

might be set aside on showing sufficient grounds for such an application; and in this case the order will not be very prejudicial to the defendant. 1883

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r.
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PIGOT, J., made an order striking out the defence of Khajah Abdool Aziz under s. 136 of the Code in consequence of his non-compliance with the order of the 29th March 1883; and at the same time mentioned that the party against whom the order was made might come in and seek to set it aside on showing good grounds for the application.

Attorneys for the plaintiff: *Messrs. Remfry and Remfry.*

APPELLATE CIVIL.

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

JUGUT SHOBHUN CHUNDER *alias* DOOLAL CHUNDER DEHINGUR GOSSAMY (PLAINTIFF) *v.* BINAUD CHUNDER *alias* SODA SHOBHUN CHUNDER DEHINGUR GOSSAMY AND ANOTHER (DEFENDANTS).*

1883
May 29.

Jurisdiction of Revenue Courts—Question of Title—Registration of names—Declaratory decrees, Suit for.

It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts. It is the duty of the latter in suits brought for declaration of a right to registration to declare the rights of parties in order that the revenue authorities may be duly certified as to the persons whom they ought to register.

IN this case the plaintiff sued to get his name registered on the revenue rolls as a joint holder with his brother, defendant No. 1 in respect of 311 bighas of ancestral lands.

The plaintiff stated that after his father's death in 1277 (1870), he and his brother, defendant No. 1, inherited their father's estate; that at that time both of them were minors, and the lands in

* Appeal from Appellate Decree No. 1863 of 1881 against the decree of W. B. Ward, Esq., Judge of Assam Valley District, dated the 13th June 1881, reversing the decree of Baboo Shibo Persad Chuckerbutty, Sudder Munsiff of Gauhatty, dated the 14th December 1880.

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question were recorded in the name of their step-mother ; that after the death of their step-mother, defendant No. 1, who had attained majority, became the guardian of his minor brother, and applied for and obtained a certificate to collect and receive the amounts due to their father, and further applied to the Collector to have his name registered in respect of his father's ancestral property, and accordingly obtained a pottah in his own name of all these properties ; that on the 25th Pous 1285 (10th January 1879) he (the plaintiff) attained his majority, and separated from defendant No. 1, and took ijwali possession of a share of the lands in suit. That defendant No. 1, in order to establish his exclusive right over all the ancestral property, brought a suit against certain tenants to eject them from their holdings ; that he the plaintiff thereupon applied to the Revenue Court to have his name recorded as a joint holder of these lands with his brother, but his application was refused both in the first Court and on appeal in the Chief Commissioner's Court : and that he thereupon brought this suit against defendant No. 1 and the Deputy Commissioner for declaration of his title and the recording of his name jointly with that of his brother on the revenue rolls.

Defendant No. 1 stated that the plaintiff was not in possession, and that a suit for a declaratory decree would not lie ; and he further denied plaintiff's claim to any portion of the land, the land not being subject to the ordinary Hindu law of inheritance.

Defendant No. 2 stated that he had no interest in the suit and asked for costs.

The Assistant Commissioner found that the lands were ancestral ; that the plaintiff had been in possession of the land in suit jointly with his brother, and decided the case in favor of the plaintiff, ordering that the properties claimed by the plaintiff be declared his paternal properties, and he be entitled to get his name registered in respect of a half share therein.

The defendant No. 1 appealed to the Judge of the Valley District of Assam, who, without going into the merits of the case, dismissed the appeal on the ground that the plaint disclosed no cause of action, stating that the plaintiff, being in possession and enjoyment of the lands in suit, the Chief Commissioner's order refusing to register his name as a joint holder with his brother threw no

cloud upon the plaintiff's title; and further that the Court had not the power to pass such an order against the revenue authorities as was asked for in the plaint.

The plaintiff appealed to the High Court.

Baboo *Bhoobun Mohun Dass* for the appellant.

Baboo *Rash Behari Ghose* for the respondents.

The judgment of the Court (GARTH, C.J., and MACPHERSON, J.) was delivered by

GARTH, C.J.—In this case, which is somewhat similar in its nature to others which have been appealed from the Assam Valley Districts, we are sorry to find that the District Judge has again taken an erroneous view of the law.

The plaintiff sued to have it declared that he is entitled to an eight-anna share in certain immovable property, and to have his name registered as the owner of that share in the Revenue Court.

His case is, that his father was the owner of the property in question, and that he and his brother, the defendant No. 1, inherited it in equal shares. At the time of his father's death, which occurred on the 2nd of Joisto 1277 (17th May 1870), the plaintiff and his brother were both minors, and consequently their step-mother, Chunder Coomary, who appears to have acted as their guardian, had her name recorded in the Revenue Court as the owner of one portion of the property, whilst another portion remained in the name of the plaintiff's father, to whom a pottah had been granted.

Chunder Coomary died whilst the plaintiff was still a minor, but his brother, the defendant No. 1, had then attained majority, and he became the plaintiff's guardian after the step-mother's death.

