

1877

DALIP SINGH
v.
DURGA PRASAD.

JUDGMENT:—No objection being taken to the finding of the lower appellate Court on the point referred to it, we accept that finding and dismiss the appeal with costs.

Appeal dismissed.

1877
June 14.

FULL BENCH.

(Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, and Mr. Justice Spankie.)

NANKU AND ANOTHER (DEFENDANTS) v. THE BOARD OF REVENUE FOR THE N.-W. P., IN THE CAPACITY OF THE COURT OF WARDS, FOR THE MINOR RAJA OF KANTIT (PLAINTIFF).*

Suits cognizable by Courts of Small Causes—Act XXIII of 1861, s. 27—Zamindari dues and cesses not coming within the classes of such suits—Joinder of causes of action between same parties.

The plaintiff claimed from the defendants, as joint decree-holders, a fourth share of the proceeds realised by auction-sale through the Court of the Munsif of certain houses, situate on land subject to a village-custom whereby a proprietary due of the above amount was recognised and payable to the zamindar of the said land. The Division Bench of the High Court having referred to the Full Bench the question whether claims for such zamindari dues or cesses were in the nature of suits cognizable by a Court of Small Causes, held by the Full Bench that the claim as brought does not fall within any of the classes of suits cognizable by the Courts of Small Causes: *aliter* if the due is payable in virtue of a contract

Held by the Division Bench that the claim is not bad for misjoinder, as the due was payable out of the sale-proceeds taken out of Court by the decree-holders.

THE Board of Revenue, North-Western Provinces, representing the Court of Wards as Manager of the estate of the Raja of Kantit (a minor), sued in 1875 to recover from the defendants a sum of Rs. 115-8-0, a fourth share of the sale-proceeds of certain houses belonging to one Jokhu Misr situate on the estate of the said Raja of Kantit, which the defendants, as decree-holders against the said Jokhu Misr, had attached and sold by auction in 1873, through the Court of the Munsif of Mirzapur, and of which the defendants had realised the sale-proceeds. The suit was based on an alleged village custom obtaining in the Kantit estate by which the Raja

* Special Appeal, No. 1452 of 1876, from a decree of J. W. Sherer, Esq., C.S.I., Judge of Mirzapur, dated the 16th September, 1876, affirming a decree of Munshi Madho Lal, Munsif of Mirzapur, dated the 15th May, 1876.

as zamindar was entitled to receive as "huq-i-chaharum" one-fourth share of the sale-proceeds of property situate on the said estate, as a proprietary due. The defendants pleaded among other matters that as auction-purchasers under their joint money-decree of distinct houses sold at different times the suit was bad for misjoinder.

The Munsif found that the suit was not bad for misjoinder as against the defendants because they were sued as joint decree-holders who had realised the sale-proceeds of the property, and not as auction-purchasers thereof. The defendants in appeal before the Judge of Mirzapur repeated the pleas contained in their reply to the suit, and the Judge finding the pleas untenable affirmed the decision of the Munsif and dismissed the appeal with costs.

In special appeal to the High Court a question having been raised as to whether suits for "huq-i-chaharum" or other zamindari cesses were in the nature of suits cognizable by a Court of Small Causes, the Court (PEARSON and TURNER JJ.) made the following order :—

It appearing that there are conflicting rulings, we refer to the Full Bench the following question:—

Are suits for "huq-i-chaharum" or other zamindari cesses of the nature cognizable by a Court of Small Causes.

Munshi *Sukh Ram* and Maulvi *Mehdi Hasan*, for appellant.

The *Senior Government Pleader (Lala Juala Prasad)*, for respondent.

STUART, C.J., PEARSON, TURNER, and SPANKIE, JJ. concurring :—We have considered the language of the Small Cause Court Act and hold that the claim brought in this suit does not fall within any of the classes of suits made cognizable by those Courts. The claim is for a zamindari due customarily payable, it is not a claim for money due on contract, nor for personal property or the value thereof, nor for damages. The opinion at which we have arrived is in accordance with the more numerous rulings of this Court, and with the practice of the Court to allow special appeals in such cases although the sum in dispute is of less amount than Rs. 500. It must not be understood that we impugn the

1877

NANOO
v.
BOARD OF
REVENUE.

ruling that, where "chaharum" is payable in virtue of a contract, the claim is of a nature triable by a Court of Small Causes.

The Division Bench, upon the return of the case with the above finding, dismissed the appeal on the grounds detailed in the judgment of the Court delivered by—

TURNER, J.—The Full Bench being of opinion that a claim for "huq-i-chaharum" is not cognizable by a Court of Small Causes we may entertain the appeal.

The first plea alone is urged that the claim is bad for misjoinder. This plea has for sufficient reasons been over-ruled by the Courts below. The sale-monies, although the produce of the sale of more than one lot, have been taken out of Court by the decree-holders, the appellants, and they must give up to the respondent, the zamindar, his due in respect of each sale. The causes of action though several are between the same parties. The appeal fails and is dismissed with costs.

Appeal dismissed.

1877
June 21.

APPELLATE CIVIL.

(Before Mr. Justice Pearson and Mr. Justice Turner).

GANPAT RAI AND ANOTHER (DEFENDANTS) v. SARUPI (PLAINTIFF)*

Money-decree passed on Mortgage-bonds—Mortgage-rights not conveyed by Sale of Money-decree.

The purchaser of a single money-decree passed on a bond hypothecating property does not merely by his purchase acquire a lien upon the property.

ONE Badri Das the mortgagee of certain lands and houses obtained in 1868 a money-decree on his mortgage-bonds. The plaintiff's husband, one Narayan Das, together with one Jamna Das purchased in 1871 the said decree. The said Narayan Das having died the plaintiff brought this suit as his widow and guardian of his minor sons, alleging that the said Narayan Das by the purchase of the said money-decree acquired with his co-vendee the mortgage-rights of Badri against the said property, and seeking to

* Regular Appeal, No. 21 of 1877, from a decree of Rai Shankar Das, Subordinate Judge of Saháranpur, dated the 4th December, 1876.