Rs. 32, and he accordingly decreed to Masi Das $4\frac{1}{2}$ *powas* only. There was another proceeding before the Special Commissioner in case "No. 103 of 1877-78," in which the Court of Wards claimed to hold $9\frac{1}{2}$ *powas* of lands as *majhahas*. In that proceeding Masi Das was one of the defendants; and the Special Commissioner in his judgment said that the case was governed by his decision in case No. 84; and he accordingly gave the plaintiffs a decree for the lands claimed.

An appeal (No. 106 of 1879) was preferred to the Commissioner by Masi Das from the decision of the Special Commissioner, and the Commissioner held that the whole of the lands, namely 12 *powas*, claimed by him (Masi Das) was *bhuinhari*; and he reversed the decision of the Special Commissioner and decreed to Masi Das the lands claimed, and he also declared that the rent payable by Masi Das was at the rate of Rs. 8 per *powa*. Subsequently there was another proceeding before the Special Commissioner on the 5th of December 1879. This proceeding was held preparatory to the register, which, under section 5 of the Act, the Special Commissioner had to prepare. It appears that upon that occasion an objection was preferred by the Court of Wards representing the estate of the plaintiff, that Masi Das had demarcated, along with his *bhuinhari* lands, a large area of *majhahas* lands to which he was not entitled. And the Special Commissioner, in determining the question raised before him, inspected the land and proceeded to consider and interpret the decision of the Commissioner of the 5th May 1879; and he held that Masi Das was entitled to only $8\frac{1}{2}$ *powas* of land upon payment of rent at the rate of Rs. 8 per *powa*; and he accordingly declared that the rest of the lands in contest between the parties were *majhahas* lands. He then directed that the $8\frac{1}{2}$ *powas* of land described in his judgment should be registered as the *bhuinhari* of Masi Das. The register was prepared in accordance with this direction. The register was in due course placed before the Commissioner for confirmation under section 25 of the Act; and that officer confirmed it on the 13th of August 1880.

The register being thus confirmed by the Commissioner was published in the *Calcutta Gazette* on the 1st September 1880, in accordance with the directions of section 25 of the Act.

Masi Das, notwithstanding this register recording the quantity of *bhuinhari* land as only 8 $\frac{3}{4}$ *powas*, paid to the Court of Wards, and they received from him, rent for the whole of the 12 *powas* of land at the rate of As. 8 per *powa* from 1880 to the year 1884-85.

The plaintiff attained majority on the 21st of March 1887; and he commenced the present action on the 19th of January 1891 for recovery of possession of 13 $\frac{3}{4}$ annas, equivalent to, as we understand, 3 *powas* of land described in the plaint as *majhahas* land which, he alleged, had been wrongfully taken possession of by the defendant Masi Das on or after the 13th of August 1880, that being the date, as already mentioned, when the register prepared by the Special Commissioner was confirmed by the Commissioner. This land is admittedly part of the land which was claimed by Masi Das in the proceeding before the Special Commissioner in 1879; but which, according to the register prepared by the Special Commissioner, was recorded as *majhahas* land. The defendant pleaded that the land in suit was part of his *bhuinhari* land, and he relied upon the decision of the Commissioner of the 5th May 1879 as a final decision between the parties. He further pleaded that the suit was barred by the law of limitation. The Subordinate Judge of Lohardugga has accepted the contention of the defendant, and held that the decision of the Commissioner of the 5th May 1879 was final, and the subsequent decision by the Special Commissioner of the 5th December 1879 was invalid and illegal, and that the register prepared by the Special Commissioner, although it was confirmed by the Commissioner, was not a register prepared according to law, and that, therefore, it could not be regarded as conclusive evidence between the parties. He has further held that the suit of the plaintiff is barred by limitation, the possession of the plaintiff before 1880 (when he alleges his cause of action arose) being not satisfactorily proved.

The present appeal is by the plaintiff, and it is contended on his behalf that the Court below has misread the provisions of Act II of 1869, and has not given to the register prepared by the Special Commissioner and confirmed by the Commissioner that effect which,

1894

 PRITAP
 UDAI NATH
 SAKI DEO
 v.
 MASI DAS.

1894

PERHAP
UDAI NATH
SAHI DEO
".
MASI DAS.

under the law, it bears ; and further that the suit is not barred by limitation.

