

evidence of its authenticity, although *per se* no evidence of title as against the defendants.

From these remarks it will appear, that the evidence of the plaintiffs' possession ought carefully to be investigated and weighed, both on the question of title and also on that of limitation.

The Subordinate Judge, if he thinks fit, may receive further evidence of possession on either side. The costs in all the Courts will follow the result of the trial on remand.

Case remanded.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.

HEM LOTTA (PLAINTIFF) *v.* SREEDHONE BOROORA AND ANOTHER
(DEFENDANTS).*

1877
Nov. 27.

Certificate Proceedings under Beng. Act VII of 1868—Jurisdiction of Civil Court to enquire into legality of—Grant of Potta after Certificate issued.

In a suit for arrears of rent it appeared that the plaintiff claimed under a potta granted by the owner of land, after a certificate had been issued against him out of a Collector's office under Beng. Act VII of 1868. The defendants had purchased the land in question at a sale held under the Act. The plaintiff alleged that the certificate had not been served, and that no notice before the certificate was issued was served upon the grantor as required by s. 18 of the Act. And he contended that as the Collector's proceedings were irregular, the potta was valid. The District Judge held that the Civil Court had no power to inquire into the Collector's proceedings, and must, as nothing appeared to the contrary, assume that they were regular, and dismissed the suit.

Held, that the Judge was bound to examine the proceedings of the Collector to see that they were legal and regular so as to constitute a legal bar to the grant of the potta, and that the Judge was not at liberty to make any presumption in favour of their legality or correctness.

THIS was a suit to recover arrears of rent. The plaintiff alleged that she held possession of the land out of which the rent issued, by virtue of a patni granted by one Doorga Mohun Kanaye. The potta was granted subsequently to the issue out

* Appeal under s. 15 of the Letters Patent, against the decree of Mr. Justice Lawford, dated the 26th July 1877, in Special Appeal No. 2636 of 1876.

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of a Collector's office of a certificate under Beng. Act VII of 1868 against the grantor. The defendants purchased the land in question at the sale held under the Act, and now pleaded that Doorga Mohun Kanaye had no power to grant the potta after the certificate had been served. The witnesses called to prove service of the certificate were disbelieved by the Munsif, and it also appeared at the trial before him that no notice was served upon Doorga Mohun Kanaye under s. 18 of the Act before the certificate was issued. Under these circumstances the Munsif held that the potta was good, and gave the plaintiff a decree. Upon appeal the District Judge considered that a Civil Court could not say that the procedure followed by the Collector was irregular and that the entire proceedings were null and void, and must, as nothing appeared to the contrary, assume that they were regular, and that if the parties were aggrieved they could try the correctness of the Collector's proceedings by a regular suit; and reversed the Munsif's decision. This decree was upheld on appeal to the High Court by Mr. Justice Lawford. The plaintiff now appealed under s. 15 of the Letters Patent.

Baboo Mohini Mohun Roy for the appellant.

Baboo Srinath Doss for the respondents.

GARTH, C. J. (BIRCH, J., concurring)—We think that the District Judge has made a mistake in this case, which the learned Judge in this Court has not thought fit to rectify.

The District Judge appears to have considered, for some reason or other, that it was not competent for the Civil Court to question the validity of the proceedings of the Collector.

The question arose in this way—

The plaintiff claimed reut from the defendant by virtue of a patni which had been granted to her by Doorga Mohun, and under which Doorga Mohun's rights as the defendant's landlord had been conveyed to him (the plaintiff).

The defendants' case was, that the patni was invalid, because Doorga Mohun had no right to grant it.

Now, *prima facie*, Doorga Mohun had of course a right by law to grant the patni. But the defendants alleged, that certain proceedings had been taken by the Collector, the legal

effect of which was to prevent Doorga Mohun from transferring his interest in the tenure; which proceedings consisted of a certificate, which was intended to operate as a judgment against Doorga Mohun, and a notice given to him of the issue of that certificate.

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Now it was absolutely necessary in order to answer the plaintiff's case effectually, that the defendants should prove these proceedings in a regular way; and it is clear, that the plaintiff was at liberty, if she could, to question the legality of those proceedings, and to show that they were irregular and ineffectual.

But the Judge says: "This Court cannot say that the procedure followed by the Collector was irregular, and that the entire proceedings are null and void;" and further on he says, "I hold that this Court cannot in this suit examine the proceedings of the Collector under Act VII, and must, as nothing appears to the contrary, assume that they were regular."

In this we think that the Judge was clearly wrong. He was bound to examine the proceedings of the Collector; he was bound to see that they were legal and regular, so as to constitute a legal bar to Doorga Mohun's transferring his interest to the plaintiff: and the Judge was not at liberty to make any presumption in favour of their legality or correctness.

The case must go back to the Judge to try the question of the legality of the Collector's proceedings. The Munsif tried this question, and it will be for the Judge now to ascertain whether the proceedings were regular and effectual so as to prevent the transfer of the tenure by Doorga Mohun to the plaintiff.

If necessary, additional evidence may be given by either party for the purpose of determining that question.

The judgment of this Court and of the District Judge will be reversed, and the case will be remanded to the District Judge for retrial in accordance with the views expressed.

If further evidence is necessary, the Judge can give the parties an opportunity of adducing it. The costs will abide the result.

Appeal allowed.