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maintain the present suit, regard being had to the provisions of s. 42 of the Specific Relief Act. If, however, the order were made under the provisions of s. 52, the Act gives to the order no such force. We think that, although an order made under this section may be some evidence of possession, yet in the absence of any express provision of the Legislature, we cannot say that it is conclusive on the question of possession. In the present case it does not appear on the face of the order under what section it was made, and, we think, we should not be justified in presuming against the plaintiff that it was made under s. 55 rather than under s. 52. We must therefore regard the Collector's order merely as evidence of possession, which the Courts below were at liberty to consider along with the other evidence in the case. The Subordinate Judge has found, as a matter of fact that the plaintiff is in possession of the share which he claims, and having so found it certainly was competent to him to make the declaratory decree against which the present appeal has been preferred. We come, therefore, to the conclusion that there are no grounds upon which we can interfere with the decision of the Court below, and we, therefore, dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

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POROMANAND KHASNABISH (DEFENDANT) *v.* KHEPOO PARAMANICK (PLAINTIFF).*

Execution of decree—Payment not certified in Court—Fraud—Cause of action—Regular Suit—Code of Civil Procedure (Act XIV of 1882*) s.* 258.

The holder of a money decree, agreed to accept in satisfaction of the amount thereof, a part payment in cash, and a lease of certain lands for five years, rent free. The judgment-debtor made the payment, and gave the lease agreed on. Afterwards the decree-holder executed the decree against the judgment-debtor, and then the judgment-debtor brought the present suit for a declaration that the money decree was satisfied, and for damages against the decree-holder. *Held*, that such a suit would lie.

Gunamani Dasi v. *Prankishori Dasi* (1); *Viraraghava Reddi* v.

* Appeal from Appellate Decree No. 994 of 1882, against the decree of Baboo Jibun Kristo Chatterjee, Subordinate Judge of Pubna and Bogra, dated the 3rd April 1882, reversing the decree of Baboo Annoda Prosaud Chatterjee, Munsiff of Shahajadpore, dated the 18th July 1881.

(1) 5 B. L. R., 223.

Subbaka (1); *Chembrakandi Musutti* v. *Themdyal Puthalath Shekharan Nayar* (2); *Sita Ram* v. *Mahipal* (3); *Shadi* v. *Ganga Sahai* (4); and *Ishan Chunder Bundopadhya* v. *Indro Narain Gossami* (5) followed; *Patankar* v. *Devji* (6) not followed.

IN this case the plaintiff stated that, having been indebted to the defendant on a bond, the latter instituted a suit against him in 1874 for the recovery of the amount; that on the 20th of February 1875 he entered into an arrangement with the defendant for the satisfaction of the claim, and a decree on the basis of the arrangement was passed on the same day. That that arrangement was that the plaintiff should pay a portion of the claim in cash, and that in satisfaction of the remainder, the plaintiff should give to the defendant a lease of certain lands for the years 1283, 1284, 1285, 1286 and 1287 (1876—1880). That the plaintiff made the cash payment agreed on, and delivered over possession of the lands to the defendant, who kept possession of them for the five years agreed on. That, notwithstanding the plaintiff carried out the agreement, the defendant afterwards executed his decree against the plaintiff, the latter's objections having been overruled by the Court. The plaintiff then instituted the present suit for a declaration that the decree of 1871 was satisfied, and for Rs. 186-14 as damages.

It appears that no mention was made of the arrangement relied on by the plaintiff in the decree of 1874, which, in form, was an ordinary money decree.

The Court of first instance disbelieved the plaintiff's story and dismissed the suit with costs. On appeal, this decision was reversed and the claim decreed. The defendant appealed to the High Court, on the ground "that the Courts below ought to have held that the present suit, as brought, does not lie, and that the plaintiff had no cause of action to bring it."

Baboo *Srinath Banerjee* for the appellant.

Baboo *Grija Sunker Mozoomdar* for the respondent.

The judgment of the Court (FIELD and O'KINEALY, JJ.) was delivered by

(1) I. L. R., 5 Mad., 897.
(2) I. L. R., 6 Mad., 41.
(3) I. L. R., 3 All., 533.
(4) I. L. R., 3 All., 588.
(5) I. L. R., 9 Calc., 788.
(6) I. L. R., 6 Bom., 146.

