

which would qualify her to bestow on the child the care which it may need; (iii) that she should be well conducted; and (iv) that she should live in a place where the infant may not undergo any risk, morally or physically." All the cases are decided with reference to the interest of the children; if these are imperilled, the mother loses her right. [CUNNINGHAM, J.—Unless she has committed some act of impropriety, she is entitled to the custody of her infant children.] The executors must be able to exercise supervision. If the mother goes to a place where they cannot do this, she loses her right.

1881
IN THE
MATTER OF
HOSSEINI
BEGUM.

Mr. *Jackson* and Mr. *Gasper* were not called upon.

CUNNINGHAM, J., made the rule absolute, and directed that the children should be given up to the mother in the course of the day.

Attorney for Phoodia Bibee: Baboo *G. C. Chunder*.

Attorney for Aga Mahomed Kazim Ispahani and Moonshi Mahomed Ibrahim: Baboo *M. D. Sen*.

APPELLATE CIVIL.

Before Mr. Justice Tottenham and Mr. Justice Maclean.

BEEJOY KEOT (PLAINTIFF) *v.* GORIA KEOT AND OTHERS
(DEFENDANTS).

1881
June 10.

*Declaration of Title to Land in Assam, Suit for — Jurisdiction of Civil Court —
Registration of Claimant's Name by Collector.*

A person claiming a right to rent-bearing land in Assam, held under a putta from Government in the names of the persons against whom he claims, is entitled to sue in the Civil Court for a declaration of his title and right to have his name registered as co-owner in the Collectorate; and the Civil

* Appeal from Appellate Decree, No. 1737 of 1879, against the decree of W. E. Ward, Esq., Judge of the Assam Valley District, dated the 28th April 1879, reversing the decree of G. E. McLeod, Esq., Assistant Commissioner of Gowhatty, dated the 30th December 1878.

1881
 BEMJOY
 KEOT
 v.
 GORIA KEOT.

Court has jurisdiction to determine such suits, although the Collector has not been first applied to; but should not pass any order against the Collector in any suit to which he is not a party, but merely declare what the plaintiff's rights are.

THIS was a suit for declaration of coparcenary right to, and for registration of the name of the plaintiff, with those of the defendants, in the Collector's books, in respect of 52 bighas 4 cottas 5½ lechas of rent-bearing land. The plaintiff stated, that one Ramdas, who held 317 bighas 15 lechas in certain villages, of which the lands in dispute formed a portion, left three sons surviving—Andharu, Ohana Apa, and Gondho—who were each entitled to an equal third share of the land; that Gondho left two sons, Bhogjar, the father of the plaintiff, and Papara, the fourth defendant; that the first defendant was the grandson and sole descendant of Andharu; and that the second defendant Ajala, and third defendant Kuherain, were the sons of Ohana Apa. The plaintiff, accordingly, claimed, that he was entitled, along with his brother Jara, to one-sixth of the lands held by Ramdas. The plaintiff further stated, that, after the death of his father, he commenced to hold possession of the land in question in conjunction with the defendants, and that the mouzadar had entered his name and that of the defendant No. 4, Papara, along with those of the other defendants, in the measurement papers of 1283; but that, subsequently, the Deputy Commissioner had, on the 27th December 1876, ordered his name and that of Papara to be struck out, on the ground that they had been entered without orders; and, without any application having been made, had directed the patta to be issued in the names of the defendants Nos. 1, 2, & 3. The plaintiff, accordingly, brought this suit to have his coparcenary right declared and to have his name registered as co-owner. The defendants Nos. 1 and 4 admitted the claim, but the other two defendants contested it as being false, and in addition pleaded limitation, and submitted that the Collector was a necessary party.

The Assistant Commissioner, finding the facts in favor of the plaintiff, gave him a decree, declaring that he and Jara were entitled to a coparcenary right in one-sixth of the land, and to

have their names entered in the revenue records; and directed that Kuherain should pay all costs. Against this decree the defendants Nos. 2 and 3 appealed, and the lower Appellate Court reversed it and dismissed the suit, holding that the plaintiff was not entitled to sue in the Civil Court without having first applied to the Collector to have his name registered as a joint Government tenant of the lands in suit, as, were the decree asked for made, the Collector would in no way be bound by it, the effect of it being to order the Collector to do what he had never been asked by the plaintiff to do.

The plaintiff appealed to the High Court.

Baboo Byhunt Nath Dass for the appellant.

Baboo Bhoobun Mohun Dass for the respondents.

