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*Before Mr. Justice Bayley, Mr. Justice Jardine and Mr. Justice Candy.*NAGU (*Original Defendant No. 2*), *Appellant v. SALU (Original Plaintiff)*, *Respondent*. * [16th December, 1890.]1890.
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15 B. 424.*Grant of land by the Collector—Suit to recover possession as against grantee—Collector—Sections 37 and 135 of the Land-Revenue Code (Bombay Act V of 1879)—Limitation—Article 14, sch. II of the Limitation Act (XV of 1877).*

On the 1st September 1882 the Collector of Ahmednagar by an order under s. 37 of the Bombay Land-Revenue Code (Bombay Act V of 1879) granted a piece of open ground to N. for building purposes.

[425] On the 31st March, 1888, S. brought a suit against N. and the Secretary of State for India in Council to recover possession of the ground, and to set aside the Collector's order.

Held, that the suit not being brought within one year from the date of the Collector's order, as provided for in s. 135 of the Bombay Land-Revenue Code (Bombay Act V of 1879), it was time-barred.

[Diss., 7 S.L.R. 169=24 Ind. Cas. 813; Appl., 21 C. 626; R., 32 C. 1107 (1124)=2 C. L.J. 107; 33 C. 693 (697); 6 Bom. L. R. 230 (232); D., 24 B. 435 (446).]

THIS was an appeal from the decision of J. W. Walker, District Judge of Ahmednagar.

Suit to set aside the grant of land by the Collector and to recover possession.

The facts of the case were as follows :—

Defendant No. 2, Nagu, applied to the Collector of Ahmednagar for a grant of a certain piece of open ground in the village site of Kolhar, in the Ahmednagar District. The Collector thereupon gave notice in the village that any claim to the said land should be submitted to him within seven days. The plaintiff, Salu, accordingly appeared before the Collector and claimed the land. His claim, however, was rejected; and on the 1st September, 1882, the land was handed over to the defendant by the Mamlatdar of Rahuri under the order of the Collector. Subsequently the plaintiff presented an application to the Mamlatdar of Rahuri, alleging that he had not been informed of the result of his claim. The Mamlatdar on the 18th July, 1885, informed him that the land had been granted to the defendant on the 1st September, 1882, for building purposes under the Collector's order.

On the 31st March, 1888, the plaintiff filed the present suit against the Secretary of State for India in Council as defendant No. 1 and against the grantee, Nagu, as defendant No. 2, to recover possession of the land, alleging that it was his ancestral property. (The plaint is fully set out in the judgment of Mr. Justice Bayley on p. 432.)

The Secretary of State (defendant No. 1) pleaded that the claim was time-barred, and that the land did not belong to the plaintiff, and was never in his possession.

Defendant No. 2, Nagu, contended (*inter alia*) that the claim was time-barred, that the ground was a vacant village site, and was granted to him by the Collector on his application, and that he had erected walls on the ground.

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[426] The District Judge, who tried the case as the Court of first instance under s. 32 of the Bombay Civil Courts Act (XIV of 1869), found that the land belonged to the plaintiff; that he had been in possession thereof till 1885 when he was dispossessed by the defendants, and that the suit was not barred by limitation. Upon these findings, the District Judge allowed the plaintiff's claim.

Against the decree of the District Court, defendant No. 2 appealed to the High Court.

Gangaram Bapsoba Rele., for the appellant.

Daji Abaji Khare, for the respondent.

JUDGMENTS OF THE DIVISION BENCH.

JARDINE, J.—I am of opinion that the lower Court has rightly found on the evidence that the plaintiff had been in possession of the land in suit and has rightly treated that possession as *prima facie* proof of title. The learned Judge has applied the principles stated in Addison on Torts (5th edition), 373, Ch. 7 (on Injuries to Rights of Property), in *Every v. Smith* (1) and in *Dadabhai v. The Sub-Collector of Broach* (2).

A question remains about limitation. The defendant alleges that he has received a title from the Collector under whose orders he obtained the land after some inquiry held under s. 37 of the Bombay Land-Revenue Code (Bombay Act V of 1879), and that the suit being one to set aside the Collector's order is barred by the limitation of one year. Now whether s. 135 of that Code or art. 14 of the Limitation Act is relied upon, I am of opinion that *Shivaji v. The Collector of Ratnagiri* (3) and *Krishnamma v. Achayya* (4) are authorities to the contrary; and that the following cases explain the principle:—*Oghad Odha v. Nag Mulu* (5); *Luchmon v. Kanchun* (6); *Kristo v. Steel* (7).

