

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

1885
July 1.

CHANDRA BEHUSAN GANGOPADHYA (PLAINTIFF) v. RAM KANTH
BANERJI AND ANOTHER (DEFENDANTS.)*

*Civil Procedure Code, 1882, ss. 281, 283—Limitation Act (XV of 1877),
Sch. II, Art. 11—Claim to attached property—Regular suit.*

The order contemplated by s. 281 of the Code of Civil Procedure is an order made after investigation into the facts of the case, and it is only when the order is made after such investigation that the limitation of one year is applicable to a subsequent suit under s. 283 of the Civil Procedure Code.

THIS was a suit respecting a one-third share of a certain piece of land, which share formerly belonged to one Rajcoomar Dass. The plaintiff purchased the share on the 11th of June 1878 in execution of a decree against Rajcoomar Dass. The defendant purchased the share of Rajcoomar in August 1880 at a sale in execution of another decree against Rajcoomar Dass. When the share was attached in execution of this latter decree the plaintiff put in a claim which was disposed of by the Court in the following manner on the 25th January 1880: "The boundaries of the attached property given by the decree-holder differ from those mentioned in the claimant's *kobala*. Consequently, the sale of the property contained within the said boundaries is not likely to affect the interest of the claimant. Hence ordered that the prayer be rejected." The present suit for possession of the share was instituted on the 28th of April 1882.

The defendant pleaded that the suit was barred by limitation, in that it had not been instituted within one year from the date of the order rejecting the plaintiff's claim in January 1880. But the Court of first instance, after considering the order then made, and the rulings in *Syed Mohamed Afzul v. Kanhya Lal* (1), *Shaikh Khoda Buksh v. Purmonund Dutt* (2), *Rutnassur Koondoo v. Majeda Bebee* (3), *Radhamath Banerjee v. Jodunath Singh* (4),

* Appeal from Appellate Decree No. 587 of 1884, against the decree of C. A. Kelly, Esq., Judge of Nuddea, dated the 16th of January 1884, reversing the decree of Baboo Bhagwan Chundra, Chatterji, First Munsiff of Krishnagore, dated the 29th of July 1882.

(1) 2 W. R., 263.

(3) 7 W. R., 252.

(2) 5 W. R., 213.

(4) 7 W. R., 441.

and *Kaminee Debia v. Issur Chunder Roy Chowdhry* (1), overruled the plea of limitation. This decision was reversed on appeal by the District Judge, on the ground that the order of the 25th January 1880 amounted to an order disallowing the claim under section 281 of the Code of Civil Procedure. The plaintiff appealed to the High Court.

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DHYA
P.
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BANERJI.

Baboo *Doorga Dass Dutt*, for the appellant.

Baboo *Bipro Dass Mukherji*, and Baboo *Josodanundun Poramanick*, for the respondents.

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

FIELD, J.—We think the Judge in the Court below is wrong in this case. We have heard the order, dated 25th January 1879, and we think it cannot be treated as an order under s. 281 of the Code of Civil Procedure. The order contemplated by that section is an order made after the investigation mentioned in s. 278. Section 280 commences “if upon the said investigation the Court is satisfied, &c.” Section 281 begins, “if the Court is satisfied, &c.” “Satisfied” clearly means satisfied upon the investigation. There was no investigation in this case, the Munsiff having declined to make any investigation, remarking that the parties would not be prejudiced.

We think, therefore, that the one year's rule of limitation does not apply to the present case. We set aside the decree of the Court below, and remand the case for trial on the merits.

Costs will follow the result.

Appeal allowed and case remanded.

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

IBIN HOSEIN (PLAINTIFF) v. HAIDAR AND ANOTHER (TWO OF THE DEFENDANTS.)*

1885
July 2.

Course of action—Slander—Defamation—Verbal abuse—Special damage.

A suit to recover damages for verbal abuse of a gross character may be maintained with proof of consequential damage.

* Appeal from Appellate Decree No. 1333 of 1884, against the decree of A. C. Brett, Esq., Judge of Mozufferpore, dated 28th of May 1884, reversing the decree of Moulvi Mahomed Nurul Hosain, Munsiff of T'ajpore, dated the 12th of March 1883.