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v. *Lalla Buhoree Lall* (1) and *Lokhee Narain Roy Chowdhry* v. *Kallyppuddo Bandopadhya* (2), that the section should be construed strictly and literally, and should not be applied to a case where a certified purchaser is the plaintiff and the real owner the party in possession. In the present case the real owner, the plaintiff, may not be under any necessity to bring a suit to oust the certified purchaser, for the simple reason that he is in possession.

That being so, there is no reason why he should be held precluded from maintaining a suit like the present against his *tehsildar* for accounts and papers.

As to the second objection, it is sufficient to say that the admissibility of the document in question was not objected to in the Court of first instance. That being so, we do not think it open to the appellant to take the objection on second appeal.

The appeal is dismissed with costs.

Appeal dismissed.

C. S.

Before Mr. Justice Norris and Mr. Justice Banerjee.

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PANDIT SARDAR (PLAINTIFF) *v.* MEAJAN MIRDHA (DEFENDANT).*

Bengal Tenancy Act (Act VIII of 1885), ss. 101, 102—Record of Rights case—Settlement Officer's decision—Subsequent civil suit—Res judicata.

A decision by a Settlement Officer under Chapter X of the Bengal Tenancy Act as to which of two persons claiming to be tenant ought to be recorded as such does not operate as *res judicata* in a subsequent civil suit between the same parties concerning the title to the land.

THE facts of this case were as follows:—

Pandit Sardar and Meajan Mirdha both claimed the same *jote*. In the measurement and record of rights under the provisions of Chapter X of the Bengal Tenancy Act the name of Pandit Sardar was recorded as the holder of the *jote*. Meajan Mirdha then

* Appeal from Appellate Decree, No. 2021 of 1892, against the decree of Babu Nobin Chunder Gangooly, Subordinate Judge of Rajshahi, dated the 17th of August 1892, reversing the decree of Babu Atool Chunder Ghose, Munsif of Nowgong, dated the 17th of February 1892.

(1) 10 B. L. R., 159; 14 Moo. I. A., 496.

(2) L. R., 2 I. A., 154.

instituted a suit in the Court of the Settlement Officer in order to get his name entered in the record of rights as owner of the said *jote*. The case was heard *ex-parte*, and the Settlement Officer gave Meajan Mirdha a decree. Pandit Sardar then instituted the present suit against Meajan Mirdha for a declaration of his right to, and for confirmation of his possession of, the land in dispute, on the allegation that the land had been wrongly entered in the name of the defendant in the record of rights by the Settlement Officer. The defendant contended that the suit was barred by the doctrine of *res judicata* and by limitation.

The Munsif held that the suit was not barred by limitation or *res judicata*, and that the plaintiff had made out his title and gave him a decree.

On appeal the District Judge reversed the Munsif's finding on the ground that the decision of the Revenue Officer operated as *res judicata*.

From this decision the plaintiff appealed to the High Court.

Babu *Nand Lal Sarkar* for the appellant.

Babu *Kishory Lal Sarkar* for the respondent.

Babu *Nand Lal Sarkar* for the appellant:—The question involved in this case is whether a dispute between two rival claimants of the same *jama* may be disposed of by a Settlement Officer under Chapter X of the Bengal Tenancy Act, so that his decision may bind the parties as *res judicata* in the event of a subsequent regular suit for the same matter. It may be said that the Settlement Officer's decision will have the force of a decree, but that simply means that it may be enforceable as a decree. The case of *Peary Mohun Mukerjee* v. *Ali Sheik* (1) is an authority in support of the contention that deals with an analagous provision in section 158 of the Bengal Tenancy Act. The recent rulings of this Court—*Narendro Nath Roy Chowdhry* v. *Srinath Sandel* (2) and *Bidhu Mukhi Dabi* v. *Bhugwan Chunder Roy Chowdhry* (3)—curtail the powers of the Settlement Officer. The recent Full Bench case of *Secretary of State for India* v. *Nitye Singh* (4) also supports this contention. The case of *Gokul Sahu* v. *Jadu Nandan*

(1) I. L. R., 20 Calc., 249.
(2) I. L. R., 19 Calc., 641.
(3) I. L. R., 19 Calc., 643.
(4) I. L. R., 21 Calc., 38.

