

s. 83 of the Evidence Act. That section says—"The Court shall presume that maps or plans, purporting to be made by the authority of Government, were so made and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate." Now this map does not purport to be made by the authority of Government within the meaning of this section. It was a map prepared by an officer of Government while he was in charge of a khas mehal, the Government being in possession of that mehal merely as a private proprietor. It seems to us clear, therefore, that the document in question does not come within the purview of that section. But we are not prepared to hold, as contended for by the pleader for the appellant, that this map is not admissible in evidence at all. It may be admissible as evidence under s. 13 of the Evidence Act. But it is one thing to treat it as mere evidence of possession or of assertion of right under s. 13, and it is another thing to presume it to be accurate under s. 83 of the Act.

We think, therefore, that the error complained of has materially affected the merits of the decision of the Subordinate Judge in this case. We accordingly set aside his judgment, and remand the case to him for re-trial. Costs will abide the result.

Case remanded.

Before Mr. Justice Miller and Mr. Justice Tottenham.

DHUNPUT SING (PLAINTIFF) v. SHAM SOONDER MITTER
AND OTHERS (DEFENDANTS)*

1879
June 12.

Res-judicata—Suit for Arrears of Rent—Joint, and Joint and Several Liability.

In the year 1877 A, who was the owner of a fractional share of a zemindari, which was let in patni, and of a four-anna share in the patni, sued his co-sharers in the patni for his share of the arrears of rent for the years 1873 to 1876, after deducting the rent of his four-anna share. Before the hearing of the suit, B intervened alleging that he had purchased a six-anna share of the patni,

* Appeal from Appellate Decree, No. 2273 of 1878, against the decree of S. H. C. Tayler, Esq., Judge of Bheerbhoom, dated the 9th September 1878, reversing the decree of Baboo Nilmony Nag, Munsif of Doobrajapore, dated the 27th June 1878.

1879
DHUNPUT
SING
v.
SHAM
SOONDER
MITTER.

and he was made a defendant. *A* then discovered that his co-sharers in the patni had sold their remaining shares to *C*. *A* applied to make *C* a party to the suit, and subsequently for leave to withdraw the suit. Both these applications were refused, and a decree for the arrears of rent was made. *A*, alleging that he did not wish to enforce the decree in the previous suit, then instituted this suit against *C* and the defendants in the former suit, for the purpose of recovering arrears of rent for the years 1874 and 1875 from *C*, in proportion to the share purchased by him.

Held, that the relative position of *C* to the defendants, whose share he had purchased, resembled that which exists between persons who have made themselves jointly and severally liable to perform a particular contract; and that as a decree obtained against one of the joint and several promisors without satisfaction, is no bar to a suit against another, the present suit was not barred by the decree obtained in the suit of 1877.

Nuthoo Lall Chowdhry v. Shoukee Lall (1) and *Hemendro Coomar Mullick v. Rajendro Lall Moonshae* (2) distinguished.

Baboo *Sreenauth Dass* and Baboo *Gooroo Dass Banerji* for the appellants.

Baboo *Hari Mohun Chuckerbutty* for the respondents.

The facts of this case appear sufficiently from the judgment of the Court (MITTER, J., and TOTTENHAM, J.), which was delivered by

TOTTENHAM, J.—The plaintiff is the owner of a fractional share of a zemindari called Lot Rasaba, which is let in patni, the names of the *pro forma* defendants 1 to 3 being registered in the zemindar's sherista as the patni talukdars. The plaintiff also had a share (four annas) in this patni. For his share of the arrears of rent of the patni in respect of the years 1280 to 1282 (1873 to 1875), deducting the quota of the rent payable by himself, the plaintiff brought against the aforesaid defendants the suit No. 8 of 1877. The *pro forma* defendant No. 4 intervened in that suit, alleging that he had acquired by purchase a six-anna share of the patni in question, and therefore the suit should have been brought against him also. He was made a defendant before the suit was finally disposed of. The plaintiff, it is alleged, came to know that the

(1) 10 B. L. R., 200.

