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BIRJ NATH
DE
v.
CHANDAR
MOHAN
BANERJI.

v. *Juggo Mohun Gossain* (1), *Hormusji Navroji v. Bai Dhanbaiji*, *Jamsetji Dosabhai*, (2), *Arunamoyi Dasi v. Mohendra Nath Wadadar* (3) and *Barot Parshotam Kallu v. Bai Muli* (4). In our opinion the view of the law expressed in those cases is correct. In this Court our brother Burkitt in an unreported case has decided that questions of the title of the testator or intestate to property are not to be dealt with in applications for probate or letters of administration.

We accordingly decline to express any opinion as to whether the testatrix had a disposing power over the property, or any of it, mentioned in her will. The contention in the first Court could hardly have been seriously put forward, as the objectors called no evidence to support it. We dismiss this appeal with costs.

Appeal dismissed.

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May 5.

Before Sir John Edge, Kt., Chief Justice and Mr Justice Blair.

FAKIRE AND OTHERS (PLAINTIFFS) v. TASADDUQ HUSAIN

AND OTHERS (DEFENDANTS).*

Costs—Joint decree for costs against defendants having separate defences, defendants being also wrong-doers—Suit for contribution—Suit not maintainable.

In a suit against one defendant for possession of certain property, which was claimed as his by the original defendant, certain third persons got themselves added to the array of parties as defendants and put in a defence in opposition to and exclusive of that of the first defendant. The plaintiff in that suit obtained a decree, the claims of both sets of defendants being found to be unsupported, and the decree gave costs jointly against all the defendants. The decree having been executed for costs against the first defendant, he sued the other defendants for contribution. *Held* that the suit would not lie. *Kristo Chunder Chatterjee v. Wise*, (5); *Sreeputty Roy v. Loharam Roy* (6); *Abdul Wahid Khan v. Shaluka Bibi* (7) and *Suput Singh v. Imrit Tewari* (8) referred to.

* Second Appeal No. 22 of 1895 from a decree of W. Blennerhassett, Esq., District Judge of Allahabad, dated the 26th September 1894, confirming a decree of H. David, Esq., Munsif of Allahabad, dated the 3rd August 1894.

(1) I. L. R. 4 Calc. 1.

(5) 14 W. R. 10.

(2) I. L. R. 12 Bom. 164.

(6) 7 W. R. 384.

(3) I. L. R. 20 Calc. 888.

(7) I. L. R. 21 Calc. 498, at p. 503.

(4) I. L. R. 18 Bom. 749.

(8) I. L. R. 5 Calc. 720.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal* and Pandit *Baldeo Ram Dure*, for the appellant.

Pandit *Moti Lal* and Babu *Datti Lal*, for the respondents.

EDGE, C. J., and BLAIR, J.—This was a suit for contribution. It arose in this way. The plaintiff in a former suit, to which the appellant here was an original defendant, sought possession of a *mandi* and a house. The plaintiff here, in that suit a defendant, defended as to all the property claimed; as to part alleging that he was a tenant who had not received notice; as to the rest entirely denying the title of the plaintiff to that suit. The defendants here, we suppose, being desirous of embroiling themselves in litigation, got themselves made defendants, and they also claimed the *mandi*, but made no claim to the house. In the result the plaintiff in the former suit recovered as against this plaintiff most of what he claimed, and got a decree as against the defendants here. The decree, so far as costs were concerned, decreed costs jointly against the defendants. This plaintiff paid all those costs and now seeks by this suit to compel his co-defendants in the former suit to contribute to the costs which were paid to the plaintiff in that suit. The first Court dismissed the claim. The District Judge of Allahabad, relying on the decision in *Kristo Chunder Chatterjee v. J. P. Wise*, (1) dismissed the appeal. From that decree this appeal has been brought.

It appears to us that it lay upon the plaintiff here to show that there was either some contract between him and the defendants, or some equity which created a duty on these defendants to contribute to the costs in question as between themselves. Apparently the plaintiff and defendants here were wrong-doers. They were holding on to property to which the plaintiff in the former suit was entitled, and to which they (or either or any of them) were not entitled. Each was acting independently and for his own benefit, and setting up a title against the plaintiff to the former suit which

(1) 14 W. R., Cr., 70.

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was independent of, and separate from, and inconsistent with, the title set up by the other defendants. Their claims were mutually exclusive. There was no contract between them. One was not acting as the servant of the other; and there was no equity between these persons, whose cases were antagonistic to each other.

It appears to us that the principle upon which *Kristo Chunder Chatterjee v. Wise* (1) and *Sreeputty Roy v. Lohgram Roy* (2) were decided is the correct principle to apply in this case. It is the principle which we believe the Privy Council would have applied; at least so we conclude from the judgment of their Lordships in *Abdul Wahid Khan v. Shaluka Bibi* (3). That there may in some events be contribution between wrong-doers is shown from the judgment in *Suprit Singh v. Imrit Tewari* (4). No facts were alleged or proved here, and no facts existed, which would entitle the plaintiff to obtain contribution from the defendants in respect of these costs.

We dismiss this appeal with costs.

Appeal dismissed.

1897
May 6.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

SHAM LAL (DEFENDANT) v. CHOKHE (PLAINTIFF).*

Act No. XII of 1881 (N.-W. P. Rent Act), section 42—Landholder and tenant—Assessment of crops of evicted tenant—Effect of such assessment.

Held that where a landholder, having ejected a tenant upon whose holding there are growing crops, applies under section 42, cl. (c) of Act No. XII of 1881 for assessment of the price of such crops, he is bound by the assessment which the Revenue Court may make, and cannot afterwards refuse to pay the price so fixed.

THIS was an appeal under section 10 of the Letters Patent from the judgment of Aikman, J., in Second Appeal, No. 1019 of 1894, *Sham Lal v. Chokhe* (5). The facts of the case will be

* Appeal No. 31 of 1896 under section 10 of the Letters Patent.

(1) 14 W. R., Cr., 70.

(3) I. L. R. 21 Calc. 496, at p. 503.

(2) 7 W. R. 384.

(4) I. L. R. 5 Calc. 720.

(5) I. L. R. 19 All. 68; s.c., Weekly Notes, 1896, p. 179.