Section 37 of Bombay Act V of 1879 very carefully preserves existing rights; the rule found in Bombay Act IV of 1868, s. 11, which threw the burden of proof on the subject claiming against the Government, has not been re-enacted.

[427] I would confirm the decree with costs; but as Mr. Justice Candy differs on the point of limitation, and the point is of general importance, we refer the appeal, under s. 575 of the Code of Civil Procedure (Act XIV of 1882), to Mr. Justice Bayley.

CANDY, J.—The plaint in this case sets forth that the plaintiff owns a piece of open ground, in the village site of Kolhar; that the second defendant, Nagu, applied to the Collector for a grant of the same for building purposes; thereupon a notice was posted in the village to the effect that persons having a claim to the said land by right of ownership should submit their claim; that plaintiff accordingly submitted his claim, which was finally disposed of on 18th July, 1885, when his claim was rejected and the land was granted to defendant No. 2 on a lease for ninety-nine years. Plaintiff alleges that the land is his ancestral property, and, therefore, the Collector could not grant the same to defendant No. 2. He, therefore, sues to recover possession of the same, giving 18th July, 1885, as the date of his cause of action when defendant No. 2 took possession in accordance with the order of the Revenue authorities. He prays that

(1) 26 L. J. (N. S.) Ex. 344.

(3) 11 B. 449.

(5) P. J. for 1881, 26.

(2) 7 B.H.C.R. A.C. J. 82.

(4) 2 M. 306.

(7) 12 C. 279.

(6) 10 G. 525.

the order of the Collector should be cancelled, that the land should be declared to be his, and that it should be given back into his possession. The plaint is dated 31st March, 1888.

The defendant No. 1 (the Secretary of State) and defendant No. 2, Nagu, have replied that the claim was barred by limitation, and that the ground did not belong to plaintiff.

The District Judge found that plaintiff's right to the ground was proved, that the suit was not barred by limitation, that the grant of the land by defendant 1 to defendant 2 should be set aside, and that plaintiff should recover possession. On the question of limitation, the District Judge simply remarked that "the ground belongs to plaintiff, and he was in possession till 1885 when he was dispossessed by defendants, and the suit is, therefore, not barred by limitation." On appeal before us the question has arisen whether the claim is not barred by limitation under s. 135 of the Bombay Land-Revenue Code, which provides that "any suit instituted in a Civil Court to set aside any order passed by the Collector under s. 37 or s. 129, in respect of any [428] land situate within the site of a village, town, or city, shall be dismissed, although limitation has not been set up as a defence, if it has not been instituted within one year from the date of the order." No authority has been shown by the pleaders before us, but we have been referred to the case of *Shivaji v. The Collector of Ratnagiri* (1). In that case, however, in which the question at issue was under the Limitation Act, and not under s. 135 of the Bombay Land-Revenue Code, this Court was most careful not to pass a final judgment on the point of limitation. It said "whether the suit is barred or not, will depend in some measure on the particular facts and the times when they occurred. We do not desire to pre-judge these or the conclusions to which they will lead.

Now in the present case the facts are clear, and applying to them the principles laid down in that case, there seems to me no doubt that the present suit is barred under s. 135 of the Land-Revenue Code. The Collector evidently acted under s. 37 of the Bombay Land-Revenue Code, and in so acting he properly considered whether the ground in question was the property of individuals, and whether any rights were established in or over the same. Finding this in the negative he disposed of the land subject to the rules which governed his procedure. Had the order passed by him not been *prima facie* within the scope of his authority, *ratione-materiae*, then s. 135 would not apply. So, too, had he affected to deal with something in its nature or legal character beyond the range of his functions, his order would have been legally a nullity, and there would have been no need for plaintiff to bring a suit to set it aside. Possibly had the Collector dealt with the land as the property of Government without giving the opportunity to any individuals of asserting their rights, the order might have been treated as a nullity, and there would have been no bar under s. 135. It is no valid argument to say that plaintiff did succeed in the lower Court in proving that the land belonged to him and not to Government, and, therefore, that ss. 37 and 135 did not apply. The limitation in s. 135 is not confined to suits in which the Court should the Collector to have been mistaken in his order. To so hold would simply make [429] s. 135 a dead letter. Reading ss. 37 and 135 together, it seems clear that the Legislature intended that if the Collector after regular

