

himself, so neither can his tenant against him. There is therefore not only no authority for the view of the Subordinate Judge, but it is inconsistent with the principle that underlies the acquisition of easements.

We therefore decree this appeal with costs and set aside the decree of the lower Court so far as it gives the defendants a right of easement against the plaintiffs in respect of the water, fish, and earth of the disputed tank.

The cross-appeal is not pressed and is dismissed.

Before Mr. Justice Rampini and Mr. Justice Pratt.

PARBATI NATH DUTT

v.

RAJMOHUN DUTT.*

1902

MANI
CHANDER
CHAKR-
BUTTY
c.
BAIKANTA
NATH
BISWAS.

1901

Nov. 27.

Limitation Act (XV of 1877) Schedule ii, Article 14, Estates Partition Act (Bengal Act VIII of 1876) ss. 116, 149 and 150—Suit for possession.

In a partition proceeding before the Collector under the Estates Partition Act, R, a party to that proceeding, contended that certain land measured as part of the estate under partition was not part of that estate, but appertained to his howla.

The Revenue authorities enquired into his contention under s. 116 of the Act and decided it against him. On a suit having been brought by him, after the lapse of one year, for a declaration that the disputed land was part of his howla, the defence was that the suit not having been brought within one year from the date of the order passed by the Revenue authorities, it was barred by limitation.

Held, that the suit was so barred.

Laloo Singh v. Purna Chander Banerjee (1) distinguished.

THE defendant Parbati Nath Dutt appealed to the High Court.

This appeal arose out of an action brought by the plaintiff to recover possession of certain land on declaration of his title thereto. The allegation of the plaintiff was that the disputed

* Appeal from Order No. 313 of 1900, against the order of Dwarkanath Mitter, Esquire, Additional Judge of Dacca, dated the 4th of July 1900, reversing the order of Babu Kali Kumar Bose, Subordinate Judge of that District, dated the 14th of August 1897, and remanding the suit to his Court for trial on the merits.

(1) (1896) I. L. R. 24 Calc. 149.

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land appertained to the howla Mooktaram Datta Das comprised within taluks Nos. 241, 242 and 243 and not within taluk No. 2466; that he had acquired a right to the disputed land by adverse possession over 12 years; that the defendants Nos. 1 and 2 and one Ram Coomar Singh, predecessor of the defendants Nos. 5 and 6, applied for the partition of the estate No. 2466 in the Dacca Collectorate, and the Amin who went to measure the lands measured all the disputed lands as appertaining to taluk No. 2466, and that he objected to the disputed lands being included in the said taluk, but his objection was disallowed by the Revenue authorities. Hence this suit was brought. The defendants, *inter alia*, contended that the plaintiff's suit being virtually a suit for setting aside the orders of the Revenue authorities, and not having been brought within one year from the date of the last order, it was barred by limitation. The Court of first instance dismissed the plaintiff's suit, holding that it was barred by limitation. On appeal the learned Additional Judge of Dacca, Babu Dwarka Nath Mitter, holding that the suit was not barred by limitation, remanded the case to the first Court for trial on the merits.

Babu Hovendra Narayan Mitter for the appellant.

Babu Hari Mohun Chuckerbutty for the respondent.

RAMPINI and PRATT JJ. This is an appeal against an order of the Officiating Additional Judge of Dacca, dated 4th July 1900, setting aside a decree of the Subordinate Judge of that District, dismissing a suit as barred by limitation and remanding it to him for trial.

The facts are as follows: The respondent was a party to a partition before the Collector under the Estates Partition Act. He contended before the Collector that certain land, measured as part of taluk No. 2466, the estate under partition, was not part of that estate, but appertained to his howla, Muktaram Datta Das, subordinate to taluks Nos. 241, 242 and 243. The Revenue authorities enquired into his contention under s. 116 of the Act and decided it against him. The respondent then brought this suit to have it declared that the disputed land was part of his howla, Muktaram Datta Das, but he brought his suit after the lapse

of one year, and so the Subordinate Judge held it to be barred and dismissed it.

The Additional Judge was of opinion the suit was not barred and remanded the case for trial.

The defendant appeals, and on his behalf it has been urged that the Additional Judge's order is wrong. We are of opinion that the appeal should be decreed.

The plea which the plaintiff raises in this suit is exactly the same as he raised before the Revenue authorities and which was decided against him.

The Revenue authorities had jurisdiction to enquire into his plea under s. 116 of the Act: hence the plaintiff was bound by that order. S. 149 provides that no order of a Revenue officer passed under Part VIII of the Act (which is the part in which s. 116 occurs) shall be set aside, except as provided in s. 150. S. 150 expressly provides that any person aggrieved by an order under s. 116 may bring a suit to modify it or set it aside, and Article 14 of the Limitation Act prescribes a period of one year for the bringing of such a suit. Now, the present suit was brought after the lapse of one year from the date of the order. It is, accordingly, in our opinion, barred. The learned pleader for the respondent urges that the respondent brings the suit in a different capacity from that in which he raised his plea under s. 116 before the Revenue authorities. This is not so. He did not really raise this plea under s. 116 before the Revenue authorities as the proprietor of taluk 2466. As such, it was his interest that as much land as possible should be measured as part of taluk No. 2466. He was only interested in having the disputed land excluded from measurement in his capacity as holder of the howla Muktaram Datta Das. Whatever he may now say, he raised his plea before the Revenue authorities and he has brought this suit in the same capacity and as the same individual. Hence the ruling in the case of *Laloo Singh v. Purna Chander Banerjee* (1), on which the Additional Judge relies, is

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not in point. It is further clearly distinguishable from the present case, for the plaintiff in *Laloo Singh v. Purna Chander Banerjee* (1) appears to have been no party to the proceedings before the Revenue authorities and to have been in no way bound by the orders passed by them.

We accordingly decree the appeal with costs.

Appeal allowed.

S. C. G.

Before Sir Francis W. Maclean, K.C.I.E. Chief Justice, and Mr. Justice Banerjee.

1901
 May 16.

DOYAL KRISHNA NASKAR

v.

AMRITA LAL DAS.*

Compensation, suit for—Sale in execution of a decree obtained outside the jurisdiction of the Original Side of the High Court—Misdescription of area of property sold—Deficiency in quantity of land.

An auction-purchaser of a tenure, sold in execution of a decree outside the jurisdiction of the Original Side of the High Court, brought a suit against the decree-holder for a refund of part of the purchase-money on account of a deficiency in the actual area of land purchased as compared with the area stated in the sale proclamation, and for abatement of rent in respect of such deficiency.

It was alleged that the decree-holder made false and fraudulent allegations in respect of the area of the property in the sale proclamation, but there was no finding by the Lower Court as to this, nor was there any finding that the plaintiff sustained any loss, and there was no condition in the sale proceedings as to compensation for errors or misdescription. The purchase-money was not in Court, and the decree-holder offered to pay back the auction-purchaser his purchase-money and release him from his purchase, but this was refused.

Held, that, although there was a deficiency in area, the auction-purchaser was not entitled to compensation, as he had failed to prove he had sustained loss by misdescription in the sale proclamation, but he was entitled to an abatement of rent for such deficiency.

*Appeal from Appellate Decrees Nos. 409 and 758 of 1899, against the decree of Babu Rajendra Coomar Bose, Subordinate Judge of 24-Pergunnahs, dated the 16th of December 1898, modifying the decree of Babu Bhuban Mohun Ghose, Munsiff of Alipur, dated the 23rd of August 1898.