## CIVIL REVISION.

*Before Edgley J.*

1940

*Jan.* 31;
*Feb.* 1.

# GOBINDA MOHAN RAY

*v.*

# MAGNEERAM BANGUR & COMPANY.*

**Procedure**—*Discovery of documents—Duty of* mofussil *Court to make orders for discovery—Revision—Difference between right to discovery under O. XI, r. 12 of the Code of Civil Procedure, 1908, and right to production under O. XI, r. 14 of the Code—Right to discovery under O. XI, r. 12 of the Code far wider than right to production under O. XIII, r. 1 of the Code—Code of Civil Procedure (Act V of 1908), s. 30; O. XI, rr. 12, 14; O. XIII, r. 1.*

On December 14, 1937, the plaintiff instituted a suit in the Court of the First Munsif of Alipore for the recovery of a plot of land. According to the plaintiff the land in question used to belong to one A. H., and the plaintiff purchased it in proceedings in execution of a decree against the said A. H.'s heirs. In his additional written-statement filed on August 28, 1939, the defendant contended that the said land originally belonged to the said A.H.'s father, one R. B., and that upon a partition of the said R. B's estate, the defendant purchased the land from the Commissioner of Partition appointed in a High Court suit. On August 31, 1939, the Munsif made an order directing the parties "to take all necessary steps, including inter-"rogatories, discovery, *etc.*, preparatory to fixing the date of peremptory "hearing." Thereafter, the plaintiff's applications dated September 9, 1939, and September 20, 1939, for discovery of defendant's documents, having been dismissed by the Munsif on the grounds that the list of documents, on which the defendant relied, had already been filed under O. XIII, r. 1 of the Code of Civil Procedure, 1908, and that vague and general discovery could not be allowed at that stage of the suit,

*held*: (i) that it was essentially a case in which an order for discovery of documents should have been made, and, if the parties themselves did not apply under O. XI, r. 12 of the Code of Civil Procedure, 1908, for such an order, it was the duty of the Court of its own motion to make such an order under s. 30 of the Code;

(ii) that in dismissing the plaintiff's said applications for discovery, the Munsif had acted with material irregularity and failed to exercise a jurisdiction vested in him by law, and the High Court could interfere in the matter in the exercise of its revisional jurisdiction under s. 115 of the Code;

(iii) that the right of a party to discovery of his opponent's documents under O. XI, r. 12 of the Code is far wider than what is afforded him under O. XIII, r. 1 of the Code; under O. XIII, r. 1 the opponent is required to produce only those documents on which he himself relies, unless the Court

*Civil Revision, No. 1509 of 1939, against the orders of Jnanadhir Sarma Sarkar, First Munsif of Alipore, dated Sept. 11 and 20, 1939.

has expressly directed the production of any other document, whereas, if an order is made against him under O. XI, r. 12, he must give discovery of all documents relating to the matter in question, whether he himself intends to rely on them or not, and whether such documents be ultimately admissible in evidence or not.

*Compagnie Financiere et Commerciale du Pacifique* v. *Peruvian Guano Co.* (1) referred to.

Upon a contention of the defendant that the plaintiff cannot obtain discovery of a document which relates solely to the defendant's title and which consequently is protected from production for inspection,

*held* that the fact that a document is protected from production or inspection is not a sufficient reason for not disclosing it in the affidavit of documents.

*Combe* v. *Corporation of London* (2) relied upon.

CIVIL RULE obtained by the plaintiff.

The facts of the case appear sufficiently from the judgment.

*Jatindra Mohan Choudhury, Baidyanath Banerjee, Ranajit Acharjee Choudhury, Sibkali Bagchi* and *Prafulla Kumar Chatterjee* for the petitioner. By his order dated August 31, 1939, the learned Munsif adjourned the suit till September 20, 1939, in order that necessary steps might be taken in the meanwhile, including the obtaining of discovery. And yet when the plaintiff applied for general discovery on September 9, 1939, the learned Munsif refused the application on September 11, 1939, stating that the application for general discovery was made at too late a stage and stating also that the plaintiff was at liberty to apply for discovery of any specified document in the possession or power of the defendant. In accordance with the Munsif's observation in his order dated September 11, 1939, the plaintiff, on September 20, 1939, applied for discovery of documents relating to the defendant's fresh contention in his additional written-statement, *viz.*, that the land in question was purchased by him in course of the partition suit in the High Court. But, the learned Munsif very

(1) (1882) 11 Q. B. D. 55.

