

1883  
 MOHESH LAL  
 v.  
 MOHANT  
 BAWAN DAS.

gage, or to include it or Mangal's right to the Rs. 5,849, claimed on account of the purchase of lots 8, 9, 10, and 11, in the security to the plaintiff for the loan of Rs. 20,000.

As to the sum of Rs. 3,166-11-6 awarded by the first Court to be realized from the mortgaged estates on account of money expended on account of the payment of revenue, road cesses, &c., on account of the estates, the credit was given to Mangal and not to the plaintiff, and there is no privity between the plaintiff and defendant No. 1 in respect of it. Mangal may possibly be entitled to it, but that must depend upon the state of accounts between him and the aethal, which cannot be taken in the suit now under appeal.

Their Lordships will humbly advise Her Majesty to affirm the decree of the High Court, and to dismiss this appeal. The appellants must pay the costs of this appeal.

*Appeal dismissed.*

Solicitors for the appellant: Messrs. *Barrow & Rogers.*

Solicitor for the respondent: Mr. *T. L. Wilson.*

## APPELLATE CIVIL.

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.*

1883  
 July 23.

KHATJA BIBI (PLAINTIFF) v. TARUK CHUNDER DUTT  
 (DEFENDANT.)\*

*Transfer of case—Civil Procedure Code (Act XIV of 1882), section 23—Practice—Ground for transfer.*

Section 23 of Act XIV of 1882 is only intended to provide for those cases where, on the ground of expense or convenience or some other good reason, the Court thinks that the place of trial ought to be changed.

Parties desirous of obtaining the transfer of a case from one forum to another ought clearly to explain to the Court by petition and affidavit what is the nature of the claim and defence; they should further state what are the issues and the evidence required, and then satisfy the Court

\* Civil Reference No. 7 of 1883 made by J. Pratt, Esq., Officiating District Judge of Dacca, under s. 23, Civil Procedure Code, for transfer of a case from one Court to another, dated the 18th June 1883.

that, either on the ground of expense or convenience or otherwise, the place of trial ought to be changed.

THIS was a reference under the provisions of s. 23 of Act XIV of 1882.

The defendant in the suit asked that the case might be transferred from the file of the Second Judge of Dacca to that of the Sub-Judge of Furrirdpore, on the ground that the bulk of the property in suit was situate in Furrirdpore, and that some of his co-sharers in the ijara were residents of Furrirdpore, and that it would be inconvenient to take his witnesses to Dacca. The plaintiff among his objections stated that, though the bulk of the property was situate in Furrirdpore, a portion of it was in Dacca; that the defendant resided at Dacca; and that the witnesses likely to be summoned also resided at Dacca.

1883  
KHATIFA  
BIBI  
v.  
TARUK  
CHUNDER  
DUTT.

Baboo *Akhil Chunder Sen* for the plaintiff.

No one appeared for the defendant.

The order of the High Court (GARTH, C.J., and MACPHERSON, J.) was as follows:—

GARTH, C.J.—We see no sufficient ground for transferring this suit from the Dacca Court to that of Furrirdpore.

*Prima facie*, the plaintiff as the *arbiter litis* has a right to bring his suit in any Court which the law allows; and s. 23 is only intended, as we consider, to provide for those cases, where, on the ground of expense or convenience, or some other good reason, the Court thinks that the place of trial ought to be changed.

If for instance, in this case, the defendant could have shown us that great expense could have been saved, or that the balance of convenience was strongly in favor of the case being tried at Furrirdpore, we might have thought it right to grant his application. But looking at the allegations on both sides, we think it very difficult to say where the balance of convenience lies.

The plaintiff, on the one hand, says that, though a great part of the property in suit is in Furrirdpore, some of it is in Dacca; that the defendant himself lives at Dacca, and carries on business

1888  
 KHATIJA  
 BIBI  
 v.  
 TARUK  
 CHUNDER  
 DUTT.

there; and that all the witnesses who are likely to be summoned in the cause reside at Dacca.

The defendant, on the other hand, says that the bulk of the property in suit is situated in Furrirdpore; that some of the persons who are co-sharers with him in the ijara, and who ought, therefore, to have been made parties to the suit, reside at Furrirdpore; and that it would be very inconvenient to bring the necessary evidence relating to the estate to Dacca.

It would seem from those counter allegations that, notwithstanding all the defendant says, the balance of convenience may be in favour of the case being tried at Dacca. It certainly does not follow that, because the bulk of the land in suit may be at Furrirdpore, and that some of the co-sharers may live there, the balance, either of convenience or of expense, is in favour of trying the case there.

Parties who desire to have a case transferred from one forum to another ought clearly to explain to the Court by petition and affidavit what is the nature of the claim and defence, and what the issues are; they should state what evidence will be required, and then satisfy the Court that, either on the ground of expense or convenience or otherwise, the place of trial ought to be changed.

*Application dismissed.*