

rent, and the Act was not intended to apply to debts for rent but to debts of a different nature.

It seems to us, however, that this is just one of those cases in which the Legislature intended to protect the property of the Nawab Nazim. These two taluks formed part of his estates; and it was for the purpose of protecting those estates and of preventing their sale, that this Act was passed. A debt for rent is like any other debt; and we quite agree with the lower Courts that the consent of the Governor-General in Council will be necessary before the plaintiff can sell the property in execution. This appeal will, therefore, be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Cunningham and Mr. Justice Maclean.

KUNNOCK CHUNDER MOOKERJEE (DEFENDANT) v. GURU DASS
BISWAS (PLAINTIFF).*

1883
May 31.

*Civil Procedure Code (Act XIV of 1882), ss. 42, 43.—Enhancement of rent,
Suit for—Subsequent suit for rent.*

Under ss. 42 and 43 of the Civil Procedure Code, plaintiffs must bring their entire claim and every remedy enforceable in respect of that claim into Court at once, and if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent, and suits for rent, are claims arising in respect of the same subject-matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rate, to sue for the original rent for previous years.

Baboo *Bama Churn Bannerjee* for the appellant.

Baboo *Sree Nath Dass* for the respondent.

The judgment of the Court was delivered by

CUNNINGHAM, J.—The question raised in this appeal is whether the plaintiff, having sued for enhanced rent for the year 1286 (1879), can now sue for the original rent for the years 1284, 1285 and 1286 (1877, 1878, and 1879).

* Appeal from Appellate Decree No. 944 of 1882, against the decree of W. Macpherson, Esq., Judge of the 24-Pergunnas, dated the 10th March 1882, modifying the decree of Baboo Grish Chunder Chatterjee, Second Moonsiff of Sakheera, dated the 30th June 1881.

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The lower Appellate Court has found that the one action is no bar to the other. We feel it impossible to concur in this opinion. It appears to us that, looking at the wording of ss. 42 and 43 of the Code of Civil Procedure, it is clearly the intention of the Legislature that plaintiffs should bring their entire claim and every remedy enforceable in respect of that claim into Court at once, and that if they fail to do that in any suit, they cannot afterwards avail themselves of any other remedy on which they have not chosen to insist in the first suit.

It is true that the Privy Council have pointed out that a suit for enhanced rent and a suit for rent are very different proceedings. None the less are they, in our opinion, remedies or claims arising in respect of the same subject-matter. This being so, we think they fall within the purview of s. 43, and that the plaintiff, not having chosen to put forward this claim for rent of the years 1284, 1285 and 1286 at the original rate in the former suit, is now barred from suing for that rent in the present suit. We think, therefore, that the decision of the lower Appellate Court must be set aside and that the suit must be dismissed with costs throughout.

Appeal allowed.

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

SHUMBHOO NATH PODDAR (PLAINTIFF) v. LUCKYNATH DEY
 AND OTHERS (DEFENDANTS).*

1883
 June 5.

*Sale in execution of decree—Civil Procedure Code (Act X of 1877), s. 295—
 Rateable distribution amongst decree-holders.*

Where property belonging to *A* has been attached under a decree, and other decree-holders than the attaching creditor have applied before realization of assets to participate in the sale proceeds, and amongst them a creditor who has obtained a decree against *A* and *B*, such latter creditor is entitled under s. 295 to share in the proceeds of the sale of *A*'s property.

THIS case was originally filed and decided in 1880, and the regular and special appeal thereon decided on the 30th May 1881 and 19th July 1882 respectively. The case then came up on appeal

* Appeal under s. 15 of the Letters Patent against the decree of Mr. Justice Field, dated the 19th July 1882, in appeal from Appellate Decree No. 1508 of 1881.