(2) (1842) 1 Y.C.C.C. 631; 62 E. R. 1048.

1940

*Gobindu Mohan Ray* v. *Magniceram Bangur & Company.*

curiously rejected this application also. Both the orders of dismissal are irregular and illegal. The plaintiff has been deprived of his rights as to discovery of the defendant's documents. It cannot be said that the plaintiff has been guilty of unreasonable delay in making the application. The additional issues, arising under the subsequent pleadings of the parties, were framed on August 31, 1939, and the plaintiff applied for obtaining discovery on September 9, 1939. The discovery was necessitated by reason of the additional issues.

*Jitendra Kumar Sen Gupta* and *Rabiranjan Das Gupta* for the opposite party. The plaintiff's application is not competent. What the plaintiff is entitled to is a discovery of documents on which the defendant relies. A list of such documents had already been filed in Court under O. XIII, r. 1 of the Code of Civil Procedure, 1908. The plaintiff is not entitled to a general discovery under O. XI, r. 12 of the Code. The suit being for a declaration of plaintiff's title, the plaintiff must succeed, if at all, on the strength of his own title and not on the weakness of his adversary's. An order for discovery under O. XI, r. 12 would involve disclosure of documents which relate solely to defendant's title, but the defendant cannot be made to produce such documents: *Lyell* v. *Kennedy* (1).

Even if the application for discovery were competent, it was discretionary with the Court below to allow it or not. Notice the words "the Court *may* either refuse or adjourn (the application)" in r. 12 of O. XI. In exercise of his discretion, the learned Munsif has refused the plaintiff's applications. In such circumstances, in my submission, the High Court cannot interfere under s. 115 of the Code, with the Munsif's order of refusal. The suit is a very old one, and the additional issues framed are no new issues but a restatement of issues framed more than a

(1) (1883) 8 App. Cas. 217.

year ago. The plaintiff can suffer no hardship, as a list of documents, on which the defendant relies, has already been filed.

*Choudhury*, in reply.

EDGLEY J. This Rule arises with reference to two applications for discovery under O. XI, r. 12 of the Code of Civil Procedure, 1908, which were filed by the plaintiff in connection with Suit No. 402 of 1937. Both the applications were rejected by the learned Munsif. As regards the first application filed on September 9, 1939, the order of rejection is dated September 11, 1939, and is based on the ground that the list of documents upon which the parties relied had already been filed and that the application was of a vague and general character and should not be allowed at a late stage of the suit. The order dated September 20, 1939, on the second application, is merely to the effect that it was too late to reconsider the matter. The application for discovery was, therefore, rejected.

It appears that the plaintiff had filed two suits against the defendant, namely, Suits Nos. 402 of 1937 and 83 of 1938. These suits related to two separate plots of land, but the main contentions of the parties appear to have been the same in both the suits. The plaintiff's case was to the effect that the land in suit had belonged to a man named Abdul Hamid and that the plaintiff had purchased the suit land in execution of certain civil Court decrees against Abdul Hamid's heirs. The defendant's case, on the other hand, was to the effect that the disputed property had originally belonged to Rahim Bux, the father of Abdul Hamid. His contention was that Rahim Bux's estate had been partitioned and that the defendant had purchased the disputed property from the Commissioner in the partition proceedings in connection with Suit No. 1221 of 1916, which was instituted on the Original Side of this Court. Title Suit No. 402 of 1937 was filed in the Court of the

1940

*Gobinda Mohan Ray* v. *Magneeram Bangur & Company.*

*Edgley J.*

First Munsif of Alipore on December 14, 1937, while Suit No. 83 of 1938 was filed on April 27, 1938. We are not directly concerned in this case with the previous history of Suit No. 83 of 1938 except, to this extent, that we find that, on August 8, 1939, an order was recorded by the learned District Judge of the 24-*Parganâs* to the effect that this suit should be tried analogously with the Title Suit No. 402 of 1937. In the latter suit the issues were framed as far back as March 15, 1938. On March 23, 1939, the defendant appears to have filed the documents upon which he intended to rely under the provisions of O. XIII, r. 1 of the Code of Civil Procedure, but the record shows that on the following day, these documents were taken away by the defendant. After the learned District Judge had ordered Suit No. 402 of 1937 to be tried analogously with Suit No. 83 of 1938 we find that, on August 18, 1939, the defendant filed the list of the documents on which he intended to rely in Suit No. 83 of 1938. On August 28, 1939, an additional written-statement appears to have been filed by the defendant in Title Suit No. 402 of 1937 and, on August 31, 1939, two additional issues were framed by the learned Munsif. These issues were in the following terms :—

> Issue No. 9 : Did the suit land pass to the defendant by sale from the Commissioner of Partition in Suit No. 1221 of 1916 of the Original Side, High Court?
>
> Issue No. 10 : Can the defendant claim priority of such sale, if any?

