

**Ashutosh Nath Ray Vs. Abdool**

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**SooperKanoon Citation :** [sooperkanoon.com/863372](http://sooperkanoon.com/863372)

**Court :** Kolkata

**Decided On :** Aug-06-1901

**Reported in :** (1901)ILR28Cal676

**Judge :** Rampini and ; Gupta, JJ.

**Appellant :** Ashutosh Nath Ray

**Respondent :** Abdool

**Judgement :**

1. The facts of this case are that there was a settlement of the plaintiff's rent by a Settlement Officer in May 1891. It is said the present defendant applied for a settlement of his tenants' rents, including that of the plaintiff, but his petition is not to be found on the record. However, it has been decided that the Settlement Officer has jurisdiction to settle the plaintiff's rent as he was found to be in possession of excess land. The Settlement Officer accordingly increased the plaintiff's rent from Rs. 7, odd, to Rs. 9-12. The plaintiff raised no objection under Section 105 of the old Chapter X. He preferred no appeal to the Special Judge. He remained perfectly quiet. The defendant's estates being under the management of the Court of Wards, a certificate for the amount due for the rent of 1303 and 1304, due from the plaintiff, was issued in 1895-96. The plaintiff then objected to the certificate, but his objection was disallowed on the 25th January, 1897. He accordingly instituted this suit on the 7th July, 1897, for cancellation or modification of the certificate, which he pleads, was issued for an excessive

amount.

2. Both Courts have held that the plaintiff was not bound by the proceedings of the Settlement Officer, that the latter had no right to raise the plaintiff's rent, and have accordingly modified the certificate and given the plaintiff a decree for the recovery of a sum of Rs. 19-12. The defendant appeals. On his behalf it has been contended, (1) that the order of the Settlement Officer, dated May 1891, has the effect of res judicata, and (2) that the plaintiff's suit for the alteration of his rent is barred by limitation.

3. It appears to us that the Settlement Officer's order of May 1891 has not exactly the effect of res judicata. The plaintiff contends it was an ex parte order, and was passed without notice to him. This does not appear to be quite correct. A general notice directed to him as well as to other tenants was issued under Rule 16 of the Government rules under the tenancy Act. The rules do not require the issue of any special notice to each individual tenant. Some of the tenants appeared before the Settlement Officer. The plaintiff might have appeared, too, if he had pleased. In the settlement proceedings the defendant and the present plaintiff were arrayed against each other as plaintiff and defendant, though the present plaintiff did not appear. The Settlement Officer took evidence and decided the question of the plaintiff's rent along with those of other tenants, as he was entitled to do under the rules. His decision had, therefore, under Section 107 the force of a decree. But it was an ex parte decree, and though it was not executed, that was because it was in the nature of a declaratory decree, incapable of actual execution. Hence, though it may not make the question of the plaintiff's rent res judicata, it is certainly admissible in evidence, and is good evidence, as to the plaintiff's rent. It is a good decree, not being shown to have been obtained by fraud. The entry in the khatian of the plaintiff's rent has also the presumption of correctness attaching under Section 109 to an undisputed entry. However this may be, we think the appellant's second plea must prevail. The plaintiff's rent was settled by the Settlement Officer, who had jurisdiction to settle it, in May 1891. The plaintiff made no objection under Section

105. He preferred no appeal under Section

108. Under Section 111, he could bring a suit for the alteration of his rent as soon as the record of the rights was finally published. The period of limitation applicable would seem to be either Article 14, which allows one year for the setting aside of the act of a Government officer in his official capacity not expressly provided for, or Article 120, which prescribes six years as the period of limitation for a suit for which no period of limitation is prescribed elsewhere. Whichever article is applicable, a suit for the alteration of the plaintiff's rent would seem to be barred, as the present suit was instituted on the 7th July 1897, or more than six years after the plaintiff's rent was settled. The plaintiff ought not, therefore, to be allowed to bring a suit for the alteration of his rent under the specious guise of a suit for the amendment of a certificate. That this is the object of the plaintiff's suit is clear, for the Munsif says in his judgment: ' It seems that three distinct prayers have been made in the plaint

(1) for determination of the plaintiff's jama,

(2) for cancellation of the certificate,

(3) for realization of Bs. 19 odd as compensation,' and the Munsif has altered the plaintiff's rent, for he sent out an amin, who measured the land and he held on the amin's report that the plaintiff was liable to pay rent for 13 kanies only, instead of 15 kanies as found by the Settlement Officer. If the plaintiff had not been a tenant of a Ward's estate, he would not have been able to institute such a suit as he has done. It cannot be the intention of the Legislature, or right, that while tenants' rents after being settled by a Settlement Officer become final, if not impugned in the way provided by the law for doing so, after the lapse of a certain time, tenants of Ward's estates should have the means of upsetting them, by bringing suits to cancel and modify the certificates issued against them for such rents.

4. We are, therefore, of opinion that this suit is not maintainable. We accordingly decree this appeal with costs.