The judgment of the Court (TOTTENHAM and MACLEAN, JJ.) was delivered by

TOTTENHAM, J.—It will be sufficient to refer the District Judge to the judgments of this Court of the 2nd March 1880 in the case of *Kalindri Dabia v. Komolakanto Surma* (1) and

(1) *The 2nd March 1880.*

*Before Mr. Justice Prinsep and
Mr. Justice Maclean.*

KALINDRI DABIA (PLAINTIFF)
v. KOMOLAKANTO SURMA AND
ANOTHER (DEFENDANTS).*

Baboo Bhubun Mohun Dass for the
appellant.

Baboo Kali Mohun Dass for the res-
pondents.

The facts in this case sufficiently

* Appeal from Appellate Decree, No. 1672 of 1879, against the decree of W. E. Ward, Esq., Judge of the Assam Valley District, dated the 28th April 1879, affirming the decree of G. E. MacLeod, Esq., Assistant Commissioner of Gowhatty, dated the 28th December 1878.

appear from the judgment of the Court (PRINSEP and MACLEAN, JJ.), which was delivered by :

PRINSEP, J.—The lands in this suit originally belonged to one Isharam. The plaintiff states that they were sold to Parsuram in execution of a decree against Isharam, and were purchased from Parsuram by her father in 1854 (1260). Isharam's name, however, remained on the Collector's register notwithstanding these purchases.

The defendant Roteekant Dass obtained a decree against Isharam, in execution of which the lands were sold to defendant No. 2, Komolakanto Surma, to whom the Collector, in 1281, granted a patta.

Plaintiff now sues for a declaration of her right to the land for registration

1881
BEEJOY
KEOT
v.
GORIA KEOT.

1881

BHEJOY
KEOT

GORIA KEOT,

of the 12th August 1880 in the case of *Hootaboo Ravah v. Loom Ravah* (1), and to say that this Court does not concur in

of her name in the Collectorate, and to have the sale to defendant No. 2 set aside.

The plaint was filed on 15th November 1875. The suit has twice been remanded by the lower Appellate Court, and we regret that it is impossible for us now to put an end to these proceedings.

The District Judge has found that, before coming to the Civil Court, the plaintiff is bound to go to the Collector and to endeavour to obtain a patta from him in cancellation of the patta granted to defendant No. 2. The Judge further states, that, "if the Collector, on enquiry, finds that there has been no mistake or collusion in the granting of this patta to defendant No. 2, and refuses to accede to the plaintiff's request, his decision on this point must be taken as final."

This opinion is certainly opposed to what was declared by the same District Judge on the 23rd December 1876, when this case came before him previously. He then stated—"Plaintiff is entitled, on the facts stated by her, to ignore the second sale in execution of Isharam's right altogether, and to ask the Court to declare her right in the land, as well as her right to have her name registered in the Collector's book as the Government ryot."

It appears to us that the Civil Court, which has twice sold the land as belonging to Isharam, is the proper tribunal to decide, whether anything passed to the purchaser at the execution-sale held on the 24th September 1874, or whether the rights of Isharam were at that time vested in the plaintiff as stated by her.

The District Judge should decide

this appeal with as little delay as possible.

Costs of this appeal will abide the result, and appellant will recover the value of the appeal stamp.

*Appeal allowed
and case remanded.*

(1) *The 12th August 1880.*

Before Mr. Justice Morris and Mr. Justice Prinsep.

HOOTABOO RAVAH AND ANOTHER
(PLAINTIFFS) v. LOOM RAVAH
(DEFENDANT).*

Baboo *Okhil Chunder Sen* for the appellants.

Baboo *Kashikant Sen* for the respondent.

The facts in this case also were sufficiently set out, for the purposes of the report, in the judgment of the Court (MORRIS and PRINSEP, J.J.), which was delivered by

MORRIS, J. — The grounds upon which the lower Appellate Court has dismissed this suit, as well as the suit in appeal No. 66, appear to us to be untenable. In appeal No. 599, the plaintiffs sued to recover possession of one bigha odd of land as their proportionate share in a certain plot of rent-bearing homestead land belonging to them and to the defendant, whom they allege to be their own brother. They also ask to obtain a separate patta

* Appeal from Appellate Decrees, Nos. 599 and 600, of 1879, against the decree of W. E. Ward, Esq., Judge of the Assam Valley District, dated the 17th December 1878, reversing the decree of G. E. McLeod, Esq., Assistant Commissioner of Gowhatty' in Kamrup, dated the 16th July 1878.

his view of the incompetence of the Civil Court to deal with questions of title arising between ryots in Assam. Nor do we accept as correct the District Judge's opinion that the Collector will disregard the finding of the Civil Court. We do not think, however, that the Civil Court should pass any order upon the Collector except in a case to which he is a party. The duty of the Civil Court is simply to declare the rights

1881
BEEJOY
KEOT
v.
GORIA KEOT.

from the Revenue Court in respect of this land.