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Roy (1) is clearly distinguishable. That was a dispute between landlord and tenant. On the above authorities the Settlement Officer's decision cannot be a bar to the present suit.

Babu *Kishory Lal Sarkar* for the respondent:—Under the provision of section 106 and of rule 32 framed by Government under the authority given by the Legislature to the Local Government, the finding by the Settlement Officer as to which of two persons was the tenant in occupation of a particular plot of land had the force of a decree as regards questions of possession, though not regarding questions of title. If that be so, the present suit is not maintainable. The question before the Settlement Officer was "whether the plaintiff was a sub-raiyat under the defendant who claimed to be the raiyat, or whether he was himself the raiyat;" that was clearly a question between a landlord and tenant, though the landlord was not the ulterior landlord. If that relationship was in question, then this case is governed by the case of *Gokul Sahu* v. *Jadu Nandan Roy* (1). The case of *Peary Mohun Mukerjee* v. *Ali Sheik* (2) is not applicable to this case; that case was decided with reference to section 158 of the Bengal Tenancy Act, and section 158 proceeds upon the assumption that the landlord is known, whereas under section 102, clause (*d*), the landlord, *i.e.*, the immediate landlord, of each tenant is to be determined. In this case the Settlement Officer determined that the plaintiff was a sub-raiyat and the defendant, who was another raiyat, was his landlord. Therefore the Settlement Officer's decision was final, and this suit was rightly dismissed by the Court below.

The judgment of the Court (NORRIS and BANERJEE, JJ.) was delivered by

BANERJEE, J.—This appeal arises out of a suit brought by the plaintiff, appellant, for a declaration of his *jote* right to, and for confirmation of his possession of, two plots of land on the allegation that the land had been wrongly entered in the name of the defendant in a record of rights prepared by the Revenue Officer under Chapter X of the Bengal Tenancy Act.

The defence was that the suit was barred by the principle of *res judicata* and also by limitation; and that the *jote* right in the land was with the defendant, and not with the plaintiff.

(1) I. L. R., 17 Calc., 721. (2) I. L. R., 20 Calc., 249.

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The First Court held that the pleas in bar were not valid, and that the plaintiff had made out his title, and accordingly gave him a decree. On appeal that decree has been reversed and the suit dismissed on the ground that the decision of the Revenue Officer operates as *res judicata* and is a bar to the present suit.

On second appeal it is contended for the plaintiff that the decision of the Lower Appellate Court is wrong; and we are of opinion that the contention ought to prevail. The Subordinate Judge in his decision relies on the case of *Gokul Sahu* v. *Jadu Nandan Roy* (1), but that case is clearly distinguishable from the present. Here the question of right to certain plots of land is raised as between two persons, each of whom claims to hold them as a tenant, and there is no question now, nor was there any before the Settlement Officer, as between the landlord and the tenant; whereas in the case of *Gokul Sahu* v. *Jadu Nandan Roy* (1) the question that was raised was one between the proprietor of the estate and a person who, according to him, held the land in dispute as his tenant, and whose case was that he was entitled to hold it without any payment of rent to the proprietor. That, then, was clearly a dispute between the landlord on the one hand and the tenant on the other. The facts of that case, moreover, were of a somewhat peculiar nature. There, though the person who was alleged to be the tenant on the land claimed the land as his rent-free property, he admitted that he came upon the land with the leave and license of the proprietor and claimed to hold it free of rent merely on the strength of a *sanad* granted to him by the proprietor. The decision in the record of rights proceeding was found to be one as between landlord and tenant, and was held to operate as *res judicata* in a subsequent suit between the same parties. That case, therefore, does not lay down any such broad proposition as is to be found enunciated in the head note. The case was considered by a full Bench of this Court recently in *Secretary of State for India* v. *Nityo Singh* (2), and the decision of the Full Bench is to the effect that a Revenue Officer in preparing a record of rights under sections 101 and 102 of the Bengal Tenancy Act is not competent to determine the validity of rent-free titles set up by persons occupying lands within the area

(1) I. L. R., 17 Calc., 721. (2) I. L. R., 21 Calc., 38.

