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Petambar Baboo and anr. Vs. Nilmony Singh Deo and ors.

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Court : Kolkata

Decided On : Apr-16-1878

Reported in : (1878)ILR3Cal794

Judge : Jackson and ;Tottenham, JJ.

Appellant : Petambar Baboo and anr.

Respondent : Nilmony Singh Deo and ors.

Judgement :

Jackson, J.

1. It appears to us that the decision of the Court below on the issue of limitation is erroneous. It appears that in July 1865 a suit was brought by a person, who was then talookdar, against the defendants for arrears of rent, and in the plaint in that suit it was recited that previously this talookdar had sued the zemindar for a reduction of the talook rent on the ground that the present defendants had alleged their rent to be mokurrari, Rs. 132, whereas the talook rent had been assessed on the allegation of the zemindar that the rent was higher. That is the account given in the judgment of the Court below, and we understand what took place was this. The previous talookdar there spoken of had, in the first instance, sued these defendants for rent at a rate higher than Rs. 132, and these defendants had then made out their right to hold the mokurrari at Rs. 132, and no more; thereupon the talookdar, being defeated, sued the superior landlord upon the ground that the

defendants having set up and proved their right to hold the mokurrari at Rs. 132, his assurances in respect of the assets of the estate had proved unfounded to that extent, and it seems that reduction of their rent was accordingly allowed; Now, in that way it was not merely a setting up of the mokurrari, but it was set up in such a manner as affected the raja zemindar with a loss pro tanto of his rent in consequence of this mokurrari. It was manifestly, we think, such an allegation as put upon the raja the necessity of attaching this mokurrari within twelve years. The Court below seems to think that the mokurrari in its fullest sense was not pleaded, because the tenure was described as one granted for maintenance. That seems to me merely to indicate the origin of the grant, and does not amount to any real difference in the nature of it.

2. Then it is said that, by the custom of this raj, grants for maintenance by the raja of the time being are liable to revocation at the instance and at the discretion of succeeding rajas, and this contention no doubt is supported by a decision of the Judicial Committee of the Privy Council in the case of Anund Lal Singh Deo v. Maharaja Gurrood Narayun Deo Bahadur 5 Moo. I.A. 82. But I think it clear that if the right of resumption exists in such cases at the option of each raja at the time of his succession, and if he has notice of a claim to hold such mokurrari, and allows twelve years to go by without taking steps to get rid of it, he at least is barred for the time of his enjoyment. That being so, it appears to me that limitation barred the present suit, and that it ought to have been dismissed. The judgment of the Court below is reversed with costs.

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