title to the property, which was acquired on 3rd June, 1888, is superior to the plaintiff's, which was not acquired before November, 1888, the plaintiff has failed to establish his right to an injunction, and his claim was, therefore, properly rejected.

Decree must be confirmed with costs.

Decree confirmed.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

FAKI GULAM MOHIDIN AND OTHERS (*Original Plaintiffs*), *Appellants* v. SAJNAK BIN PANDNAK AND OTHERS (*Original Defendants*), *Respondents.** [22nd March, 1893].

Khoti Settlement Act (Bombay Act I of 1880), ss 17,† 20,† 21,† 22† and 37†—Settlement Officer's decision—Dhara lands—Suit for a declaration that lands were khoti lands—Decree of a Civil Court—Adverse possession—Art. 14, sch. II of the Limitation Act (XV of 1877)—Six years' limitation.

A survey settlement officer decided in the year 1882 that certain lands situate at the *khoti* village of Tadil, in the Ratnagiri District, were *dhara* lands of S. and [245] another, but the entry in the survey register that they were *dhara* lands was not made till 1889.

In the meanwhile, F. and others, who were the *khots* of the village, made an application to the special survey officer to revise the decision of the settlement officer of the year 1982, and the special settlement officer having rejected this application in 1885, they brought the present suit in 1887 against S. and others for a declaration that the lands were their *khoti*.

The Judge dismissed the suit on the ground that the settlement officer's decision being final under ss. 20 and 21 of the Khoti Settlement Act (Bombay Act I of 1880), and it having not been set aside within one year from its date, the suit was time-barred under art. 14, sch. II of the Limitation Act (XV of 1877).

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* Second Appeal, No. 595 of 1891.

† Sections 17, 20, 21, 22 and 37 of the Khoti Settlement Act (Bom. Act I of 1880):—

17. The other records prepared under the said section (that is, s 16) shall specify the nature and amount of rent payable to the khot by each privileged occupant according to the provisions of s. 33 of this Act, and any entry in any record duly made under this section shall be conclusive, and final evidence of the liability thereby established.

20. If it shall appear to the survey officer who frames the said register or other record that there exists any dispute as to any matter which he is bound to record, he may, either on the application of any of the disputant parties or of his own motion, investigate and determine such dispute and frame the said register or other record accordingly.

21. In any such matter the decision of the said survey officer, when not final, shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent Court.

22. No suit shall lie against the said survey officer, or against Government, to set aside any such decision of a survey officer; but the record shall from time to time be amended by the said survey officer, or when the survey settlement is concluded, by the Collector, in accordance with any such decree as aforesaid which the parties may obtain *inter se* on an application accompanied by a certified copy of such decree, being duly made to the said survey officer, or to the Collector, for that purpose.

37. Existing survey settlements of the land revenue of any village to which this Act extends, made, approved and confirmed under the authority of the Governor in Council, shall be deemed to have been lawfully made, and, except as is hereinafter otherwise provided, shall continue in force for the terms for which they have been respectively guaranteed, subject to all the provisions of law which would be applicable thereto if this Act had not been passed, and anything in this Act which is inconsistent with any of the said provisions shall be deemed not to apply to such settlements.

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Held, reversing the decree, that the claim was not time-barred. Under ss. 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court and not the consequences of that decision, which as provided by s. 22 are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court.

Held, further, that s. 21 does not contemplate any "order" being made by the survey officer between the parties, and even if framing the register be regarded as an "act" of the survey officer, s. 22 provides for its being amended by the Collector himself, in accordance with the decision of the Civil Court.

Held, further, that although the defendants might have paid only the assessment before 1878-79, their adverse possession of the lands as *dhara* did not begin to run against the plaintiffs until 1878-79, when such a claim was actively advanced by the defendants. The plaintiffs' cause of action arose in 1882, when the survey officer determined that the lands were *dhara*, and the present suit, which was brought within six years to reverse that decision, was, therefore, in time.

[F., 3 Bom. L.R. 420 (421); R., 32 C. 1107 (1126)=2 C.L.J. 107.]

THIS was a second appeal from the decision of R. S. Tipnis, Acting Assistant Judge of Ratnagiri.

Suit for a declaration that the lands in dispute were plaintiffs' *khoti* lands.