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inquiry disposed of land under s. 37, then such order of disposition might be subject in regular course to a suit having for its object to set the order aside. The order could not be in its nature temporary only. It is analogous to those cases in the Civil Procedure Code where the party, against whom an order is passed after inquiry, may institute a regular suit to establish his right which has been disallowed, but he must do so within a certain limited time. The reasonableness of such a limitation is manifest. The party against whom the order is passed having had full notice of its scope and effect is in all fairness bound to bring his suit to contest its validity within one year. According to the contention of the plaintiff's pleader in this case, though he submitted his claim to the ownership of the land before the Revenue authorities and knew that the ground was held to belong to Government and was so disposed of to defendant for building purposes, he was entitled to wait for nearly twelve years before suing to recover possession.

With regard to the other cases noted by my learned brother it may be remarked that in *Krishnamma v. Achayya* (1), which related to art. 16 of sch. II of Act IX of 1871, (answering to art. 14 in the present Limitation Act) the decision was founded on the ruling of the Privy Council in *Raj Bahadur Singh v. Achumbit Lal* (2), but that ruling of the Privy Council was much misunderstood. This was clearly pointed out by the Privy Council in the subsequent case of *Jagadamba Chowdhrani v. Dakhina Mohun* (3), (see pp. 95, 96), and the foundation of the ruling of the Madras High Court is thus taken away. Besides, in that case it was not shown that the order complained of interfered with the plaintiff's possession so as to give rise to a cause of action, and there is nothing in the report of the cases to show whether the order of the demarcation officers complained of was made under any Act of the Legislature, and whether in such Act there is any mention of a suit brought to set aside that order. It may [430] have been simply an administrative order, which being in its nature merely provisional, needed no setting aside. Thus the decision may be in accordance with the principles enunciated in *Shivaji v. The Collector of Ratnagiri* (4) noted above.

The decision in *Oghad Odha v. Nag Mula* (5) is in accordance with the same principles. In that case the order complained of was a mere nullity, there being neither a statutory basis nor the foundation of consent upon which it could rest. Here if the Collector is debarred from passing an order under s. 37, on the bare ground that a claim is made by an individual, then it is difficult to see how there ever can be a suit under s. 135 to set aside a Collector's order. The decision in *Luchmon v. Kanchun* (6) affords us no assistance. In that suit there was a prayer to set aside an order passed under the Land Regulation Act, 1876, and it was held that this prayer must be treated as mere surplusage, the Civil Court by a special clause in the said Act having no power to set aside an order passed under the same.

In the case of *Kristo v. Steel* (7) all that was decided was that under the peculiar terms of a special Act, though a plaintiff's claim might under certain circumstances be barred, the assertion of a defendant's title set up by way of defence would not under the same circumstances be barred.

(1) 2 M. 306.

(2) 6 I.A. 110.

(3) 13 I.A. 84 = 13 C. 305.

(4) 11 B. 429.

(5) P. J. for 1881, p. 26.

(6) 10 C. 525.

(7) 12 C. 279.

For all these reasons I am of opinion that the present suit is against the intention and letter of the law, s. 135 of the Bombay Land-Revenue Code, and must be dismissed.

It is, therefore, unnecessary for me to express an opinion on the question whether plaintiff has proved his title to the open ground. But I may remark that, as pointed out in *Dadabhai v. The Sub-Collector of Broach* (1) the law in India is not the same as in England, and that except in summary suits a plaintiff in this country cannot succeed in ejection on the mere ground of possession. Possession is evidence of title. Whether the evidence of user in this case (keeping cattle and dung on the ground) was enough to establish title it is not necessary for me to say.

[431] The Judges being thus divided in opinion, they referred the appeal to Mr. Justice Bayley for final decision, under s. 575 of the Code of Civil Procedure (Act XIV of 1882).

