

suit that the decree dated 28th March 1855, which is now in execution, was made.

1877

---

BINDA  
PRASAD  
v.  
AHMAD  
ALI.

The object of that suit was to have certain property claimed by the ladies declared liable to sale in execution of the decree of 1847, and if the judgment and decree be examined it will be seen that the claim was only decreed against the ladies, and the decree was in effect a declaration that the property was not the property of the ladies, and so far as their claim to it was concerned, it was liable to satisfy the decree of 1847. The decree-holder cannot realize the balance of the decree of 1847 under the decree of 1855, by executing it against those who are the judgment-debtors under the former decree, but this is what he has been doing. The balance still due of the decree of 1847 can only be recovered in execution of that decree, and it is no answer to the objection, that respondent has on previous occasions taken out execution in the same way without opposition on the part of the appellants. There has been a grave illegality which no acquiescence in the past can justify.

We decree the appeal and set aside the orders of the lower Courts with costs.

*Appeal allowed.*

---

## APPELLATE CIVIL.

---

1877  
March 14.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Turner.*

MUSSAMMAT JAGESRI KUAR, (PLAINTIFF) v. RAM NATH BHAGAT, AND ANOTHER, (DEFENDANTS).\*

*Declaratory decree—Suit by Reversioner.*

The plaintiff's mother was entitled to certain property for her life under an award, under which the plaintiff was entitled to succeed to the property after her mother's death. The plaintiff sued her mother and the holder of a decree, in execution of which the property had been sold, praying for a declaration of her right to succeed to the property, and that the said decree and sale might be declared void against her; alleging that the decree had been obtained and executed by collusion between the defendants. *Held* that the suit could be maintained under the exception in the judgment of the Privy Council in *Srimathoo Moothoo Vija Ragoonadah Raneer Kolandapuree Natchiar alias Kattama Natchiar v. Dorasinga Tevar alias Gowry Vallaba Tevar* (1).

---

\* Special Appeal, No. 1469 of 1876, from a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 25th November 1876, reversing a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Ghazipur, dated the 11th January 1876.

1877

MUSAMMAT  
JAGESRI  
KUAR  
v.  
RAM NATH  
BHAGAT.

The plaintiff in this case, the daughter of one Ganga Dubey, sued to have her right declared to certain paternal ancestral gaundadary property, and to have a decree of the 21st August 1863, and the auction sale of a four anna share of the above property, in execution of the said decree, declared void against her by reason of collusion and fraud between the defendant Ram Nath Bhagat, the holder of the alleged collusive decree, and the auction-purchaser of the said property, and defendant Anjora Kuar, mother of the plaintiff. The latter defendant was entitled to the said four anna share during her lifetime, under an arbitration award which reserved plaintiff's right as daughter to succeed to the said property on the death of her mother. The Subordinate Judge of Gházipur decreed the suit, finding distinctly the existence of fraud and collusion between the two defendants on the issues of fact framed in the case. The first defendant, the decree-holder, appealed from the said decree to the Judge of Gházipur. The Judge, without deciding the case on the merits, held on the strength of rulings of Her Majesty's Privy Council (1) that, inasmuch as the plaintiff's suit did not involve any right to consequential relief, such a suit could not be maintained during the lifetime of the widow, and the Judge accordingly dismissed the suit. The High Court over-ruled the Judge as to the effect of the latest ruling of the Privy Council and remanded the case under s. 351 of Act VIII of 1859, for trial.

Munshi *Sukh Ram* for appellant.

Pandit *Ajudhia Nath*, *Lala Lalta Prasad*, and Pandit *Anandi Lal* for respondents.

The following judgment was delivered by the Court:—

We are of opinion that the present suit is maintainable. The Lords of the Privy Council (2) expressly except the case of a

(1). *Sree Narain Mitter v. Sreemutty Kishen Sondery* Dasseo 11 B. L. R., 171; *Srinathoo Moothoo Vija Ragoonadah Rance Kolandapuree Natchiar alias Kattama Natchiar v. Dorasinga Tevar alias Gowry Vallaba Tevar*, 15, B. L. R. 83.

(2) *Srinathoo Moothoo Vija Ragoonadah Rance Kolandapuree Natchiar alias Kattama Natchiar v. Dorasinga Tevar alias Gowry Vallaba Tevar*, 15, B. L. R., 83.

The portion of the judgment of their Lordships referred to here was as follows:—

“The arguments now under consideration are founded on the right of a reversioner to bring a suit to restrain a widow or other Hindu female in possession from acts of waste, although his interest during her life is future and contingent. Suits of the kind form a very special class and have been entertained by the Courts *ex necessitate rei*.”

suit brought by a Hindu reversioner from the operation of the general rule.

The appeal is decreed and the suit remanded under s. 351 for trial. Costs of the appeal to abide and follow the result.

*Appeal decreed and cause remanded.*

1877

MUSAMMAT  
JAGESRI  
KWAR  
v.  
RAM NATH  
BHAGAT.

## APPELLATE CIVIL.

1877

March 20.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*

AKBAR KHAN, AND OTHERS, (PLAINTIFFS) v. SHEORATAN, AND OTHERS,  
(DEFENDANTS).\*

*Regulation VII of 1822, s. 9, cl. i—Act XIX of 1873, s. 66—Cesses—Civil Court—Suit for declaration of zamindari rights to cesses.*

Notwithstanding that zamindari cesses cannot be collected until recognized and sanctioned by the settlement authorities, there is nothing in Regulation VII of 1822, or Act XIX of 1873, to preclude a Civil Court from taking cognizance of suits seeking a declaration of zamindari rights to such cesses.

The plaintiffs sued for a declaration of their rights, as zamindars, to half the fruit and timber of certain groves, which they alleged they were entitled by ancient custom to receive. The Officiating Munsif of Azamgarh found in favor of the existence of the custom and decreed the suit.

The Judge, on appeal by the defendants, held that s. 66 read in connection with preceding sections of Act XIX of 1873, was a bar to civil suits seeking to establish rights to cesses, unless such rights had been recorded by the settlement officer; and the Judge, without entering into the question of the existence of the alleged custom, dismissed the suit on the ground that the settlement officer had not recorded the existence of such rights.

The High Court remanded the case under s. 354 of Act VIII of 1859, over-ruling the Judge as to the inadmissibility of the suit in the following order:—

Mr. Colvin and Munshi Hanuman Prasad for appellant.

Pandit Ajudhia Nath and Mir Akbar Husain for respondent.

\* Special Appeal, No. 748 of 1876, from a decree of R. F. Saunders, Esq., Judge of Azamgarh, dated the 18th March 1876, reversing a decree of Maulvi Sakhawat Ali, Officiating Munsif of Azamgarh, dated the 8th December 1875.