

(1912) 05 CAL CK 0009**Calcutta High Court****Case No:** None

Aman Gazi

APPELLANT

Vs

Maharaja Birendra Kishore

RESPONDENT

Manikya Bahadur

Date of Decision: May 3, 1912**Citation:** 15 Ind. Cas. 64**Hon'ble Judges:** Stephen, J; Richardson, J**Bench:** Division Bench**Judgement**

1. This is one of the numerous suits brought by the Maharaja of Tipperah, in which he seeks for a declaration of his title as zemindar, to and for khas-possession of, the lands in dispute or in the alternative for assessment of rent.

2. The District Judge in the Court below has considered the question of limitation and has held that the suit is not barred under the provisions of the statute. The facts are, that the defendant on the 11th February 1895 set up a title before the Settlement Officer according to which he claimed to hold the lands in question rent-free. No actual decision by the Settlement Officer was brought to our notice: but the record-of-rights, which was finally published on the 9th of July 1906, contains entries to the effect that the defendant was a settled raiyat in the village, and that no rent had been assessed in respect of the lands in question. If the time when the tenant first made his claim is considered as the starting point of the period of limitation, the suit is barred, but it is not barred if we count the period from the date of the publication of the Record of Rights. The lower Court has held that the latter date is the one from which limitation must be counted and we consider that this is right. The claim made by the tenant cannot be said to have been allowed by the Settlement Officer. It may, perhaps, not be said to have failed as the question it raised was allowed to be left open for future determination. But on looking into the facts of the case, we cannot but consider that on the publication of the Record of Rights, it was open to the Maharaja to rely upon the entries therein as a tacit

recognition of his right to have rent assessed at any rate within twelve years of this date. We have been referred to a recent decision in the case of Raja Birendra Kishore Manikya v. Roshan Khan 18 Ind. Cas. 518 15 C.L.J. 203 : 39 C. 453. As regards that case, there does not appear to have been any question raised as to the effect of any entries in the Record of Rights. We, therefore, do not consider ourselves bound by that decision.

3. It is argued before us that the Settlement Officer had no jurisdiction to deal with a claim to hold land free of rent. As to this, it is enough to say that on the materials before us the entries in the Record of Right as finally published were made by a competent authority.

4. The result is that this appeal fails and is dismissed with costs.