In view of the arguments addressed to us on either side in this appeal, it will be necessary, in the first instance, to refer very shortly to some of the provisions of Bengal Act II of 1869, so far as they bear upon the questions arising in this case.

The preamble of the Act, after stating what are *bhuinhari* lands and what are *majhahas* lands, states "that it is desirable that these tenures should be defined and recorded, and a register made of all rights, privileges, and liabilities affecting the holders thereof."

Section 2 gives the Lieutenant-Governor of Bengal authority to appoint certain persons as Special Commissioners and Commissioners for the purposes of the Act.

Section 3 declares what the duties of the Special Commissioners should be ; and it states that they are to investigate and ascertain the titles and tenures of all lands within their jurisdiction which may be alleged by any person to be held upon *bhuinhari* and *majhahas* tenures, respectively, and to demarcate the same.

Section 4 provides that, in making such investigation, the Special Commissioner, in addition to the powers conferred on him by the Act, shall exercise all the powers conferred upon a Collector making a settlement of land revenue under Regulation VII of 1822.

Section 5 states that the Special Commissioner shall make an accurate register of the lands which he may ascertain to belong to the *bhuinhari* and *majhahas* classes, respectively.

Section 14 provides for an appeal being preferred from any order or decision by the Special Commissioner to the Commissioner of the Division.

Section 15 gives to a person aggrieved by any order or decision of the Special Commissioner or Commissioner liberty to apply for a review of judgment.

Section 20 states that "no decision or order of the Special Commissioner shall be in any way altered, varied or reversed save on review by the Special Commissioner under sections 15, 16, 17, 18 and 19 of this Act, or by appeal to the Commissioner of the

Division under section 24 of this Act ;” and that “no suit shall be received in any Court to vary or set aside any such order or decision of the Special Commissioner, or any decision or order upon appeal or upon review by the Commissioner of the Division made under the provisions of this Act, and every such decision or order upon appeal by the Commissioner of the Division shall be final, unless it be altered, varied, or reversed by the said Commissioner on review under sections 15, 16, 17, 18 and 19 of the Act.”

1894

PERTAP
UDAI NATH
SAHI DEO
2.
MASI DAS.

Section 25 provides that “the register of each village prepared under the provisions of section 5 of this Act shall, when finally revised and corrected in accordance with any decisions and orders of the Special Commissioners and the Commissioner of the Division under this Act, be confirmed by the Commissioner of the Division, and such confirmation shall be published forthwith in the *Calcutta Gazette*.”

Section 26 states that “every register to be prepared under this Act, after publication of the confirmation thereof in pursuance of the section next preceding, shall be conclusive evidence of all matters recorded in such register in pursuance of this Act,” and that “from and after such publication of the confirmation of the register relating to any village, no evidence shall be received that any lands in such village not mentioned in such register are of *bhuinhari* or of *majhahas* tenure.”

It will be observed that under section 20, the decision of the Commissioner of the Division on appeal is final ; and so we may take it that the decision of the Commissioner, dated the 5th May 1879, was final between the parties ; but at the same time the subsequent decision of the Special Commissioner of the 5th December 1879 was likewise final, no appeal having been preferred against it to the Commissioner, and it having not been altered or varied on review. The Special Commissioner was then called upon to determine the question whether Masi Das had not demarcated as *bhuinhari* more lands than he was entitled to ; and he did so after an inspection of the locality, and according to the construction that he put upon the decision of the 5th of May 1879. He had also to revise and correct under section

1894

PERTAP
UDAI NATH
SAHI DEO
v.
MASI DAS.

25 the register in accordance with the decisions that had already been passed; and he did so in accordance with his own understanding of the decision of the Commissioner.

It was argued before us by the learned Vakil for the respondent that the revision and correction of the register by the Special Commissioner were not in accordance with the decision of the Commissioner; and we think, as we understand that decision, that he is right in his contention, and that the Special Commissioner did not rightly appreciate the judgment and the finding of the Commissioner. But then such revision and correction were in accordance with the interpretation that the Special Commissioner put upon the decision of the Commissioner. The register being thus revised and prepared was laid before the Commissioner for confirmation; and we find, on a reference to the column of remarks therein, that the case No. 84 of 1877-78 and the appeal case No. 106 of 1879 were distinctly noted, as also a miscellaneous case No. 540 of 1879-80 which, we presume, was the identical case that was dealt with by the Special Commissioner on the 5th December 1879. We may, therefore, presume that the whole matter was placed before the Commissioner, and that he exercised his own judgment in the said matter. And when he gave his sanction to the register, he must have been satisfied that the Special Commissioner had rightly understood his judgment of the 5th May 1879.