He then applied to the Judge's Court for a certificate authorizing him to collect the amounts due to their father; and taking advantage of his position as the plaintiff's guardian, he also applied to the Collector to have his name recorded as the sole owner of the property, which stood in the names of Chunder Coomary and of his father. His application was granted, and he obtained a pottah, conveying the property to himself alone.

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The plaintiff then says that afterwards upon attaining his majority, he separated from his brother, the defendant No. 1, on the 25th of Pous 1285 (10th January 1879); and that he has since been in ijmalî possession of a share of the lands in suit.

He then alleges that the defendant No. 1, with a view of excluding him from his interest in those lands, took proceedings in his own name to eject the tenants; whereupon the plaintiff, for his own protection, applied to the Revenue Court to have his name registered as the owner of an eight-anna share in the property; but in consequence of objections raised by the defendant No. 1 the Deputy Commissioner refused to register him.

He then appealed to the Commissioner, who confirmed the order, but advised the plaintiff to bring a civil suit. This was no doubt his proper remedy; and he did bring this suit on the 2nd of July 1880. The defendant No. 1 alleges (amongst other things) that the plaintiff has no interest in the lands in suit.

The Assistant Commissioner, after going into the case very carefully, decided in the plaintiff's favor, and gave him a decree, declaring that he was entitled to an eight-anna share of a part of the property in question, and to have his name registered as the owner of that share.

The defendant No. 1 appealed from that decree; and the District Judge, apparently without going into the evidence, or considering the judgment of the first Court, held that the plaintiff disclosed no cause of action, and refused to try the appeal upon its merits.

The District Judge goes on to say, what of course is very true in a literal sense, that the Civil Court has no power to make a binding order upon the revenue authorities in the manner prayed for in the plaint; but I think if he had only exercised a little of the discretion, which was shown by the first Court, he would have had no difficulty in making such a decree as would have given the plaintiff all the relief which he could properly ask, if after an investigation on the merits he considered him entitled to it; that is to say, a decree declaring what his rights were, leaving it to the revenue authorities to register him, if they thought fit, in respect of those rights.

Suits of this kind are extremely useful, and of every-day.

occurrence in this province. It no doubt sometimes happens that plaintiffs, through ignorance or mistake, ask for an order upon the Collector, which the Civil Courts have no power to make; but that is a mere formal error, which it is the duty of the Judge to correct; and if he finds upon the evidence that the plaintiff is entitled to the right which he claims, and that the case is one in which a declaratory decree can legally be made, he ought to make such a decree, and then leave it to the revenue authorities to do their duty in the matter.

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I observe the District Judge says, that "the revenue authorities in Assam are not legally bound to register the names of all the joint shareholders in a pottah."

I can only say that if this is so, and if the revenue authorities in Assam are at liberty to prefer the claims of any one shareholder in a property, and to register him as the sole owner, to the exclusion of the others, notwithstanding any declaration which may be made by the Civil Court to the contrary, I am afraid that the Revenue Court, instead of being of any service to the public, must of necessity often become an instrument of fraud and oppression; and if that is the state of the law in Assam, I think the sooner the notice of the Supreme Government is called to it, the better.

It is not, of course, the province of the Revenue Court to decide questions of title between contending claimants. It has neither the knowledge of law, nor the proper machinery, to decide such questions. That is obviously the province of the Civil Courts; and their duty, as I understand it, is to declare the rights of parties, in order that the revenue authorities may be duly certified as to the person whom they ought to register.

Unless this were so, I see no reason why the Collector or the Commissioner in Assam should constantly refer parties, (as the Commissioner has done in the present instance), to the Civil Court. It would seem nothing short of mockery to refer a claimant to the Civil Court, and when he has sued there, and had his rights declared, to inform him that the Revenue Court cannot recognize those rights.

The plaintiff in this case has sufficiently explained his title upon the face of his plaint. He has shown how those rights are

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likely to be jeopardized by the exclusive claim to the property which is made by his brother, and the proceedings which the latter has taken with a view to exclude him from his property. It is obvious from the written statement of the defendant No. 1, and from the judgment of the first Court, that the latter denies the plaintiff's title, and means to oust him if he can, and the case is therefore one which comes directly within the scope of s. 42 of the Specific Relief Act.

The case must therefore be remanded to the lower Appellate Court, in order that the merits of the case may be properly investigated, and the plaintiff's rights declared with a view to registration.

There is nothing in the case referred to by the District Judge which is opposed to this view, because in that case, as explained by the High Court, the plaintiff was not in a position to sue for a declaratory decree.

There have been several other cases since the year 1879, which have come up in appeal from Assam, and in which, I regret to say, this Court has been constrained to express its disapproval of the law which has been laid down by the District Judge. (See *Kalindri Dabia v. Komola Kanto Surma* (1); *Hootaboo Ravah v. Loom Ravah* (2); *Beejoy Keot v. Gorla Keot* (3); *Purnamal Deka Kohla v. Mayaram Deka Kohla*; and (4) *Shiboram Surma v. Juggeram Surma* (5).

The costs in this Court and in the lower Appellate Court will abide the result.

Case remanded.

(1) I. L. R., 7 Calc., 437.

(2) Id., 440.

(3) Id., 439.

(4) 10 C. L. R., 201.

(5) No. 138 of 1881 not reported.