(2) I. L. R., 3 Calc., 363.

remaining share of the aforesaid defendants 1 to 3 had been purchased by the principal defendant in this case, *viz.*, Sham Soonder Mitter. The plaintiff at first applied to make Sham Soonder party to that suit, but his application was refused. Then he made another application to withdraw from it with leave to institute a fresh action. This application was also refused, and a decree was passed against the persons who are the *pro forma* defendants Nos. 1 to 4 in this suit.

1879
DHUNPUT
SING
v.
SHAM
SOONDER
MITTER.

The plaintiff has brought this suit to recover arrears of rent and the road-cess of the years 1281 (1874) and 1282 (1875) from Sham Soonder, the principal defendant, in proportion to the share purchased by him, alleging that he does not wish to enforce the decree passed in the suit No. 8 against the defendants whose interest the principal defendant, Sham Soonder, has purchased.

The Munsif decreed the claim, but on Sham Soonder's appeal the District Judge has reversed that decree, and has dismissed the suit, holding that, under the circumstances stated above, a second suit is untenable.

It is contended before us in this second appeal that the decision of the District Judge is erroneous in law. We think this contention is valid.

In support of the view of the law taken by the lower Appellate Court, the learned pleader for the respondent Sham Soonder relied upon two decisions of this Court—*Nuthoo Lall Chowdhry v. Shoulkee Lall* (1), and *Hemendro Coomar Mullick v. Rajendro Lall Moonshree* (2). These cases are quite distinguishable: they have laid it down that in the case of a joint contract or joint wrongdoing, a decree obtained against one of the promisors or wrong-doers is a bar to any fresh suit against the others. The ground upon which this decision rests is, that in both these cases the obligation or liability of the joint promisors or wrong-doers is single and undivided. Therefore there is one cause of action, and as soon as it is sued upon and a decree obtained, it is satisfied and exhausted. But these cases also show that the same rule of law does not apply where the obligation is joint *and several*. In this latter case, it has been held that a decree obtained

(1) 10 B. L. R., 200.

(2) I. L. R., 3 Calc., 352.

1879
DHUNPUT
SING
v.
SHAM
SOONDER
MITTAR.

against one of the promisors *without satisfaction* is no bar to a suit against another.

In this case, the relative position of the principal defendant, Sham Soonder, to the defendants whose interest he has purchased, does not resemble that which exists between joint contractors, but rather resembles that which exists between persons who have made themselves severally liable to perform a particular contract.

If Sham Soonder had been sued along with his predecessors in title in the suit No. 8 of 1877, the plaintiff could not have obtained a joint decree against them all. The zemindar has the right either to sue the registered talukdar, or the purchaser of it, but he cannot make them jointly liable. That being so, we are of opinion that the present suit is not barred by reason of the decree passed in the suit No. 8 of 1877, provided that the claim be not fully satisfied under that decree. It will be for the Court to take care that the plaintiff be not allowed to realize the same amount under two decrees. We, therefore, reverse the decision of the lower Appellate Court, and remand the case to that Court for the trial of the remaining issues. Costs to abide the results.

Case remanded.

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice White.

1879
July '71.

MOONSHI GOLAM ARAB (PLAINTIFF) v. CURREEMBUX SHAIKJEE
(DEFENDANT).

Suit on Decree of Small Cause Court—Small Cause Court Act (IX of 1850)—Stat. 9 and 10 Vict., cap. 95.

No suit will lie in the High Court on a decree of the Small Cause Court. *Berkley v. Elderkin* (1) and *Austin v. Mills* (2) followed.

Mohendronath Ash v. Baerobodun Dutt (3), *Madan Mohan Bose v. Lawrence* (4) and *Khobalal Buboo v. Ram Chunder Bose* (5) overruled.

(1) 1 Q. B., 805.

(3) 1 Ind. Jur., N. S., 220.

(2) 9 Ex., 288.

(4) 1 B. L. R., O. C., 66.

(5) I. L. R., 2 Calo., 434.