ORIGINAL CIVIL.

Before Mr. Justice Wilson.

1881
April 13.

ATTERMONY DOSSEE (PLAINTIFF) *v.* HURRY DOSS DUTT (DEFENDANT).

Ex parte Suit on a Former Decree of the High Court—Procedure on Revivor.

There is nothing in Act X of 1877 which prevents a suit from being instituted on a decree of the High Court.

THE plaintiff stated, that one Gostobehary Mullick had, on the 8th May 1875, in a mortgage suit against one Hurry Doss Dutt, obtained a decree for an account and for a sale of the mortgaged premises, and for payment of any deficiency that might remain after sale; that, in June 1876, Gostobehary Mullick died intestate, having received nothing under his decree save a sum of Rs. 130 for interest. On the 31st March 1879, letters of administration to the estate of Gostobehary were granted to his mother Attermony Dossee (the present plaintiff). The decree, however, remained unsatisfied, no steps having been taken to revive the suit. Attermony Dossee, therefore, brought the present suit on the decree of the 8th May 1875 (it being too late to revive the suit in the usual way under the Civil Procedure Code), asking that her suit might be taken as supplemental to the former suit, and that she might be declared entitled to the benefit of the former decree; that the amount due under the said decree and indenture of mortgage and costs might be paid to her as administratrix, or that, in default, the premises might be sold as directed by the decree; and for further and other relief. At the hearing the facts were proved as alleged in the plaintiff.

Mr. *R. Allen* for the plaintiff.

No appearance having been entered for the defendant, the case was heard *ex parte*.

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The judgment of the Court was delivered by

WILSON, J.—This case raises a question which, so far as I know, has not been before decided. I do not think the question is one of any great difficulty; but as the suit is undefended, and I therefore had not the advantage of hearing the matter argued from the defendant's point of view, I thought it right to take time to consider.

I think the suit is well brought. It may be regarded in either of two ways. It may be looked at as a suit upon the former decree. As a general rule a suit lies upon the decree of a Court of competent jurisdiction, unless the right to sue be taken away expressly or by implication. I see nothing to prevent a suit being brought upon a decree of this Court. And the Limitation Act prescribes the period of limitation for such a suit in sched. ii, div. i, art. 122.

This suit may again be regarded as a suit supplemental to the former suit, and to revive the decree. And so regarded, I think, the suit is properly brought. Under the older procedure in the Supreme Court, a common law judgment was revived by *scire facias*, a proceeding which was of the nature of a new action to give effect to the old. An equity suit was revived by bill of revivor.

Act VI of 1854, s. 31, introduced a simpler method of reviving a suit on the Equity Side of the Court, by order in the suit founded upon a suggestion without the necessity of a bill. But I can see nothing in that enactment to take away the right to proceed by bill, if for any reason the simpler mode of proceeding was not available.

The High Court inherited all the jurisdiction and powers of the Supreme Court.

The provisions of Act VIII of 1859 were, by rule, made generally applicable to this Court; and that Act contained provisions for reviving suits by a summary process. The present Procedure Code, which, for the most part, applies by its own authority to this Court, contains provisions of a like nature. But in these Acts again I find nothing to take away the right to proceed by the older and more cumbrous methods, if for any

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reason the parties to a suit are unable to take advantage of the newer and simpler procedure.

In my opinion, therefore, the plaintiff is entitled to maintain this suit, and should have a decree in the terms of the first and second prayers of the plaint, the defendant having six months time to redeem. The defendant, however, is not to blame for the necessity having arisen for recourse to a suit. That was in consequence of differences between the parties interested in Gostobehary Mullick's estate. The decree will, therefore, be without costs up to decree.

Attorneys for the plaintiff: *Swinhoe & Co.*

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

1881
March 1.

NITTYANUND ROY (PLAINTIFF) *v.* ABDAR RAHEEM AND ANOTHER (DEFENDANTS).*

Public Documents—Evidence Act (I of 1872), s. 74.

In a suit to obtain possession, under a title acquired by purchase at an auction, of certain lands, together with mesne profits, upon setting aside an alleged taluqua etmami right claimed by the defendants, the defendants, in support of their claim, produced certain documents purporting to be abstracted from, or copies of, Government measurement chittas, dated Mughi 1126-27 (1764). These documents were produced from the Collectorate, but there was nothing to show that they were the record of measurements made by any Government officer.

Held, that they were not "public documents" within the meaning of s. 74 of the Evidence Act.

BABOO *Chunder Madhub Ghose* and Baboo *Okhil Chunder Sen* for the appellant.

Appeal from Appellate Decree, No. 690 of 1879, against the decree of Baboo Koilash Chunder Mookerjee, Second Subordinate Judge of Chittagong, dated the 12th December 1878, modifying the decree of Baboo Chunder Coomar Roy, Munsif of Fatikchari, dated the 31st January 1877.