The lands in dispute were situate in the village of Tadil, in the Dapoli Taluka in the Ratnagiri District, and were held by the ancestors of defendants Nos. 1 and 2 on *khoti* tenure prior to the revenue survey of 1867-68. The plaintiffs were the *khots* of the village. At the time of the revenue survey settlement of 1867-68 some of the lands in dispute were entered in the revenue register as the plaintiffs' *khoti* and the rest as *dhara* of defendants Nos. 1 and 2. Complaints were lodged against the settlement of 1867-68 as being in many cases erroneous, and in 1874 the Government appointed a commission to settle the disputes [246] that had arisen among the *khots*. On the report of this commission in 1876, Government passed a resolution directing that the survey settlement should be revised. In the year 1878-79 a revised settlement was introduced in the village of Tadil, and in this revised survey all the lands in dispute were entered as *dhara* of defendants Nos. 1 and 2. Thereupon the plaintiffs in 1880 complained to the survey authorities that the lands should have been entered as their *khoti*, and applied that the records should be altered. The Special Assistant Collector inquired into the matter, and on the 19th June, 1882, reported to the settlement officer and Collector that the lands in dispute were the *dhara* of the defendants Nos. 1 and 2, and the settlement officer sanctioned their being entered as such in the register on the 23rd June, 1882, but the actual correction was not made till the year 1889. In the meanwhile, a special settlement officer was appointed for the settlement work, and to him one of the plaintiffs applied for a review of the order of the 23rd June, 1882, and on the 30th June, 1885, the special settlement officer decided that he saw no reason to interfere with that order.

On the 19th September, 1887, the plaintiffs brought the present suit praying for a declaration that the lands in dispute were their *khoti* lands. The date of the plaintiffs' cause of action was stated to be the 30th June, 1885, *viz.*, the date of the order of the special settlement officer.

The defendants Sajnak and Ramnak (defendants Nos. 1 and 2) contended that all the fields in dispute were their ancestral *dhara* lands and alleged that they had sold two of them to defendants Nos. 12 and 13.

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Defendants Nos. 3, 6 and 8, who were co-sharers of the plaintiffs, admitted the claim, and stated that they were willing to be joined as co-plaintiffs.

Defendants Nos. 12 and 13, Faki Hasan and Faki Abdul Gafur, set up their purchase of two fields from defendants Nos. 1 and 2.

The Subordinate Judge made the declaration sought for by the plaintiffs with respect only to four out of the eighteen survey [247] numbers in dispute, and rejected the claim with respect to the remaining fields as time-barred.

Against the decree of the Subordinate Judge defendants Nos. 1 and 2 appealed, and the plaintiffs presented cross-objections under s. 561 of the Civil Procedure Code (Act XIV of 1882). The Acting Assistant Judge rejected the claim *in toto*, on the ground that as the suit was not brought within one year after the final settlement of 1882, it was barred under art. 14, sch. II of the Limitation Act (XV of 1877). He was, however, of opinion that art. 144, sch. II of the *Limitation Act* was not applicable, and that the decision of 1882 was liable to be rectified by a competent Civil Court.

The plaintiffs preferred a second appeal.

Ganesh Krishna Deshmukh, for the appellants (plaintiffs).—The Judge was wrong in holding our claim barred under art. 14, sch. II of the Limitation Act. The article is not applicable to the present case, because it relates to an "act" or "order" of a Government officer, and not to a "decision" passed by him, as in the present case.

When the revised settlement was introduced in the year 1878-79, the Khoti Settlement Act had not been passed; therefore the Act cannot be held to apply to that settlement; consequently s. 21 of the Act has no application. Assuming that ss. 20 and 21 do apply to the decision of 1882, these sections contemplate judicial inquiry, but the officer who passed that decision made no such inquiry; therefore the decision can have no binding effect. The survey settlement proceedings were not finally closed till the year 1889, when the alteration with respect to the lands in dispute was made in the survey register. The proceedings under the revised survey commenced in 1878-79 and lasted till 1889. Our present suit was filed in 1887, that is, before the proceedings were finally closed. Therefore there had been no complete settlement made under the Khoti Act before the filing of the suit. Section 21 of the Khoti Act cannot apply to the present case, because the conditions precedent to the operation of the section were not satisfied.

[248] Under s. 20 of the Act the Settlement Officer had no authority to rectify the Survey register which had been prepared, prior to the passing of the Act, in the year 1878-79 under a Government resolution of the year 1876.

The Judge was wrong in rejecting our claim *in toto*. The Subordinate Judge had awarded our claim with respect to four fields, which included the field purchased by defendants Nos. 12 and 13. They had not appealed to the Judge against the Subordinate Judge's decree; therefore the decree could not be reversed as against them.

Gangaram B. Rele, for respondents Nos. 1 and 2 (Mahar defendants).

Vasudev G. Bhandarkar, for respondents Nos. 3 and 4 (defendants Nos. 12 and 13).—The appeal in the lower Court covered all the fields mentioned in the plaint. Therefore the Judge was right in passing a decree as to all of them.

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With respect to the point of limitation, we contend that the present suit is governed by art. 14, sch. II of the Limitation Act XV of 1877. It is true that the article does not contain the term "decision;" but the word "act" or "order" includes the term "decision." A decision of a Government officer is an act on his part. We further support the decree of the lower Court on the point of adverse possession. The Subordinate Judge distinctly found that the relationship between the parties was that of landlord and tenant, and that we ceased to pay rent since 1868,—that is, more than twelve years prior to the institution of the suit. The claim is, therefore, clearly barred by our adverse possession of those fields at least, for which no declaration was made by the Subordinate Judge in appellants' favour.

