

It appears to us that the Judge thinks that the proceedings taken by the representatives of the decree-holder in April 1867 were not *bona fide* proceedings to keep the decree alive, because they were not (the Judge considers) proceedings direct either against the property or the person of the judgment-debtor. The petitioners are representatives of the original decree holder. On the 9th April 1867, they applied for execution of their decree, and were directed to prove that they were the representatives of the decree holder, the deceased Umed Ali.

On the 26th April 1867, they adduced proof, and were admitted to represent the original decree-holder; and on the 30th April the Moonsiff struck off the execution case from the file. Now it was impossible for the petitioners to proceed with the execution of the decree until they had established their representative character. This they did, and would probably have proceeded to take further steps, had not the case been thus summarily struck off the file. But be that as it may, we think that under the above circumstances the steps which were taken in the case must be considered as having been taken in good faith to keep the decree alive.

We therefore reverse the order of the Judge, and restore that of the first Court.

The petitioners will obtain their costs of this Court and of the lower Appellate Court.

*Before Mr Justice Glover, and Mr. Justice Mitter.*

ANJUD SING AND ANOTHER (PLAINTIFFS) v. DEPUN SING AND OTHERS  
(DEFENDANTS)\*

*Valuation of Claim—Suit for Pre-emption.*

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In a suit for pre-emption, the valuation of the property sued for is to be calculated at the market value for which it would sell, and not at ten times the value of the sudder jumma.

Baboo Nilmadhab Sein for appellants.

Baboo Hem Chandra Banerjee for respondent.

GLOVER, J.—The only point taken in this special appeal is that the Judge has erroneously dismissed the claim, on the ground of under-valuation. The plaintiff, who is the special appellant, contends, that he has fulfilled the requirements of the law by valuing his suit, which is for an estate paying revenue to Government, at ten times the sudder jumma; *i. e.* the sudder jumma being Rs. 25, his valuation of the suit at Rs 250 is correct and proper.

It appears to us, that this contention fails on the plaintiff's own statement of his case. The note of the Stamp Act, which the special appellant refers to,

\* Special Appeal, No. 700 of 1869, from a decree of the First Subordinate Judge of Gya, dated the 29th December 1868, affirming the decree of the Moonsiff of that district, dated the 27th March 1868.

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after laying down the amount of stamp duty to be paid when the property is an estate paying revenue to Government, where the settlement is temporary, and where it is permanent, goes on to say, that such and such amount shall be taken to be the market value of such property, unless and until the contrary be proved. This case is a suit for pre-emption, and the plaintiff claims the right of prior purchase over this property at the price of 2,200 rupees. According to his own showing, therefore, the value of the property is not 250 but 2,200 rupees. The very best proof that this is the value of the property is, that he is asking to pay that sum for it. It appears to us that this case comes exactly under the words of the law, and that although 250 rupees may represent ten times the sudder jamma of the estate, it has most certainly been proved by the plaintiff's own admission that the value is very much higher. The decision of the Court below is therefore affirmed but considering that this objection was not taken in the Court of first instance, each party must pay his own costs.

MITTER, J.—I concur. The suit was clearly under-valued, and brought in the wrong Court. It ought to have been brought in the Court of the Subordinate Judge.

*Before Mr. Justice Bayley and Mr. Justice Hobhouse.*

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MANGINA KHATUN AND OTHERS (PLAINTIFFS) v. THE COLLECTOR OF JESSORE, ON BEHALF OF GOVERNMENT AND OTHERS (DEFENDANTS)\*

*Act XI. of 1859—Sale for Arrears of Government Revenue.*

Where there has been a sale under Act XI. of 1859, for arrears of revenue, but it is found that no revenue is actually due to Government, the sale must be set aside as not coming within the provisions of the Act.

Baboo *Girija Sankar Mozoomdar* for appellants.

Baboo *Jaggada Nand Mookerjee* for Government, respondents; and *Bangshi Dhur Sen*, for *Giridhur Sen*, respondent.

BAYLEY, J.—I am of opinion that this case must be remanded to the lower Appellant Court to try, on the evidence on the record, whether there were any arrears of Government revenue due to the plaintiffs at sun-set on the last day of payment.

The plaintiffs sued for the recovery of possession of a certain talook, and for the reversal of a sale held for the realization of arrears of Government revenue. The plaint stated that there was a sum of Rs. 14, odd annas, in deposit with the Collector of Fureedpore in the plaintiff's favor; that the sum alleged to have been due to them (plaintiffs) on account of arrears of Govern-

\* Special appeal, No. 1268 of 1869, from a decree of the Judge of Small Cause Court with powers of Sub-judge of Fureedpore in Zillah Dacca, dated the 13th March 1869, affirming a decree of the Moonsiff of that district, dated the 21st November 1868.