Gangaram Bapsoba Rele, for the appellant.—The plaintiff's suit is barred by limitation. My client, defendant No. 2, applied to the Collector for the grant of the land, and the Collector acting under s. 37 of the Bombay Land-Revenue Code (Bombay Act V of 1879) granted it. The plaintiff does not allege in his plaint that the Collector's procedure in granting the land was irregular. The Collector issued notice to the villagers to send in claims. In accordance with the notice, the plaintiff appeared before the Collector, and his claim was rejected. The plaintiff ought then to have taken steps to set aside the order of the Collector granting the land to the defendant within one year from its date, under s. 135 of the Bombay Land-Revenue Code (Bombay Act V of 1879) and also under art. 14, sch. II of the Limitation Act (XV of 1877). The order of the Collector granting the land to the defendant was passed on the 1st September, 1882, and the present suit was not filed until the 4th April, 1888. The lower Court erroneously applied twelve years' limitation to the suit under art. 144, sch. II of the Limitation Act. Section 135 of the Bombay Land-Revenue Code is peremptory; therefore a suit filed after the expiration of a year from the Collector's order must be dismissed.

Daji Abaji Khare (with *Vasudeo Gopal Bhandarkar*), for the respondent.—The lower Court was right in applying twelve years' limitation to the suit. In the present suit the main object of the plaintiff is to recover possession of the land, and the relief as to the setting aside of the Collector's order follows incidentally. Article 14, sch. II of the Limitation Act and s. 135 of the Bombay Land-Revenue Code (Bombay Act V of 1879) apply to suits for setting aside an order of a Government officer and not to suits to recover possession. The twelve years' limitation is applicable—*Boo Jinatboo v. Sha Nagar valab Kanji* (2); *Shivaji Yesji v. The Collector of Ratnagiri* (3); *Ramausar Pandey v. [432] Raghobar Jati* (4); *Krishnamma v. Achayya* (5); *Jagadamba Chaudhrani v. Dakhina Mohanroy* (6); *Raj Bahadur Singh v. Achumbit Lal* (7); *Govind Atmaram v. Mahadu* (8); *Starling on Limitation*, pp. 144, 145, 146.

The lower Court has found that until the time the defendants dispossessed the plaintiff, he was in possession of the land in dispute, and that his title to it was proved. Section 37 of the Bombay Land-Revenue Code is not applicable to the circumstances of the present case, because

(1) 7 B. H. C. R. A. C. J., 82.

(4) 5 A., 490.

(7) 6 I. A., 110.

(2) 11 B., 78.

(5) 2 M., 306.

(8) P. J. for 1889, p. 311.

(3) 11 B., 429.

(6) 13 I. A., 84 = 13 C., 308.

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it applies to lands, &c., which are the property of the Government. Moreover, an order made under that section is not final, and is, therefore, liable to be re-opened. Section 37 of the Bombay Land-Revenue Code being inapplicable, the appellant's contention, that the suit is barred under s. 135 of the same Code is bad. The suit is not barred under art. 144, sch. II of the Limitation Act.

Gangaram Bapsoba Rele, in reply.—In this suit the plaintiff virtually seeks to set aside the order passed by the Collector in our favour. The plaintiff cannot get possession unless and until the Collector's order is set aside. If the plaintiff be allowed to take possession without setting aside the Collector's order, the provisions of the Bombay Land-Revenue Code would be nugatory. Section 37 of the Code is applicable to the present case, inasmuch as the Collector made an inquiry with respect to the claims of other persons to the land in dispute, and being satisfied that the land belonged to no one except the Government, he granted it to the defendant. The Limitation Act was passed in 1877, and the Bombay Land-Revenue Code passed in the year 1879. If the provisions of the Limitation Act were sufficient to cover cases arising under the latter enactment, s. 135 would have been omitted. In the cases cited for the respondent, s. 135 was not considered.

JUDGMENT.

BAYLEY, J.—This appeal, in which Mr. Justice Jardine and Mr. Justice Candy differed as to whether or not the suit is barred by limitation, was referred by them to me under the provisions of s. 575 of the Civil Procedure Code.

[433] The case was fully argued before me by Mr. Gangaram Bapsoba Rele for the appellant (original defendant No. 2) and by Mr. Daji Abaji Khare for the respondent (original plaintiff). The Secretary of State for India in Council (original first defendant), who in the written statement filed on his behalf had alleged that the suit was barred by limitation, was not represented in the argument before me.