On the same day the learned Munsif recorded an order fixing September 20, 1939, for taking such further steps as might be necessary and in particular he directed the parties—

> to take all necessary steps including interrogatories, discovery, *etc.*, preparatory to fixing the date of peremptory hearing.

Thereafter, the two applications for discovery, dated September 9 and September 20, were filed on behalf of the plaintiff and, as already stated, these applications were rejected.

1940

*Gobinda Mohan Ray* v. *Magneeram Bangur & Company.*

*Edgley J.*

The learned advocate for the petitioner in this case contends that in rejecting these applications the learned Munsif failed to exercise a jurisdiction vested in him by law and acted illegally and with material irregularity. He contends that the provisions in the Civil Procedure Code relating to discovery and inspection and which are contained in O. XI of the Code have been provided by the legislature with the express object of enabling the parties to a suit to have knowledge of the documents relating to the matter in issue, which may be in the power or possession of the other side, before the suit comes on for trial, in order that, by a proper observance of these provisions, the parties may not be taken by surprise, that costs and time may be saved and the matters in issue between the parties may be clarified. In my view, there is much force in this contention.

This Court has laid particular emphasis in Ch. 8 of their Civil Rules and Orders (Appellate Side) on the proper observance of the rules relating to discovery, inspection and admission. In para. 153 of these Rules it was pointed out that the provisions of O. XI and O. XII of the Code of Civil Procedure relating to "Discovery and Inspection" and "Admission" (based on the English Rules of Practice) had been introduced into the Code of 1908 to save both time and expense and for the purpose of shortening litigation by the proper preparation of cases before trial. Nevertheless, although these valuable provisions had been in existence for many years, little use had been made of them with the result that suits were protracted beyond all reasonable length and costs were needlessly sacrificed. It was further stated in the same paragraph that * * * *

Presiding Judges should make themselves thoroughly conversant with the rules relating to discovery, inspection, *etc.*, and the High Court desire it to be understood that henceforward definite and systematic attempts should be made to apply them in all suitable cases. The co-operation of the bar is essential but if the bar or the litigants will not appreciate the great advantage of these provisions, presiding Judges should themselves take the

1940

*Gobinda Mohan Ray*
v.
*Magneeram Bangur & Company.*

*Edgley J.*

initiative and regard it as a part of their ordinary duty to make use of s. 30 of the Code of Civil Procedure, which gives express and clear powers to the Court to make orders in these matters of its own motion.

In the case with which we are now dealing it must have been obvious not only to the parties concerned but also to the presiding Judge that the decision of the matter would depend to a very large extent upon documentary evidence and that, therefore, this was essentially a case in which recourse should have been taken to the provisions of O. XI of the Code of Civil Procedure. It is, therefore, difficult to understand why, in the absence of any application to this effect by either of the parties, the learned Munsif did not himself record the requisite orders for this purpose under s. 30 of the Code of Civil Procedure as enjoined by para. 153 of the Court's Civil Rules and Orders, which has been quoted above. A convenient stage at which such an order might have been made was either before or immediately after the framing of the issues in Suit No. 402 of 1937, namely, on March 15, 1938. The learned Munsif appears to have been conscious at a later stage of the proceedings of the necessity of applying the ordinary rules of discovery, as is indicated by his order dated August 31, 1939, but, although he recorded that particular order, he does not appear to have been prepared to allow the parties a reasonable opportunity of giving effect to it, as is shown by his subsequent orders, dated September 11, 1939 and September 20, 1939, by which he rejected the petitioner's applications for discovery.

The main contention of the learned advocate for the opposite party in this case is that, in effect, the petitioner in both of his applications for discovery was applying for the production of documents which related solely to the defendant's title and, this being the case, it is argued that the learned Munsif was justified in refusing to make an order for discovery, which might have had the effect of compelling the defendant to produce these documents. The learned advocate, further relies upon the fact that his client

had already filed the list of the documents, upon which he intended to rely in Title Suit No. 402 of 1937, on March 23, 1939, and he contends that, inasmuch as these documents had been filed under the provisions of O. XIII, r. 1 of the Code of Civil Procedure, no further order for discovery under the provisions of O. XI was necessary.

