

Before Mr. Justice Macpherson and Mr. Justice Glover.

1869.
Sept. 1.

SHIU SUHAI MULLIC (PLAINTIFF) v DALA HARI SUHAI SING
AND ANOTHER (DEFENDANTS)*

Pre-Emption—Right by Partnership and Vicinage—Variation in Plaintiff and Evidence.

When a plaintiff seeks to establish his right of pre-emption upon the ground of partnership, he cannot obtain a decree upon the ground of vicinage.

Baboo Bhawani Charan Dutt for appellant.

Baboo Krishna Sakha Mookerjee for respondents.

MACPHERSON, J.—I think this special appeal ought to be dismissed because the lower Appellate Court was right in holding, as it did, that as the plaintiff sought to establish his right of pre-emption upon the ground of partnership, he could not properly get a decree on the ground of vicinage. Therefore, without going into the substantial question of law which is raised, and following the precedent which is to be found established in the case of *Koonj Behari Lal v. Giridhari Lal* (1), I would dismiss this appeal with costs.

GLOVER, J.—I am of the same opinion.

1869
Sept. 14.

Before Mr. Justice Loch and Mr. Justice Bayley.

ADINA BIBI AND ANOTHER (DECREE-HOLDERS) v. SUBUBUNNISFA
BIBI (JUDGMENT-DEBTOR)*

Execution of Decree—Proceedings to keep Decree alive.

When the representatives of a deceased decree-holder applied for execution of his decree, and were directed to furnish proof that they were the representatives of the deceased, and did so, and their execution case was struck off the file, held, that the steps taken by them were *bona-fide* steps taken to keep the decree alive.

Baboo Girish Chandra Ghose for appellants.

Baboo Debendra Naryan Bose for respondent.

LOCH, J.—We think that the judgment of the lower Appellate Court must be reversed.

* Special Appeal, No. 1425 of 1869, from a decree of the Subordinate Judge of Sarun, dated the 31st March 1869 reversing a decree of the Moonsiff of that district, dated the 16th November 1868.

* Miscellaneous Special Appeal, No. 328 of 1869, from a decree of the Judge of Sylhet, dated the 30th April 1869, reversing an order of the Sudder Moonsiff of that district, dated the 5th February 1869.