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under enquiry. So far, then, as the authority relied upon by the Lower Appellate Court goes, it does not support the view taken by that Court.

The question then remains whether the decision of any point raised before the Revenue Officer should, under section 107 of the Bengal Tenancy Act, operate as *res judicata* in a subsequent suit in which the same question is raised. It is unnecessary in the present case to consider the effect of any such decision in a subsequent suit as between the landlord and the tenant. All we have now to determine is whether the decision by a Revenue Officer under Chapter X operates as *res judicata* in a subsequent suit between two persons, each of whom claims the land as a tenant. We think this question ought to be answered in the negative. If it had been intended by the Legislature that the decision of a Revenue Officer should operate as *res judicata* upon matters like this, the result would be to transfer to the Settlement Officer the jurisdiction to try all civil suits between tenant and tenant in regard to their rights in any land included in the area with reference to which the record of rights is made. It might happen that the person whose name the Settlement Officer records as the tenant may not be entitled to the land in respect of which his name is recorded, and another person may set up a conflicting title to the same land, claiming it on grounds which might render it necessary to determine complicated questions of inheritance or of construction of wills, or other questions of a similar nature. We do not think that such a condition of things could have been intended by the Legislature.

It was argued that the words of section 106 which authorise the Revenue Officer to hear and decide disputes as to the correctness of entries made by him are unlimited in their scope; and that the Revenue Officer in this case was therefore authorised to decide whether the plaintiff or the defendant was the person entitled to the land in dispute; and that if he was so authorised by section 106, his decision must have the force of a decree under section 107 of the Act. We cannot accede to this contention. If we were to confine our attention to section 106, possibly the words of that section might be taken to be unlimited in their scope; but we must regard it as one of a group of sections, the object of which is not

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to have questions of disputed right as between tenant and tenant conclusively determined, but only to enable the landlord to have a summary determination of the matters referred to in section 102. That section 106 must receive a limited construction is clear from the cases that have been decided by this Court with reference to what is the proper scope of an inquiry in a record of rights proceeding. We may refer to two of them, namely, *Narendro Nath Roy Chowdhry* v. *Srinath Sandel* (1), *Bidhu Mukhi Dabi* v. *Bhugwan Chunder Roy* (2), and we may also refer to the case of *Peary Mohun Mukerjee* v. *Ali Sheik* (3), relating an analogous provision in the Bengal Tenancy Act, namely, that contained in section 158. In this last-mentioned case it was held that the decision of the Revenue Officer upon any question such as that mentioned in section 158, sub-section (1), clause (*b*), must be taken to be collateral only with reference to any question of right to possession.

For these reasons we are of opinion that the decision appealed against is wrong in law and must be set aside, and the case sent back to the Lower Appellate Court for a decision on the merits.

The appellant will have his costs in this Court. The other costs will follow the result.

Appeal allowed.

C. S.

Before Mr. Justice Norris and Mr. Justice Banerjee.

SATYENDRA NATH THAKUR (PLAINTIFF) *v.* NILKANTHA SINGHA (DEFENDANT).*

1893 *August* 29.

Sale for arrears of rent—Sale on basis of decree on compromise—Auction purchaser, title of—Liability of purchaser for rent accruing due after his purchase, but before confirmation of sale—Effect of compromise as against purchaser—Rent, accrual of.

A tenant, when sued for arrears of rent of a *jote*, compromised the case by executing a *solehnama* agreeing to pay rent at 13 annas per bigha on 4,300

* Appeal from Appellate Decree No. 700 of 1892, against the decree of C. M. W. Brett, Esq., District Judge of Jessore, dated the 17th of February 1892, affirming the decree of Babu Kailash Chander Mookerjee, Subordinate Judge of Khoolnah, dated the 28th of August 1891.

(1) I. L. R., 19 Calc., 641. (2) I. L. R., 19 Calc., 643.
(3) I. L. R., 20 Calc., 249.