The plaint, which is in Marathi, is dated the 31st March, 1888, and after describing the ground claimed in the suit at mauje Kolhar, taluka Rahuri, in the Ahmednagar Zilla, and being 25 cubits in length and 18 cubits in breadth, proceeds, according to the official translation, thus:—

“The ground described in para. 1 is the plaintiff's ancestral property, and the same is in his management from before. Such being the case, the defendant No. 2, Nagu, preferred a petition to the Collector Saheb of the Ahmednagar Zilla for the grant to him of the same for dwelling purposes. Thereupon, a notice was posted to the effect that persons having a claim by right of ownership should submit such claim within seven days, and within that time the plaintiff preferred petitions, &c., which were finally disposed of by Rao Saheb the Mamlatdar of taluka Rahuria, on the 18th July, 1885, who informed the plaintiff to the effect that the said ground has been granted to the defendant No. 2 for building purposes under a lease for ninety-nine years. But the said ground is not the property of Government. The same is the ancestral property of the plaintiff and is in his possession. Such being the case, the Collector Saheb of Ahmednagar granted the same to the defendant No. 2 under a lease for ninety-nine years and wrongfully and unjustly dispossessed the plaintiff of the same. This claim is brought for the restoration to the plaintiff of the said ground.

"The cause of action accrued on the 18th July, 1885, or thereabout,— that is, on the day on which the defendant No. 2 took possession.

"As the said ground is now in the possession of the defendant No. 2, Nagu, the suit is brought against him also.

"The market value of the said ground is Rs. 10, and the plaint is stamped accordingly.

"A written notice was sent to the defendant No. 1 on the 7th June, 1887, in a registered cover under s. 424 of Act XIV of 1882, and the same was received by the Collector Saheb of the Ahmednagar Zilla on the 16th June, 1887.

"The plaintiff's prayer is that a decree be made in his favour for the relief sought in the following paras :—

"1. It be declared that the ground mentioned in para. 1 belongs to the plaintiff by right of ownership.

[434] "2. The lease granted to the defendant No. 2 in respect of the ground in dispute be cancelled.

"3. The ground in dispute be taken out of the possession of the defendant and given into the possession of the plaintiff as before, and the defendant be ordered to remove the new building raised by him within proper time (to be allowed for that purpose), and that in default thereof, the ground be given into the possession of the plaintiff together with the same.

"4. The defendant be ordered to pay all the plaintiff's costs of this suit. This is the plaint. The 31st of March 1888."

On behalf of the appellant it was contended that the suit is barred under s. 135 of the "Bombay Land-Revenue Code, 1879" (Bombay Act V of 1879) passed by the Legislative Council of the Governor of Bombay, and which, except as to part of s. 2, came into force on the 17th of July 1879.

Section 135 prescribes the limitation to be observed in a suit instituted in a Civil Court to set aside any order passed by the Collector under s. 37, and it was argued on behalf of the appellant that the present suit is one of that character.

Section 37, after enacting that "all public roads, lanes and paths . . . the bed of the sea and of harbours and creeks below high-water-mark, and of rivers, streams, nalas, lakes and tanks, and all canals and water-courses, and all standing and flowing water, and all lands, wherever situated, which are not the property of individuals, . . . and except in so far as any rights of such persons may be established in or over the same . . . are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of Government," states that "it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit or as may be authorized by general rules sanctioned by Government, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting."

Section 135 is in these words :—

"Any suit instituted in a Civil Court to set aside any order passed by the Collector under s. 37 or 129, in respect of any land situate within the site of a village, town or city, shall be dismissed, although limitation

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has not been set up as a defence [435] if it has not been instituted within one year from the date of the order.'

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It will be noticed that the above Act was passed subsequently to the existing 'Indian Limitation Act, 1877,' passed by the Governor-General in Council, which came into force on the 1st October, 1877. By such last mentioned Act, sch. II, art. 14, a suit 'to set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for' must be brought within one year from 'the date of the Act or order.'

It appears from the plaint that the appellant having preferred a petition to the Collector of Ahmednagar for the grant to him of the land in dispute for dwelling purposes, a notice was posted to the effect that persons having a claim to the same by right of ownership should submit such claim within seven days, and that within that time the respondent (original plaintiff) preferred petitions, &c., which were finally disposed of by the Mamlatdar of taluka Rahuri of the 18th July, 1885.

