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plaintiff's equitable interest in the land, and that title having been since perfected by the issue of the certificate, the plaintiff is now in a position to sue for possession; and as the defendant has not acquired a title by adverse possession, he has, in our opinion, no valid defence to plead to the plaintiff's action, unless perhaps, (as to which we express no opinion), if it should prove that the proceedings in connection with the sale certificate to plaintiff were fraudulent, as to which no finding has been recorded in either Court. We have already expressed an opinion at the hearing, that the plaintiff was under no obligation to proceed under section 263 of Act VIII of 1859—*Patlu v. Ravji*<sup>(1)</sup>. We must, therefore, send down the case for a finding on the first issue raised by the Subordinate Judge; the finding to be transmitted to this Court within two months. The parties to be allowed to give fresh evidence.

*Case sent down.*

(1) Printed Judgments for 1885, p. 85.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nānābhāi Haridās.*

BAT UJAM AND ANOTHER, (ORIGINAL PLAINTIFFS), APPELLANTS, v.

VALLJI RASULBHAI, (ORIGINAL DEFENDANT), RESPONDENT.\*

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April 21.

*Jurisdiction—Act V. of 1879, Secs. 119 and 121, fixing of boundaries under—Boundaries, effect of decision of revenue authorities as to—Meaning of the term “determinative”.*

In 1877 a dispute arose between plaintiffs and defendant as to the boundaries of certain land, being survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879 the boundaries were fixed by a revenue officer under the orders of the Collector, and the piece of land in dispute was found to belong to the plaintiffs as occupants of survey number 88. Subsequently, the defendant having encroached upon it and dispossessed the plaintiffs, the present suit was filed. The Court of first instance awarded the plaintiffs' claim, holding that the decision by the revenue officer was conclusive as to the boundary. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court,

*Held*, restoring the decree of the Court of first instance, that, under the provisions of section 121 of Act V of 1879, the decision of the Collector as to the boundaries was conclusive, and that the plaintiffs were entitled to possession.

\* Second Appeal, No. 216 of 1884.

THIS was a second appeal from the decision of F. C. O. Beaman, Assistant Judge of Ahmedábád.

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The plaintiffs and the defendant were occupants under Government, of land comprised in survey Nos. 88 and 85 respectively. In 1877 a dispute having arisen in respect of the boundaries of these survey numbers, an inquiry was instituted, and in 1879 the boundaries were fixed by the Mámlatdár of Dhandhuka under the orders of the Collector, and the disputed piece of land was found to form a part of the plaintiffs' survey No. 88. Subsequently, the defendant having encroached upon this piece of land, the plaintiffs brought the present suit against the defendant to recover possession.

The defendant denied that he had encroached, and alleged that the land formed a part of his survey No. 87, that he had been in possession for more than twelve years, and that, therefore, the plaintiffs' suit was barred.

The Subordinate Judge of Dhandhuka, who tried the suit, found that the defendant's possession was not adverse; and being of opinion that the decision of the revenue officer as to the boundaries was conclusive, awarded the plaintiffs' claim. The defendant appealed to the Assistant Judge, who reversed the Subordinate Judge's decree with the following remarks:—" \* \* \* When first this case was argued before me I was inclined to think, as the lower Court thought, that the rights of the litigant parties were finally defined by the settlement of the boundary between their respective holdings made under the authority of the Collector. Section 121 of the Revenue Code (V of 1879) says that "the settlement of a boundary under any of the foregoing provisions of this chapter, (the settlement of boundaries and the construction and maintenance of boundary marks), shall be determinative (a) of the proper position of the boundary line or boundary marks, and (b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings." The lower Court, following the section, wrote "that, after the boundary is fixed by revenue officers, Court cannot interfere to give land from another field to the

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defendant to make up the area of his portion of survey No. 87." That is to say, that the lower Court thought that, even supposing the evidence showed that the defendant was entitled to hold the land in respect to which he was said to have encroached, yet, that if the said portion of land was found to fall within the limits of a survey-line drawn by the revenue authorities and bounding the plaintiffs' holding, the Court had no further jurisdiction than to give effect to the survey officer's award without taking into consideration the fact that that award was, upon the face of it, operative to deprive the defendant of a portion of land in respect to which he was and had been admittedly paying revenue to Government. But, after a careful perusal of the decided cases upon analogous points, I am of opinion that the settlement of a boundary-line does not conclude the question of right on either side of that line when the question is raised, as it is here, in the shape of an encroachment.