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PUROMA-NAND KHASNABISH v. KHEPOO PARA-MANICK.

FIELD, J.—This was a suit brought to recover Rs. 186-14, alleged to have been paid by the plaintiff in satisfaction of a previous decree obtained by the defendant against him.

The question which has been argued before us is whether a suit of this nature will lie. The old law under the Code of 1859, as settled by the Full Bench decision in *Gunamani Dasi* v. *Prankishori Dasi* (1) was that such a suit will lie. Upon the Code of 1877, as unamended by the Act of 1879, there are two Madras decisions to be found in *Viraraghava Reddi* v. *Subbaka* (2), a Full Bench case, and *Chembrakandi Mussutti* v. *Themdyal Puthalath Shekharan Nayar* (3) following the Full Bench decision, that the suit is maintainable. Immediately after the Madras Full Bench decision, s. 258 of the Code was altered and amended. The last paragraph of the section, as amended by the Act of 1879, and as it stands in the Code of 1882 now in force, is: No such payment or adjustment shall be recognized by any Court, unless it has been certified as aforesaid." It might be contended that the Legislature meant by this provision to overrule the decision of the Full Bench of the Madras High Court just referred to, but, as was pointed out by Mr. Justice O'Kinealy in the course of the argument in this case, it is a very proper answer to this contention to say that if the Legislature meant to overrule the decision of the Madras High Court, it would have been very easy to say in express language, admitting of no doubt, that no separate suit will lie. Upon the amended section in its present shape, there are two decisions of the Allahabad High Court—*Sita Ram* v. *Mahipal* (4), and *Shadi* v. *Gunga Sahai* (5)—in which it has been held that a separate suit will lie.

There is also a decision of this High Court, *Ishan Chundra Bundopadhya* v. *Indro Narain Gossami* (6), in which it has been held that a separate suit is maintainable. On the other hand, there is a decision of the Bombay High Court, *Patankar* v. *Devji* (7), in which it has been decided that a separate suit is not maintainable. In this conflict of authority, it appears to us that we ought to follow the previous decision of this Court, especially as

(1) 5 B. L. R., 223.
(2) I. L. R., 5 Mad., 397.
(3) I. L. R., 6 Mad., 41.
(4) I. L. R., 3 All., 533.
(5) I. L. R., 3 All., 538.
(6) I. L. R., 9 Calc., 788.
(7) I. L. R., 6 Bom., 146.

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no grounds have been advanced to induce us to suppose that that decision is not correct. Speaking for myself I desire to say, with reference to certain observations made in the decision of this Court, and in the decision of the Allahabad Court (1), that it does not appear to me necessary, in order to arrive at the conclusion that a separate suit will lie, to limit the meaning of the words "any Court" in the last paragraph of s. 258, to any Court executing the decree. I think that if this had been the intention of the Legislature, the expression "the Court" would probably have been used for "any Court." It is quite possible to suppose cases, other than those concerned with the satisfaction of the decree by a money payment, or other form of satisfaction, in which the question whether the decree had been satisfied might involve questions relating to title or other matters either as between parties to the suit, or as between other parties, and it may be quite possible (it is unnecessary to decide the point, which does not arise in the present case) that in using the expression "any Court" the Legislature had in its mind, cases of this description. The conclusion at which we arrive is that the suit was maintainable, and that this appeal must therefore be dismissed with costs.

Appeal dismissed.

ORIGINAL CIVIL.

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

ESHAN CHUNDRA SAFOOI (PLAINTIFF) *v.* NUNDAMONI DASSEE AND OTHERS (DEFENDANTS).

1884 *February* 5.

Withdrawal of Suit—Suit on behalf of a minor—Civil Procedure Code (Act VIII of 1859,) *s.* 97.—*Withdrawal of suit by next friend—Fraud.*

Where a Court has reason to believe that a suit is lawfully brought by a party who has a right to bring it on behalf of a minor, any withdrawal of the suit by that party would have precisely the same effect as the withdrawal of a suit by a person of full age.

But where a person acting for a minor has fraudulently withdrawn the minor's suit under s. 97 of Act VIII of 1859, without obtaining leave to bring a fresh suit, and by such withdrawal an absolute statutory prohibition is imposed on the minor from bringing a fresh suit, it is open to the minor

(1) *Sitaram* v. *Mahipal*, I. L. R. 3 All., 533.