It was, however, contended by the learned Vakil for the respondent that the register, not having been revised and corrected in accordance with the final decision of the Commissioner of the 5th May 1879, was not a register prepared according to law, and that therefore the confirmation of such a register by the Commissioner has no efficacy whatsoever. But we are unable to agree with this contention because, as already stated, the Special Commissioner, in the course of his duty in the investigation of the questions that were raised before him, having been called upon to interpret the decision of the Commissioner, put his own construction upon it and made an order which, unless it were reviewed or appealed against, would be final according to law. It was an order subsequent to that passed by the Commissioner, and the register having been prepared in accordance with such order, and

such register having been confirmed by the same appellate authority, the Commissioner of the Division, under section 25 of the Act, and this register having been duly published in the *Calcutta Gazette* as directed by the said section, we do not see how it is possible to hold that, after such confirmation by the Commissioner, and after such publication of the register in the *Gazette*, it has no efficacy whatsoever.

Section 26 of the Act, as already noticed, states that, after the register has been prepared and published, it shall be conclusive evidence of all matters recorded in such register; and no evidence shall be received that any lands not mentioned in the register are *bhuinhari* or *majhahas*. On turning to the register we find that the lands in suit were recorded as *majhahas* lands, and in the occupation of the Chota Nagpore Estate then in the charge of the Court of Wards. They were not recorded as *bhuinhari* lands but as *majhahas*. The matter thus recorded in the register is conclusive evidence showing that the land was *majhahas* and in the possession of the Court of Wards; and we do not think that it is open to us to say that, because the Special Commissioner did not rightly understand the decision of the Commissioner of the 5th May 1879, and because the register was not prepared by the Special Commissioner in accordance with such orders, it is not conclusive evidence of the matters recorded therein. Indeed, we think, it is not competent for us to discuss whether the Special Commissioner rightly appreciated the decision of the Commissioner of the 5th December 1879, the Special Commissioner's order having been given effect to by the register prepared and confirmed by the Commissioner under section 25 of the Act.

Upon these grounds we are of opinion that the land recorded in the register as *majhahas* belongs to the plaintiff.

Upon the question of limitation raised between the parties, each side has gone into evidence; but this evidence to our minds is not of a very satisfactory character. There is, however, a passage in the judgment of the Commissioner, dated the 5th May 1879, that Masi Das had been in adverse possession of the lands then claimed by him for many years; and if we were in a position

1894

 PURTAP
 UDAI NATH
 SAHI DEO
 v.
 MASI DAS.

1894
 PERTAP
 UDAI NATH
 SAHI DEO
 v.
 MASI DAS.

in this case to give effect to the decision of the Commissioner, we should have had no difficulty in finding that Masi Das has had adverse possession for more than twelve years : so that the plaintiffs' claim would be barred by limitation. But we are constrained to hold, upon the language of section 26 of the Act, that the register prepared by the Special Commissioner, and confirmed by the Commissioner, having recorded that the land was in the possession of the Chota Nagpore Estate, represented by the Court of Wards, it is conclusive evidence that the possession was at the time with the Chota Nagpore Estate and not with the defendant [see in this connection *Kirpal Narain Tewari v. Sukurmoni* (1)]. This register was prepared, as already mentioned, in 1880 ; and the suit, having been instituted in 1891, that is to say within twelve years of that date, is within time.

Some stress was laid before us upon the fact of the Court of Wards having received rent from the defendant for four years subsequent to 1880, thereby recognizing his right to hold these lands as *bhainhari*. But then the plaintiff was at the time a minor, and we do not think that the recognition in this form by the Court of Wards precludes the plaintiff from asserting his title to the lands as *majhahas*.

We think, however, that it is a very hard case for the defendant, for had it not been for the register we should have had no difficulty in holding that he is right in his contention, and that the plaintiff has no right to recover *khas* possession of the lands. But, unfortunately for him, the register recording his tenure and *majhahas* lands having been prepared and published in accordance with section 25 of the Act, it is not open to us to give him any relief in contravention of the matters recorded therein. Upon these grounds we set aside the decree of the Court below and decree this appeal, but under the circumstances without costs.

J. V. W.

Appeal decreed.

(1) I. L. R., 19 Calc., 91.