The latter argument loses sight of the purport of O. XIII, r. 1 of the Code and of the provisions for discovery which are contained in O. XI. It is true that, under O. XIII, r. 1 of the Civil Procedure Code, parties are obliged at the first hearing of the suit to produce—

> all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

Order XI, r. 12, on the other hand, allows any party to a suit to—

> apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein.

It is to be observed that the effect of r. 12 of O. XI is considerably wider than that of O. XIII, r. 1 of the Code. It is quite conceivable that a party may only wish to rely on a limited number of documents relating to the matter in dispute and which happen to be in his possession or power and, under the provisions of O. XIII, r. 1 of the Code, he will only be required to produce at the first hearing those documents which he himself may consider requisite for his own purposes, unless the Court has expressly directed the production of any particular document. Under O. XI, r. 12 of the Code, on the other hand, the parties may apply for the discovery of all documents of any description which have any bearing on the matter in dispute and, if discovery is ordered, the affidavit of documents must contain a complete list of all documents relating to the matter in question whether a party against whom discovery has been

1940

*Gobinda Mohan Ray* v. *Magneeram Bangur & Company.*

*Edgley J.*

ordered intends to rely on them or not. The intention of the legislature in enacting these provisions seems to have been to afford facilities to a party to the suit, in a proper case, to establish his own case by having access to his opponent's documents relating to the case, unless such documents are legally exempted from production. In other words, as one party to a suit is permitted to prove his case out of the mouth of his opponent by means of questions put in cross-examination, so also may he seek to establish his case by the process of discovery, interrogatories and admissions, for which provisions are made in Orders XI and XII of the Code of Civil Procedure. The right to obtain discovery of an adversary's documents is a very wide one and is not limited merely to those documents which may be held to be admissible in evidence when the suit is ultimately tried. The law on this point was very clearly stated by Brett J. in the case of the *Compagnie Financiere et Commerciale du Pacifique* v. *Peruvian Guano Co.* (1) as follows:—

> I desire to give as large an interpretation as I can to the words of the rule, "a document relating to any matter in question in the action". I think it obvious from the use of these terms that the documents to be produced are not confined to those, which would be evidence either to prove or to disprove any matter in question in the action.
>
> The doctrine seems to me to go farther than that and to go as far as the principle which I am about to lay down. It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which *may*—not which *must*—either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary.

As regards his contention that the plaintiff was seeking to obtain discovery of documents which related solely to the defendant's title, the learned advocate for the opposite party, in support of his argument, places considerable reliance upon a decision of the House of Lords in the case of *Lyell* v. *Kennedy* (2). That case related to an action for the purpose of recovering certain real estate in England. The defendant pleaded the Statute of Limitations

(1) (1882) 11 Q. B. D. 55, 62. (2) (1883) 8 App. Cas. 217.

1910

*Gobinda Mohan Ray* v. *Magneeram Bangur & Company.*

*Edgley J.*

and his main defence seems to have been that at the commencement of the action he had been in continuous possession for more than twelve years. Summonses were served upon the defendant and he objected to produce certain documents on the ground that they related solely to the defence of his title. The plaintiff took out a summons for an affidavit in answer to his interrogatories and also a summons for the production of certain documents but both the summonses were dismissed. The main ground upon which the Court of Appeal proceeded in dismissing the summonses appears to have been that an application for discovery cannot be made in an action for ejectment. This contention was, however, overruled by the House of Lords. The Earl of Selborne, L.C. in the course of his judgment said (1) :—

Reference was also made to a case at law of *Horton* v. *Bott* (2), in which a discovery of matters relevant only to the defendant's title was very properly refused. It does not, however, appear to me to follow from those principles, or from the case of *Horton* v. *Bott* (2), that a plaintiff in an action of ejectment, suing upon a legal title, ought to be denied that discovery of matters within the defendant's knowledge, and tending to support, not the defendant's but the palintiff's case, to which a plaintiff at law would be entitled in any other kind of action.

His Lordship went to say (3) :—

I am, therefore, of opinion that the general ground, on which the judgment appealed from appears to have proceeded, cannot be maintained ; and that, unless the whole matters inquired into by the interrogatories, which the defendant has not answered, are irrelevant to "the plaintiff's case about to come on for trial", in the words of Sir James Wigram's second proposition (Wigram, Discovery, p. 15), the defendant must make some sufficient answer to those matters.

