

1885 based upon that remand order, and we direct the Deputy Commissioner to proceed to try the appeal. The Deputy Commissioner will of course determine the appeal upon the evidence on the record at the time when the appeal was preferred. Costs in this Court will abide the result.

JATEGA
VALLEY TEA
COMPANY
v.
CHERRA TEA
COMPANY,

Appeal allowed and case remanded.

Before Mr. Justice Wilson and Mr. Justice Beverley.

1886

July 16.

ALIM BUKSH FAKIR (DEFENDANT No. 1) v. JHALO BIBI AND ANOTHER, MINOR, BY HER GUARDIAN AND NEXT FRIEND JHALO BIBI (PLAINTIFFS).*

Minor, Suit by—Next friend—Certificate under Act XL of 1858—Objection to frame of suit.

In a suit brought on behalf of a minor by his next friend, it is not necessary for the next friend to have a certificate under Act XL of 1858, provided he have in fact permission of the Court to sue.

Where a suit was brought in the name of *A*, for self and as guardian of her daughter *B*, a minor, and it was objected that it should have been brought in the names of *A*, and of *B*, a minor by her next friend and guardian, held, that, as no one was misled or injured by the improper form of the plaint, the objection ought not to be held fatal, but the decree must be taken to be in favour of *A* and of *B* suing by *A* as if the suit had been properly framed.

This was a suit for the recovery of certain lands, brought by the plaintiff Jhalo Bibi, widow of late Genda Fakir, "for self and as guardian of her minor daughter Safina Bibi."

In the Munsiff's Court of Sherepore, where the suit was originally heard, the first, and, for the purposes of this report, the only material issue raised, was: "Can the plaintiff sue on behalf of the minor daughter without a certificate under Act XL of 1858?" On this issue the Munsiff gave judgment as follows: "One Genda Sheik has filed an affidavit to the effect that the plaintiff Jhalo Bibi is the next friend of her minor daughter Safina Bibi, accordingly Jhalo Bibi has been allowed to conduct the suit on behalf of the latter. The properties sued for are not large, and I think the plaintiff can sue on behalf of the minor daughter,

* Appeal from Appellate Decree No. 1479 of 1884, against the decree of Baboo Parbati Coomar Mitter, First Subordinate Judge of Mymensingh, dated the 14th of May 1884, affirming the decree of Baboo Sashi Bhusan Basu, Munsiff of Sherepore, dated the 3rd of August 1883.

without a certificate under Act XL of 1858 under Chapter XXXI of the Civil Procedure Code. Hence this issue is decided in favour of the plaintiff." The case was then heard on its merits, and the plaintiff's suit was decreed with costs. On appeal to the Subordinate Judge of Mymensingh, the Munsiff's decree was upheld both as to law and fact. Defendant No. 1 then appealed to the High Court, where a further objection was raised that the suit was improperly framed, inasmuch as it was brought by the plaintiff "Jhalo Bibi for self and as guardian of her minor daughter Safina Bibi" instead of by "Jhalo Bibi and by Safina Bibi, by her next friend and guardian Jhalo Bibi."

1885
ALTM BUKSH
FARIS
JHALO BIBI.

Baboo *Jogesh Chunder Roy* for the appellant.

Baboo *Darika Nath Chuckerbutty* for the respondent.

The Court (WILSON and BEVERLEY, JJ.) delivered the following judgment:—

We see no ground for interfering in this case.

Two points have been raised in this appeal: first, that the first plaintiff had no authority to represent the second plaintiff, her minor daughter. But the finding on the first issue is to the effect that the Court did give sanction to the lady to represent her minor daughter. That we think is sufficient on the authority of the case of *Durga Charan Shaha v. Nilmoney Dass* (1).

Another point taken is an objection to the form in which the suit was brought. The first plaintiff purports to sue for herself and as guardian of her minor daughter. The suit ought to have been brought by Jhalo Bibi, and by her minor daughter Safina Bibi by Jhalo Bibi, her mother and next friend. But the objection was not taken at any stage of the case to that incorrect description. No one appears to have been misled by it. Everybody proceeded on the understanding that what was meant was that the minor appeared by her mother as next friend. So strongly does that appear that in the memorandum of appeal by which the matter has been brought before us, the appellant himself describes the minor's suit in this way. No injustice has been done, and the remedy given is undoubtedly right. That

(1) L. L. R., 10 Calc., 134.

1885 being so, we think we are justified in following the course taken
 ALIM BUKSH in the case above quoted, and saying that under those circum-
 FAKIR stances the objection ought not to be held fatal to the case.
 v. Of course, as in that case, the decree ought to be and must be
 JHALO BIBI. regarded as a decree, not in favour of the widow in her own
 interest and as guardian of her minor daughter, but as a decree
 in favour of her as widow and of her minor daughter suing by her.
 The appeal will be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice Agnew.

1885
 July 22.

ADHIRANI NARAIN KUMARI, RAJ RANI OF BURDWAN (PLAINTIFF)
 v. RAGHU MOHAPATRO (DEFENDANT).^a

*Civil Procedure Code (Act XIV of 1882), s. 43—Suit for arrears of Rent—
 Application of the Civil Procedure Code to Suits in Revenue Courts—Relin-
 quishment of part of claim.*

The plaintiff sued under the provisions of Act X of 1859 to recover arrears of rent for the years 1287, 1288 and 1289 (1880-1882), after having obtained a decree for the rent due for the year 1286 (1879) in a suit instituted after the rent for the year 1289 (1882) had become due.

Held, that the provisions of s. 43 of the Civil Procedure Code applied, and that the second suit was consequently barred. *Madho Prakash Singh v. Murli Manohar* (1) cited and approved; *Taruck Chunder Mookerjee v. Panchu Mohini Debya* (2) cited.

THIS was a suit under the provisions of Act X of 1859 for recovery of arrears of rent alleged to be due for the years 1287, 1288 and 1289 (1880—1882). The plaintiff in her plaint alleged that she had obtained a decree against the defendant for rent for the year 1286 (1879), but that decree was still unsatisfied.

The defendant denied that any rent was due, and further pleaded that the suit was barred by s. 43 of the Civil Procedure Code, inasmuch as the plaintiff had sued for rent for the year 1286 only on the 9th of June 1882 after the rent for the year 1287, 1288 and 1289 was due, and that consequently she must in that suit be taken to have abandoned her claim to rent for those years.

* Appeal from Appellate Decree No. 1821 of 1884, against the decree of H. Gillon, Esq., Officiating Judge of Cuttack, dated the 12th of June 1884, reversing the decree of A. J. Fraser, Esq., Deputy Collector of Cuttack, dated the 15th of August 1888.

(1) I. L. R., 5 All., 406.

(2) I. L. R., 6 Calc., 791.