The defendant denied that he was the uterine brother of the plaintiffs. He alleged that the land, of which he had obtained a patta from the Government, was his own property, and that the plaintiffs had no share in it.

The first Court decided, and with its decision the present plaintiffs, appellants, are content, that the plaintiffs were brothers of the defendant; that they had established their title to their proportionate share in the land; and accordingly it gave a decree, declaring their right in it *ijmali*, and that they were entitled to have their names registered conjointly with that of the defendant.

On appeal the Judge throw out the suit *in toto*, on the ground that the Collector had refused to recognize the plaintiffs as the Government tenants in occupation of the lands in suit; that, consequently, any possession of these lands, if they ever possessed any, was unlawful, for no ryot "in Assam Proper has any title to hold and cultivate land without a patta from the Collector."

We are not aware of the law or authority under which the Judge advances so broad a proposition as this, that no ryot can enjoy possession of any lands in Assam without direct permission of the Collector, or hold or cultivate land without a patta from the Collector; but it seems to us unnecessary to consider this point, because

in the present suit the Collector is not a party. The present is a suit affecting the rights of private individuals *inter se*; and for the determination and decision of such rights, whether relating to lands ryoti or otherwise, we can have no doubt that the Civil Courts in Assam have jurisdiction.

We observe also that the provisions of the Rent Law, Act X of 1859, are in force in Assam, and that the Government recognizes hereditary succession in tenancies. In a case such as this, if, as a matter of fact, land has been held under a patta in the name of an older brother, and the younger brothers of the family can show that they have held the land conjointly with their elder brother, the nominal holder, the Civil Court is clearly the proper Court, in the event of dispute as to possession or share in such land between the two, to determine their respective rights and interests. We are, therefore, of opinion, that, in this case, the first Court acted rightly in determining the matters at issue between the parties, and that the Judge on appeal was not competent to decline to decide them.

We, therefore, remand the case, in order that the lower Appellate Court may hear the appeal and decide the case on its merits. Costs will abide the event.

The same order is applicable to the appeal No. 600.

*Appeal allowed
and case remanded.*

1881 of the parties, and we presume that the Collector will give the
 requisite effect to any declaration so made.
 BEEJOY KROT v. GORLA KROT. The case will be remanded to the District Judge for disposal,
 and costs of this appeal will abide the result.

Appeal allowed and case remanded.

Before Mr. Justice Pontifex and Mr. Justice Field.

1881
 May 26.

NILMADHUB SHAHA AND OTHERS (DEFENDANTS) v. SRINIBASH
 KURMOKAR (PLAINTIFF).*

Suit for Possession—Limitation—Beng. Act VIII of 1869, s. 27.

In a suit for possession of land, it appeared that the defendants had obtained a darpatni lease of the land in question in 1271 (1865), and that they had immediately dispossessed the plaintiff, and had never acknowledged him to be their tenant. The plaintiff instituted his suit within twelve years from the date of dispossession.

Held, that the suit was not barred by limitation under s. 27 of Beng. Act VIII of 1869.

That section only applies to cases where the relation of landlord and tenant exists, and cannot be pleaded in bar by a defendant who does not admit that such relation has existed.

THIS was a suit to have the plaintiff's purchased right declared in respect of an eight-anna share of certain land, and to recover khas possession, together with mesne profits. It appeared that the land had originally belonged to the plaintiff and the defendant No. 3, one Uma Sunduri Dasi, the widow of one Kesub Chunder Kurmocar, and that they were in joint possession. The plaintiff was dispossessed in the year 1272 (1865). He then brought a rent-suit in respect of his share, and obtained a decree. In 1284 (1877), the plaintiff purchased the share of Uma Sunduri Dasi, but was not allowed by the other defendants to take possession; whereupon he instituted the present

* Appeal from Appellate Decree, No. 373 of 1880, against the decree of Baboo Krishna Chunder Chatterjee, Officiating Subordinate Judge of Nudda, dated the 27th December 1879, modifying the decree of Baboo Kristo Behari Mookerjee, First Munsif of Koositea, dated the 29th of June 1878.