The Lord Chancellor then referred to the defence which had been put forward by the defendant in the case and, in this connection, observed that (3)—

If the plaintiff succeeds in establishing the fact of heirship, it will also be necessary for him, at the trial, to repel the defence of the Statute of Limitations, the action having been brought more than twelve years after Ann Duncan's death. Most of the special averments in the statement of claim, and the interrogatories founded on them, have for their object to repel that defence ; * * * Unless their insufficiency is so manifest as to make it certain

(1) (1883) 8 App. Cas. 217, 223-224.
(2) (1857) 2 H. & N. 249 ; 157 E. R. 104.
(3) (1883) 8 App. Cas. 217, 227.

1940

*Gobinda Mohan Ray* v. *Magneeram Bangur & Company.*

*Edgley J.*

that they raise no question proper for determination at the trial (whatever the facts may then turn out to be), the plaintiff ought to be at liberty to prove this part of his case by all proper means, discovery included. His Lordship, therefore, held that the defendant must answer the relevant interrogatories.

The concurring judgments were to the same effect and, in this connection, Lord Fitz-Gerald observed (1):—

> I may be permitted to observe that your Lordships' decision does not in the least trench on the rule or maxim so much relied on in the Court below, that a plaintiff in ejectment must succeed, if at all, on the strength of his own title, and not on the weakness of the title of the defendant in possession, or, in other words, that the plaintiff must prove his title before the defendant can be called on to enter on his defence * * * * *.
>
> The plaintiff does not contest this maxim or seek to escape from it. He admits that he must prove his title, and can only succeed on a proved title. He claims to be permitted to prove that title. He seeks to do so now by the examination of the defendant as to his (the plaintiff's) title, just as he would be entitled to call the defendant as a witness on the trial and examine him as to the pedigree on which the plaintiff relies, or any other step in his title on which the defendant may be a competent witness.

It will be seen from the above quotations that the decision in the case of *Lyell* v. *Kennedy* (*supra*) does not really support the argument adduced in this connection by the learned advocate for the opposite party. It is true that in a suitable case a defendant may object to the production of a document on the ground that it relates solely to his title, but if, on the other hand, that document may have some bearing in support of the plaintiff's title, such objection cannot be validly raised.

In any case, it must be remembered that there is an essential difference between the discovery and production of documents. If an order for discovery is made under O. XI, r. 12 of the Code of Civil Procedure, as already pointed out, all the documents relating to the case should be embodied in the affidavit of documents by the person against whom the order for discovery is made. If, however, that person objects to the production of any of the documents mentioned in his affidavit, he will be at liberty to

(1) (1883) 8 App. Cas. 217, 232-3.

1940

*Gobinda Mohan Ray* v. *Magneeram Bangur & Company.*

*Edgley J.*

raise his objection at the proper time and such objection in the ordinary course of business will be decided on its merits. It must be remembered that the rules contained in O. XI of the Civil Procedure Code are based on the English Rules of Practice and, on this particular point, the law has been summarised in Halsbury's Laws of England (2nd edition), Vol. 10, in the following passage at p. 364:—

> The right to have the existence of a document disclosed in the affidavit of documents does not necessarily involve any right to have it produced for inspection. On the other hand, the fact that a document is protected from production for inspection does not afford a sufficient reason for not disclosing its existence.

It is also pointed out in Art. 461 of the same volume that—

> some relevant documents, although their existence must be disclosed in the affidavit of documents, are, nevertheless, protected from production.

And among the grounds mentioned, upon which such an objection may be raised, is the defence that the document sought to be inspected relates solely to the case of a party giving the discovery or solely to the defendant's title. It is also pointed out in Act. 482 that—

> Another ground upon which production can be refused is that the documents sought to be inspected relate solely to the case of the party giving the discovery. In any action where the deponent can swear that a document relates only to his own case, does not relate to nor tend to prove or support his opponent's case, and does not, to the best of his knowledge, information, and belief, contain anything impeaching his own case, and that he objects on these grounds to produce the document, then subject to the exceptions already mentioned, he will not be compelled to produce it, whether the document is or is not admissible in evidence.

The general rule in connection with this matter is very clearly stated by Knight Bruce, V. C. in the case of *Combe* v. *Corporation of London* (1):—

> To protect a defendant from the discovery or production of a document, relating to the subject of dispute, it is not sufficient that it should be evidence of his title, or contain evidence that he intends and is entitled to use in support of his case. It may also be of a similar character with regard to the plaintiff's case, either in a directly affirmative manner, or by exhibiting

(1) (1842) 1 Y. C. C. C. 631 (650); 62 E.R. 1048 (1056).