"The mistake into which the lower Court has fallen, appears to me to be this. It has regarded the determination of the boundary by the Collector as conferring a right of possession, instead of regarding it as merely a piece of evidence, valuable it is true, but not conclusive. It appears to have thought that it had no jurisdiction to question that determinative decision of the Collector, and that is a point upon which I am compelled to differ from the learned Subordinate Judge."

The plaintiffs preferred a second appeal to the High Court.

*Ganpat Sadáshiv Ráv* for appellants:—The Court of first instance rightly held that the decision of the Collector as to the boundaries is conclusive. Section 121 of Act V of 1879 says that such a decision is determinative,—that is, conclusive. The Civil Court's jurisdiction is shut out as against that decree.

*Nagindás Tulsidás* for respondent:—Section 121 does not deal with the question of title, which is called in question in the first case. The preamble of the Act states that the Act is intended for collector of land revenue and registration. It refers to the question of mere boundaries. The word "right" used in section 121 does not contemplate any preponderating right. Here the title to the property is itself in question, and the decision of the

Collector as regards boundaries will not exclude the respondent from urging it by a separate suit.

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SARGENT, C. J.:—The parties to this suit are occupants of land under Government, and the plaint is brought to recover 12 gunthás, which, plaintiffs allege, belong to survey No. 88, upon which, they say, the defendant has encroached. The defendant alleges that he is the occupant of 2 acres 32 gunthás out of survey No. 87, and that they comprise the land in question. The dispute as to the boundary of their respective holdings was dealt with by the revenue authorities under section 119 of Act V of 1879, and, according to the boundary then fixed, the disputed piece of land is included in plaintiffs' holding, survey No. 88.

The Subordinate Judge held that the decision of the Collector was, under section 121 of the Code of 1879, determinative of plaintiffs' right to hold the land; and, as the defendant had not proved adverse possession for twelve years, passed a decree for possession in favour of the plaintiffs. The Assistant Judge did not consider the Collector's decision as to the boundary conclusive as to the plaintiffs' right, and decided in favour of defendant, on the evidence recorded in the case. The Assistant Judge relied on the judgment of West, J., in *Pitámbar Dhári v. Sambhájiráv* <sup>(1)</sup>, in which it was held that the sole power given to the Collector by Act II of 1866 was to determine where the boundary had been fixed at the survey, and that "his order could establish no right which could clash with the decision of a Civil Court on a claim for possession or of title." Since then, Act X of 1876 was passed, which left the jurisdiction of the Civil Courts over suits for ejectment or possession unaltered; see *Krishnaráv Sitáram Paránjpe v. Lakshman Ganoji More* <sup>(2)</sup>. But by the Bombay Revenue Code (Act V of 1879) an important change was made in the law by sec. 121, which provides "that the settlement of a boundary under the foregoing provisions of the Act should be "determinative", first, of the proper position of the boundary; secondly, of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain or not to appertain to their respective holdings."

(1) 8 Bom. H. C. Rep., A. C. J., p. 185. (2) Printed Judgments for 1883, p. 191.

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The rights here referred to must, from the nature of the dispute necessitating the settlement, be the rights of the landholders *inter se*, and by the words "determinative", (which we may remark is not one of ordinary use in legal documents), we can only suppose was meant "conclusive" as between the parties to the dispute wherever the boundary of the holdings come in question. We agree, therefore, with the Subordinate Judge that, as the piece of land in question is admittedly within the boundary as fixed by Collector, and as the defendant does not claim to have acquired, since the Collector's decision, the right to hold the plaintiffs' land except by adverse possession, which the Subordinate Judge finds not proved, the plaintiffs are entitled to have the possession of it restored to them. The decree of the Assistant Judge must, therefore, be reversed, and that of the Subordinate Judge substituted in its place. Defendant to pay the plaintiffs their costs of this appeal and in the Court below.

*Decree reversed.*