

APPELLATE CIVIL.

Before Mr. Justice Trevelyan and Mr. Justice Wilkin*.

KOOWAR SINGH (DEFENDANT) v. GOUR SUNDER PERSHAD SINGH
AND ANOTHER (PLAINTIFFS).*

1897
June 3.

Sale for arrears of revenue—Purchaser at a revenue sale—Act XI of 1859, section 37—“Entire estate”—Estates Partition Act (Pargal Act VIII of 1876), section 123—“Time of settlement.”

A new estate created upon a partition by the Collector comes within the meaning of “entire estate” in section 37 of Act XI of 1859. The words “time of settlement” in that section mean the time when the contract was made with Government, and in the case of a permanently-settled estate mean the time of permanent settlement. A partition by the Collector merely apportioned the amount of revenue, there is no settlement of the revenue in any sense at the time of such partition.

THIS was a suit for arrears of rent and cesses in respect of *kasht* land held by the defendant in *mouzah* Dulpur Jahanpur in the district of Shahabad. Raja Ram Singh, the former owner of the estate comprising this *mouzah*, mortgaged it under a deed whereby he assigned the rents over to the mortgagee in 1874. The plaintiffs are purchasers at a revenue sale of a 3 annas 4 *dams* of the *mouzah*, which was separated from the parent estate by a partition effected by the Collector in 1884, and numbered on the revenue roll as No. 6856. The rents and cesses claimed were on account of the years 1298 to 1301 F. S., a period of four years commencing from 29th September 1890, subsequent to the purchase by the plaintiffs. The defendant pleaded payment under the deed of assignment, and urged, *inter alia*, that the plaintiff was not a purchaser of an “entire estate” within the meaning of section 37 of Act XI of 1859; that the time of settlement as given in that section was the time when the new estate was formed upon partition; and that the purchase by the plaintiff was, therefore, not free of the assignment.

The Court of first instance declined to try the question of

* Appeal from Appellate Decree No. 46 of 1896, against the decree of F. H. Harding, Esq., District Judge of Shahabad, dated the 21st of October 1895, reversing the decree of Babu Mohin Chunder Sircar, Munsif of Arrah, dated the 26th of April 1895.

1897

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incumbrance, as being one which did not legitimately arise in a simple suit for arrears of rent, and dismissed the suit on the plea of payments made to the assignee of the former proprietor. The plaintiffs preferred an appeal to the District Judge, and their appeal was decided.

The defendant appealed to the High Court.

Moulvi Mohamed Yusuf for the appellant.

Dr. Rash Chahary Ghose and Babu Satish Chandra Ghose for the respondents.

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

The plaintiffs are purchasers at a sale for arrears of Government revenue. They sue for arrears of rent. The defendants claim that they have paid their rent to persons to whom that rent was assigned by the former proprietor.

The sole question before us is, whether having regard to the terms of section 37 of Act XI of 1859 the plaintiff is entitled to disregard the arrangement made with the former proprietor.

It has been argued before us that, although the plaintiff has purchased what upon a partition by the Collector has become a separate estate bearing a separate *towji* number, and charged with a separate amount of Government revenue, he is not the purchaser of an "entire estate" within the meaning of section 37, and also that he only acquires the estate free from the incumbrances which may have been imposed upon it after the separation. We fully agree with the learned District Judge's decision on both these questions and with the reasons which he has given. An estate, the revenue of which is partitioned under the Partition Act, becomes divided into several entire estates, each one becomes wholly independent of the other for all purposes, and is, therefore, an entire, that is, a complete and self-contained estate. As far as we know, it has always been considered that a partition by the Collector has this effect. Section 123 of the Partition Act is to our minds quite clear on this subject. The fact that the Partition Act is subsequent to Act XI of 1859 makes no difference. The only question is whether the new estate created is an entire estate such as was contemplated by Act XI of 1859. It has not been suggested to us that there is a difference of any

kind between an estate, the revenue of which has been separated under the Partition Act and of which separate possession has been given, and the entire estates contemplated by Act XI of 1859.

The second question depends upon what is the meaning of the words "the time of settlement" in section 37 of Act XI of 1859. It is clear, we think, from the preamble that the settlement means the contract with Government whenever that may have been made. In the case of a permanently-settled estate it means the permanent settlement. In other cases it means the last settlement with Government whenever that may have been. The partition does not alter the amount of revenue payable, it merely apportions that amount. There is no settlement of the revenue in any sense at the time of such partition. We dismiss this appeal with costs.

S. C. C.

Appeal dismissed.

Before Mr. Justice Macpherson and Mr. Justice Ameer Ali.

AUBHOYA CHURN DEY ROY AND ANOTHER (PLAINTIFFS) v.
BISSESWARI AND OTHERS (DEPENDANTS).³

Limitation Act (XV of 1877), section 4—Application to sue in forma pauperis—Refusal of application—Extension of time granted for payment of Court-fee—Payment of Court-fee after period of limitation—Civil Procedure Code (Act XIV of 1882), sections 409, 410, 413.

1897
July 9.

Where an application for permission to sue *in forma pauperis* is rejected, and a full Court-fee is paid for a suit for the same relief, the suit must be considered, for the purposes of limitation, to have been instituted only after the payment of the Court-fee, and not at the date of presentation of the petition to sue as a pauper. Section 4 of the Limitation Act does not apply in such a case.

The plaintiff on 26th November 1890 applied for leave to sue *in forma pauperis* for the recovery of immovable property. His application was rejected in May 1891, and time was given him to pay the full Court-fee, and his petition was then treated as the plaint in the suit. The period of limitation for the suit had then, however, expired, the cause of action being found to have arisen on 23th November 1878. *Held*, that the suit was insti-

³ Appeal from Appellate Decree No. 43 of 1896, against the decree of H. Cox, Esq., District Judge of Tipperah, dated the 21st of October 1895, affirming the decree of Baba Girish Chandra Chatterjee, Subordinate Judge of that District, dated the 7th of May 1892.