The appellants seek a mere declaration in the present suit without claiming consequential relief. Such a suit cannot be maintained—s. 42 of the Specific Relief Act (I of 1877).

Ganesh Krishna Deshmukh, in reply.—The Judge has found that the possession of the respondents could not be adverse to us. In connection with the contention that a suit for a mere [249] declaration will not lie, see *Magantal Purushottam* v. *Govindlal Nagindas* (1).

JUDGMENT.

SARGENT, C. J.—The District Court has decided against the plaintiffs' claim to have the lands in question declared to be *khoti*, on the ground that the Settlement Officer's decision in 1882, that they were *dhara*, was final under ss. 20 and 21 of the Khoti Act I of 1880 (Bombay), not having been set aside within a year from the date of the survey officer's decision as required by art. 14 of the Statute of Limitation. An objection has been taken by the appellants that the Settlement Officer had no power, under s. 20 of Act I of 1880 (Bombay), to rectify the register as previously made in 1879 after the settlement was introduced into the village of Tadil in pursuance of the resolution of Government in 1876. We think, however, that the lower appeal Court was right in holding that there had not been such a complete settlement before the passing of Act I of 1880 as must be deemed to have been confirmed by s. 37 of the Act. There is no evidence to show that the register as framed in 1878-79 was treated by the Government as a final settlement, whilst it is plain, from the applications subsequently made to the Collector by the parties themselves, that neither of them considered the question as to their rights as finally settled by the Revenue authorities.

Passing, then, to the consideration of ss. 20 and 21 of the Khoti Act I of 1880 (Bombay), s. 20 states the course to be pursued by the survey officer "in investigating and determining disputes" arising in framing the register. Section 21 further provides that the "decision" of the survey officer when not final (apparently referring to the finality mentioned in s. 17 with regard to entries made under that section) shall "be binding on all the parties affected thereby until reversed or modified by a final decree of a Civil Court." It is, therefore, the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision, which, as provided by s 22, are left to the Collector himself to undo or modify in accordance with the decision [250] of the Civil Court. It is further to be remarked that the section does not contemplate any "order" being

(1) 15 B. 697.

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made by the survey officer between the parties; and even if "the framing the register" be regarded as an "act" of the survey officer, the section provides, as before mentioned, for its being amended by the Collector himself, in accordance with the decision of the Civil Court. Lastly, in the present case it is to be observed that the "act" was not done until 1889 nearly two years after the filing of the suit. For these reasons, we are of opinion that the claim is not affected by the art. 14 of the Statute of Limitation.

As to the contention that the defendant had acquired a title by adverse possession to hold the lands as *dhara*, we agree with the lower Court that although the defendant may, as a fact, have paid only the assessment before 1878-79, adverse possession would not begin to run against the plaintiff until 1878-79 when such a claim was actively advanced by the defendant, and no title by adverse possession was, therefore, acquired by the defendant when the present suit was instituted in 1887. A cause of action, however, arose in 1882 when the survey officer determined that the lands were *dhara*, and the present suit, which is brought within six years to reverse that decision, is, therefore, in our opinion, in time. We must, therefore, reverse the decree of the Court below and send back the case for a decision on the merits. Costs to abide the result.

Decree reversed and case sent back.

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APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

RAMBHAT (*Original Plaintiff*), *Appellant v.* BABABHAT AND OTHERS (*Original Defendants*), *Respondents.** [22nd March, 1893.]

Landlord and tenant—Non-payment of rent by tenant to landlord—Acquiescence of landlord—Effect of acquiescence—Subsequent suit by landlord for possession—Practice—Finding of fact not accepted in second appeal—Inam land—Sub-alienee—Wrongful surrender by the village inamdar to Government—Khalsat.

The plaintiff, a sub-alienee from an inamdar of certain inam, leased it to D, prior to the year 1858. In 1860 the land was wrongfully surrendered by the inamdars [251] of the village to Government as lapsed old service inam and was made *khalsat*. In 1863, the plaintiff protested against this being done, and the Collector referred him to a civil suit against the inamdars. From the year 1863 the plaintiff received no rent from D., or after D's death from his heirs, who paid the assessment to Government. In 1889, the plaintiff brought the present suit against the representatives of D, and the village inamdars to recover possession. The District Judge dismissed the suit, on the ground that the plaintiff must be held to have acquiesced in the loss of the land, and by his conduct since 1863 must be taken to have designedly abandoned all his interest in the land, and that his suit was barred.

Held, that the plaintiff did not acquiesce in the surrender by the inamdar in 1860, to Government, as he distinctly protested against it in 1863, and that as to his conduct since 1863 nothing had taken place to deprive him of such legal rights as he possessed against the tenant D, in 1863, if they were not barred by the Statute of Limitation;

and as to limitation, *held* that as the District Judge had decided the point under the influence of the view taken by him as to the plaintiff's conduct, the case should be remanded for a fresh finding on that point.

* Second Appeal No. 627 of 1891.