

(1896) 12 CAL CK 0018
In the Calcutta High Court

Bhabiram Dutt Barna

APPELLANT

Vs

Patan Marin

RESPONDENT

Date of Decision : 07-12-1896

Acts Referred:

Citation : (1897) ILR (Cal) 239

Hon'ble Judges : Rampini, J;Banerjee, J

Bench : Division Bench

Judgement

Rampini, J.—In this case the plaintiff sues for a declaration of his right to 5 bighas and 15 lessas of land, for possession of the same, and for mesne profits, amounting to Rs. 50.

2. The lower Courts have found that the plaintiff is entitled to this land. They both hold that 2 bighas of the land was part of his ancestral holding, and that 3 bighas 15 lessas of it were formerly the land of one Mohmer, in consequence of whose death or abandonment of them they became available for settlement before the time of the Cadastral survey, and as the plaintiff was found in possession of them at the time of the Cadastral survey, they were properly settled with the plaintiff, and the Revenue authorities had consequently no right to order the land to be transferred to the defendant's holding.

3. The defendant appeals, and on his behalf it has been urged that the suit is not maintainable u/s 154 of the Assam Regulation I of 1886, according to which, except as otherwise provided in this Regulation, no Civil Court shall exercise jurisdiction in "questions relating to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force." But we find that, according to Section 41, "entries in the record of rights made u/s 40 shall be founded on the basis of actual possession," and according to Section 39 "no person shall, merely on the ground that a settlement has been made with him or with some persons through whom he claims, be deemed to have acquired any right to or over any estate as against any other person claiming rights to or over that estate." "Estate" is defined in Section 3 to include "any land subject to the

payment of land revenue, for the discharge of which a separate engagement has been entered into;" so that the land in dispute in this case would seem to come within the definition of "Estate." That being so, the land seems to have been properly settled with the plaintiff by the Cadastral survey, who found the plaintiff in possession, and subsequent proceedings of the Revenue authorities conferred no right in the land on the defendant.

4. Then, it would seem to us that, so far as the plaintiff's right to the land in dispute is concerned, the question at issue between the parties in this case is not a question as to the validity or effect of any settlement. It is a question merely as to his right to obtain a settlement from the Revenue authorities, and such a question does not seem to be excluded from the jurisdiction of the Civil Court by the provisions of Section 154 of the Assam Land and Revenue Regulation. But in the case of *Madhub Nath Surma v. Myarani Medhi* ILR 17 Cal. 819 it is pointed out that when property has been settled with anyone by the Revenue authorities, a Civil Court can only give a plaintiff who objects to that settlement a declaration of his right to a settlement of the lands in question, and cannot give him a decree for possession. In these circumstances, we cannot in this case give the plaintiff more than a declaration of his right to obtain settlement, and must so far modify the decree of the Lower Appellate Court that we set aside the decree for possession. The plaintiff must go to the settlement authorities and get them to settle the land with him and put him in possession of it.

5. To this extent we modify the decree of the Lower Appellate Court; in other respects we affirm it. We make no order as to costs.