That date, however, is manifestly incorrect, as in Exhibit No. 28, which is a document dated the 18th July, 1885, addressed by the Mamlatdar of taluka Rahuri to the respondent, it is stated that the vacant piece of land had been granted gratis for house-building purposes under a lease for ninety-nine years to Nagu valad Suryaji Devkar (the appellant, original defendant No. 2) by order of his Honour the Collector Saheb Bahadur of zilla Nagar, Rahuri, Revenue Inward No. 375, dated 8th July, 1882; and by Exhibit No. 36, a Marathi document signed by the Mamlatdar, taluka Rahuri, and dated the 1st September, 1882, permission was thereby granted that Nagu (the appellant) should occupy for building purposes the piece of land in dispute, 25 cubits in length and 18 in breadth, describing the boundaries, the land enclosed within the four boundaries described above fit for building purposes.

The plaintiff's cause of action consequently accrued, not as stated in paragraph 3 of his plaint, on the 18th July, 1885, but on the 8th July, 1882, the date of the Collector's order granting the vacant piece of land to the appellant.

[436] The original plaintiff here admits in his plaint that within the seven days mentioned in the notice posted, intimating that persons having a claim by right of ownership should submit their claims, he preferred petitions, &c. He does not suggest that any irregularity took place in the proceedings before the Collector, or that he had not a full opportunity of stating his claim to the ownership of the vacant ground when the matter was being heard by officer.

Mr. Justice Candy, whose knowledge of the powers and course of practice of Collectors in this Presidency is, of course, much greater than my own, says in his judgment:—'The Collector evidently acted under s. 37 of the Bombay Land-Revenue Code, and in so acting he properly considered whether the ground in question was the property of individuals, and whether any rights were established in or over the same. Finding this in the negative he disposed of the land subject to the rules which governed his procedure. Had the order passed by him not been *prima facie* within the scope of his authority, *ratione materiae*, then s. 135 would not apply. So, too, had he affected to deal with something in its nature or legal character beyond the range of his functions, his order would have been legally a nullity, and there would have been no need for plaintiff to bring a suit to set it aside, Reading ss. 37

and 135 together, it seems clear that the Legislature intended that if the Collector after regular inquiry disposed of land under s. 37, then such order of disposition might be subject in regular course to a suit having for its object to set the order aside. . . . According to the contention of the plaintiff's pleader in this case, though he submitted his claim to the ownership of the land before the Revenue authorities, and knew that the ground was held to belong to Government and was so disposed of to defendant for building purposes, he was entitled to wait for nearly twelve years before suing to recover possession.'

That what the plaintiff complains of mainly and substantially is the order and act of the Collector in giving the land to the appellant is, to my mind, clear from his making the Secretary of State for India in Council a defendant in the suit (s. [437] 416 of Civil Procedure Code) as responsible for the acts of the Collector. The order of the Collector of the 8th July, 1882, granting the land to the appellant for building purposes, which it was not suggested had been made *ultra vires*, must be held to be a valid and binding order, unless set aside in a suit instituted for that purpose, and such suit must, under the provisions of s. 135 of the Bombay Land-Revenue Code of 1879, have been brought within one year from the date of the Collector's order, *i.e.*, on or before the 3th July, 1882. The present suit not having been commenced until the 31st March, 1882, was, in my opinion, brought too late; and is consequently barred by the law of limitation prescribed by s. 135.

None of the authorities in the Privy Council or in the Courts in India cited in the judgments of Jardine and Candy, JJ., appear to me to afford much, if indeed any, assistance in deciding the present case; and I need not do more than state my concurrence in the careful analysis of them by Mr. Justice Candy. Facts undoubtedly exist in the present case which were wanting in all of those cases as well as in the additional authorities cited in the argument before me. The present plaintiff can get no relief in this suit unless and until the order of the Collector granting the land to the appellant is first set aside. The suit, having regard to the cause of action as stated in the plaint, is virtually one to set aside the order of that officer, the real question being whether or not the Collector was right in making the order he did, and for the reasons I have already given, I must hold that, brought as it was, not within one year as it ought to have been, but nearly six years after the date of the Collector's order made under s. 37 of the Bombay Land-Revenue Code, the suit was time-barred, and must be dismissed with costs on the original plaintiff (the respondent) throughout, including those of, and incidental to the appeal to the High Court.

Decree reversed.

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