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(1878) 06 CAL CK 0017

Calcutta High Court

Case No: None

Narain Chunder

APPELLANT

Vs

Tayler and Others

RESPONDENT

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Date of Decision: June 12, 1878

Citation: (1879) ILR (Cal) 103

Hon'ble Judges: Tottenham, J; L.S. Jackson, J

Bench: Division Bench

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Judgement

Jackson, J.

The Extra Assistant Commissioner, not going into the merits, threw out the plaintiff's suit, firstly, on the ground that the plaintiff was barred, in as much as twelve years had elapsed from the time of the accretion of the land as taken possession of by the defendants and, secondly, because three years' limitation applied from the date of the Survey Deputy Collectors award; and lastly, because by Act IX of 1847 the Court was debarred from maintaining the suit.

2. As to the first two grounds, it is clear that the plaintiff would not be barred, because he is an auction-purchaser of the estate, and as such is entitled to recover it free of all encumbrances, and his cause of action, by whatever period of limitation it would be restricted, would arise from the time of his purchase, and the period of limitation is to be counted from that time; and it seems that the present suit is brought within three years from the date of the plaintiffs purchase.

3. As regards the objection under Act IX of 1847, the Judge has quite misconceived, it seems to us, the case of Dewan Ram Jewan Singh v. Collector of Shahabad (14 B.L.R. 221 : 18 W.R. 64,) to which reference has been made, and there is an express authority--the case of Collector of Moorshedabad v. Roy Dhunput Singh Bahadur (15 B.L.R. 49 : 23 W.R.38)--for holding that while, no doubt, the action taken by the Revenue authorities as to a settlement is final and cannot be questioned, that by no means debars a proprietor from bringing before a Civil Court his right to hold the property under any settlement that may be made. The judgment of the Court below,

therefore, must be set aside as erroneous, and the case must go back in order to be tried on the merits.