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of law, whatever her husband's intention may have been, she was at liberty to disregard them in that respect.

So far as the costs are concerned, we find that the parties have proposed an arrangement amongst themselves, which we are quite prepared to confirm; namely, that the costs on both sides shall be paid out of the estate. A decree will therefore be made for partition of the property in accordance with the prayer of the plaint, it being declared that the plaintiff and defendant are entitled, for the reasons we have given, to the whole of the testator's estate as his co-heirs, and we direct, with the consent of the parties, that the costs on either side in both Courts shall be paid out of the estate.

Appeal allowed.

Attorney for appellant: Baboo P. N. Bose.

Attorney for respondent: Baboo K. D. Bhunjoo.

APPELLATE CIVIL.

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

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 January 29. OMRUNISSA BIBEE AND OTHERS (DEFENDANTS) v. DILAWAR ALLY KHAN (PLAINTIFF).*

Land Registration Act (Beng. Act VII of 1876), ss. 52, 55—Declaratory decree—Specific Relief Act (I of 1877), s. 42—Jurisdiction of Civil Courts—Possession, Confirmation of.

The Civil Courts have no jurisdiction to make a decree reversing an order for the registration of the name of any person made by a registering officer under Beng. Act VII of 1876.

All that the Civil Courts can do is to declare the title of an individual; or to give him a decree for possession, and then the registration officers would, as a matter of course, proceed to amend their registers in accordance with the rights of the parties as settled by the Civil Courts.

An order made under s. 55 of Beng. Act VII of 1876, prevents the person against whom it is made, from relying on his previous possession, in a subsequently instituted suit for confirmation of possession. An order made under s. 52 of the same Act has not that effect.

* Appeal from Appellate Decree No. 931 of 1882, against the decree of Baboo Jehun Kristo Chatterjee, Subordinate Judge of Pubna and Bograh, dated the 7th March 1882, affirming the decree of Baboo Nogendro Nath Roy, Munsiff of Shayadpore, dated the 26th March 1881.

THIS was a suit for confirmation of possession on the following title: The plaintiff alleged that he had bought 8 annas of the property some time previously to the year 1870, and that his father at the same time purchased the remaining 8 annas share. That the father died in May 1870 when 1 anna 11 gundas 1 krant and 1 dunt share of the father's 8 annas share came to the plaintiff under the Mahomedan law of inheritance. The plaintiff made an application to the Deputy Collector of Patna for registration of his name in respect of the share claimed by him under Beng. Act VII of 1876. This application was opposed by the defendants, on the ground, that the plaintiff's story as to his purchase of 8 annas was false; that the father was the real purchaser of the whole 16 annas; and that the plaintiff was only entitled to the share which, on the death of the father, devolved upon him under the Mahomedan law of succession. The Deputy Collector disbelieved the plaintiff's story and, on the 28th of February 1878, ordered that the names should be registered in accordance with the defendants' contention; and this order was affirmed on appeal to the Collector, on the 31st of July 1879. On the 24th of July 1880 the plaintiff brought the present suit, claiming confirmation of possession, and asking that the Collector's order of the 31st of July 1879 should be set aside.

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The Court of first instance found in favour of the plaintiff on the question of title and also found that the plaintiff was in possession under that title at the date of the institution of the suit. He therefore gave the plaintiff a decree as claimed by him, and this decision was upheld on appeal to the Subordinate Judge of Rajshahye. The defendants appealed to the High Court on the ground that "there being no finding as to the plaintiff's present possession, this suit for mere confirmation of title in the face of, and after the decision in the Land Registration Act, should have been dismissed as not tenable."

Baboo Hari Mohun Chuckerbutty for the appellants.

Baboo Kishory Mohun Roy for the respondent.

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

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FIELD, J.—This case arises out of a proceeding under the Land Registration Act (Beng. Act VII of 1876). The plaintiff alleges that he is entitled to a 9 annas 11 gundas 1 krant 1 dunt share in kismut Dariapur, and he makes title to this share, as to 8 annas by purchase out of his private funds, and as to 1 anna 11 gundas 1 krant 1 dunt share by inheritance.

The contention on the other side is, that he is entitled by inheritance alone and not by purchase; and that his proper share is therefore twice 1 anna 11 gundas 1 krant 1 dunt. The plaintiff, after setting out the registration proceedings, proceeds as follows: "I pray that the Court will be pleased to pass a decree reversing the order for registration of names in respect of the 8 annas share purchased and held by me exclusively out of 9 annas 11 gundas 1 krant and 1 dunt share of the above talook; amending the said order as regards the remaining share, directing my name to be registered with respect to the aforesaid 9 annas 11 gundas 1 krant and 1 dunt share and awarding me my costs. I beg to bring this suit by paying a Court-fee stamp of the value of Rs. 10."

It has been pointed out on more than one occasion that the Civil Courts have no jurisdiction to make a decree, reversing an order for the registration of the name of any person made by a registering officer appointed under Beng. Act VII of 1876. All that the Civil Courts can do is to declare the title of an individual, or to give him a decree for possession; and the registration officers, as a matter of course, would then proceed to amend their registers in accordance with the rights of the parties as settled by the Civil Courts. The present plaintiff does not ask in so many words for confirmation of title; but the suit has been treated in the Courts below as a declaratory suit; and the Court-fee stamp has been paid accordingly.

It is now contended before us that the plaintiff was not entitled to maintain this suit. It is said that the effect of the registration proceedings was to put him out of possession, and that, not being in possession, he is not at liberty to bring a suit under the provisions of s. 42 of the Specific Relief Act having for its object the declaration of his title merely. There can be no doubt that *if the result* of the registration proceedings was

to put plaintiff out of possession, this contention must be successful.

But after examining those proceedings, we come to the conclusion that it is not possible in the present case to give any such effect to what was done by the registering officer. Under the provisions of s. 52 of Beng. Act VII of 1876, "the Collector shall consider any objections which may be advanced, and make such further enquiry as appears necessary to ascertain the truth of the alleged possession of succession to, or transfer of the estate, revenue-free property, or interest therein in respect of which registration is applied for, and if it appears to the Collector that the possession exists, or that the succession or transfer has taken place, and that the applicant has acquired possession in accordance with such succession or transfer, but not otherwise, the Collector shall order the name of the applicant to be registered." Under the provisions of s. 55: "If the applicant's possession of, succession to, or acquisition by transfer of, the extent of interest in respect of which he has applied to be registered is disputed by or on behalf of any person making a conflicting claim in respect thereof, and if the possession of the applicant in accordance with his application is not proved to the satisfaction of the Collector, the Collector shall determine summarily *the right to possession* in respect of the interest in dispute, *and shall deliver possession accordingly*, and shall make the necessary entry in the registers." Under s. 55 there is also an alternative proceeding providing for a reference to the Civil Court. No such reference was made in the present case, and therefore it is unnecessary to consider the effect of this provision. We now turn to s. 57, which provides that every order of a Collector passed under the first clause of s. 55 shall be of the same force and effect as an order passed by the Judge under s. 4 of Act XIX of 1841, determining summarily the right to possession and delivering possession accordingly." It is to be observed that no such effect is given to an order made under the provisions of s. 52. Now, if the order in the present case had been made under the provisions of s. 55, we would be compelled to say that the result of that order in accordance with the provisions of s. 57 would be to put the plaintiff out of possession," and if this were so, he certainly could not

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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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FOROMANAND KHASNABISH (DEPENDANT) 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 Shahajadporo, dated the 18th July 1881.

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