1940

*Gobinda Mohan Ray* v. *Magneeram Bangur & Company.*

*Edgley J.*

matter at variance with the defence, or tending to impeach it. I do not at present refer to the instances in which a document forms the common title, or is a subject of the mutual and common right of the plaintiff and defendant. If it be with distinctness and positiveness stated in an answer that a document forms or supports the defendant's title, and is intended to be, or may be, used by him in evidence accordingly, and does not contain anything impeaching his defence, or forming or supporting the plaintiff's title, or the plaintiff's case; that document is, I conceive, protected from production, unless the Court sees, upon the answer itself, that the defendant erroneously represents or misconceives its nature. But where it is consistent with the answer that the document may form the plaintiff's title or part of it, may contain matter supporting the plaintiff's title, or the plaintiff's case, or may contain matter impeaching the defence, then, I apprehend, the document is not protected; nor, I apprehend, is it protected, if the character ascribed to it by the defendant is not averred by him with a reasonable and sufficient degree of positiveness and distinctness.

It, therefore, follows that the contention of the learned advocate for the opposite party to the effect that an order for discovery cannot be made against him on the ground that it may compel him to produce documents relating solely to his title cannot be accepted. Having regard to the circumstances of this case generally, it is clear that an order for discovery ought to have been made and, if the defendant considers that he is entitled to protection in respect of the production of any particular documents which may be entered in the affidavit under O. XI, r. 13 of the Code, he will be at liberty to raise such objection at the proper stage of the proceedings, if and when he is ordered to produce such documents under O. XI, r. 14 of the Code or to give inspection of them under O. XI, r. 18.

It is next urged that the learned Munsif in rejecting the two applications for discovery, dated September 11, 1939, and September 20, 1939, merely acted in the reasonable exercise of the discretion vested in him and that, in these circumstances, this Court should not interfere in the exercise of its revisional jurisdiction under s. 115 of the Code of Civil Procedure. I am not prepared to accept this contention. As already pointed out, the learned Munsif by his order dated August 31, 1939, indicated that he considered that an order for discovery might suitably be made in this particular case. This is not, therefore,

a case in which the Court could refuse to make a discovery order on the ground that the learned Munsif was not satisfied that such discovery was necessary within the meaning of O. XI, r. 12 of the Code of Civil Procedure.

As regards the application dated September 9, 1939, the plaintiff pointed out that much time and labour would be saved by an order for discovery. The request contained in the petition was merely a request for an order under O. XI, r. 12 of the Code and, in my judgment, the learned Munsif would have exercised a proper discretion in this matter if, instead of rejecting the plaintiff's application, he had recorded an order in Form No. 4 of appendix C to Sch. I to the Code of Civil Procedure.

In the second application, the one dated September 20, 1939, the plaintiff only refers in express terms to the documents relating to the special contention, urged by the defendant, to the effect that it had been found in the course of the partition suit in the High Court that 397 and odd *bighâs* of land included in the suit land appertained to the estate of Rahim Bux Ostagar. It is contended by the learned advocate for the opposite party that the relevant documents were in fact filed in Court on March 23, 1939. As already pointed out, however, the record shows that all the documents, which were filed in Court on that date were taken away by the defendant on March 24, 1939, and, the reason put forward on behalf of the defendant in this respect does not afford any argument for refusing an ordinary application for discovery in this case. In my view, both the orders dated September 11, 1939, and September 20, 1939, were misconceived. I consider that the learned Munsif acted with material irregularity in making these orders and that he failed to exercise a jurisdiction vested in him by law in connection with the making of orders for discovery in suits.

1940

*Gobinda Mohan Ray* v. *Mageeram Bangur & Company.*

*Edgley J.*

This Rule, must, accordingly, be made absolute with costs. The hearing fee is assessed at two gold *mohurs*.

Having regard to the nature of the case I consider it essential that both parties should now be called upon to file affidavits of documents under the provisions of O. XI, r. 13 of the Code of Civil Procedure and the learned Munsif should call upon them to do so under the provisions of s. 30 of the Civil Procedure Code as soon as possible after the arrival of the record in the lower Court.

Let the record be sent down as early as possible.

Let an early date be fixed for the hearing.

*Rule absolute.*

P. K. D.