

longer to sit alone in the Privy Council Department, because all, or nearly all, his orders would be appealed, and thus a double expense would be entailed upon suitors, as well as a double labour upon the Court. For our present purpose it is sufficient to say, that we consider ourselves bound by the former decision in 1876. Mr. Bell's client in the present case is of course not without remedy, because he may always appeal to the Privy Council; and we know that their Lordships have frequently thought it right to admit appeals, when leave to appeal has been refused in this Court. The appeal must be dismissed with costs.

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Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

SHAH AHMED SUJAD AND ANOTHER (PLAINTIFFS) v. TAREE
 RAI AND OTHERS (DEFENDANTS).*

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 April 12.

*Cause of Action—Declaratory Decree—Specific Relief Act (I of 1877),
 s. 42—Civil Procedure Code (Act X of 1877), s. 53.*

In a suit for confirmation of possession and declaration of title in respect of land, where the plaint did not disclose any facts from which it could be said that the defendants denied the plaintiffs' title, but from the proceedings in the original cause it was established, that, before the suit was brought, there was a dispute existing between the parties as regards the title, and that a decree in favor of the plaintiffs had been passed by the original Court on the merits of the case,—

Held, that though the plaint might have been rejected in the first instance under s. 53 of the Civil Procedure Code, on the ground that it did not disclose any cause of action, it was too late for an Appellate Court to reverse the decree solely on that ground, without being satisfied that no such cause of action was established on the evidence.

THIS was a suit brought by the plaintiffs for confirmation of possession and declaration of title in respect of a plot of land,

Appeal from Appellate Decree, No. 1704 of 1879, against the decree of Baboo Aubinash Chunder Mitter, Additional Subordinate Judge of Patna, dated the 22nd May 1879, reversing the decree of Moulvi Abdool Aziz, Munsif of Behar, dated the 30th November 1878.

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and for the recovery of rupees 25 as damages for two palm trees which had been felled by the plaintiffs but forcibly taken away by the defendants. The plaint, after giving the history of the plaintiffs' title, and alleging that they were in possession, continued: "The principal defendants, on the 9th Magh 1285 Fusli, forcibly carried away two palm trees felled by the plaintiffs, and which trees stand on the purchased land mentioned above, by which act of the defendants there has been a shock to the plaintiffs' future possession, and created the date for the cause of action." The defendants denied the plaintiffs' title. They also alleged, that the plaint disclosed no cause of action for confirmation of possession and declaration of title. The Munsif overruled this last objection, and on the merits awarded a decree in favor of the plaintiffs for confirmation of possession, holding that the plaintiffs' title was proved. The Munsif also awarded a decree for Rs. 5, the value of the palm trees taken away by the defendants.

On appeal, the only point urged before the lower Appellate Court was, that as the plaint disclosed no cause of action for confirmation of possession and declaration of title, the Munsif's decree, in so far as it declared the plaintiffs' title, confirming his possession, was bad in law. The lower Appellate Court yielded to these objections, and reversed so much of the Munsif's decree as related to these two prayers. As regards the damages, the defendants' (appellants') pleader, before the lower Appellate Court, stated that he would not contest the validity of the decree.

The plaintiffs then specially appealed to the High Court.

Baboo *Doorga Pershad* for the appellants.

Mr. *Sandel* for the respondents.

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

MITTER, J. (who, after stating the facts as above, continued):—On the second appeal it is urged before us that the lower Appellate Court was in error in reversing the Munsif's decree

for confirmation of possession. The suit was brought on the 3rd May 1878, after the Specific Relief Act came in force. Section 42 of that Act says:—"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion," &c. Now, in this case, no doubt, the plaint does not disclose any facts from which it could be said that the defendants either denied their title or were interested to deny it; but from the proceedings in the lower Court it was established, that, before the suit was brought, there was a dispute between the parties as regards the title of the plaintiffs. That being so, although, under s. 53 of the Procedure Code, the Munsif might have rejected the plaint on the ground that it did not disclose any cause of action for maintaining a suit for declaration of title and confirmation of possession, yet a decree having been passed by the Munsif upon the merits, it was too late for the Appellate Court to reverse that decree upon the ground that the plaint did not disclose any cause of action for declaration of right and confirmation of possession. The Appellate Court could only reverse the decree if it was satisfied, that not only the plaint did not disclose any cause of action for granting a declaratory decree, but that no such cause of action was established on the evidence. That cannot be said in this case, because it is quite clear from the written statement and other proceedings in the case, that there was really a dispute between the parties as regards the plaintiffs' title before the suit was brought. We, therefore, reverse the decree of the lower Appellate Court so far as it reverses the decree of the Munsif, and remand the case for retrial. Costs to abide the result.

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Appeal allowed, and case remanded.