

apply to this suit is section 110, and under the provisions of that section the Court had clearly jurisdiction to order a revival of the case.

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Under these circumstances, I would direct that the plaintiff do get a decree for the Talook and for the 50 rupees for moveables as given by the lower Court, and for the sum of rupees 1,573 on account of the loan transactions; and in regard to the Fureedpore cloth concern and for the other articles and ornaments, the plaintiff's suit and his cross-appeal be dismissed.

The plaintiff will have his costs in this Court.

1869

NABADWIP  
CHANDRA  
S. KAR  
v.  
KALINATH  
PAL.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

ABDUL HAMID (DEFENDANT) v. DONGARAM DEY (PLAINTIFF)\*

1869  
July 12.

*Enhancement—Jurisdiction of Collector.*

A suit for enhancement of rent of a dwelling-house in a village, is cognizable by the Collector.

Baboo Hari Mohan Chuckerbutty for appellant.

Baboos Nalit Chandra Sen and Rama Nath Bose for respondent.

BAYLEY, J.—The plaintiff in this case sued the defendant as holding certain *Bhita* lands in his use and occupation, which *Bhita* lands he alleged were part of his talook purchased by him.

The defendant's allegation was that the lands [were not in the talook alleged by the plaintiff, but were in another talook in which he was a co-sharer with the Plaintiff.

The first Court, after a remand by the lower Appellate Court, finally decided, on the 21st October 1868, that it had not the "smallest doubt that "the lands are part of plaintiff's purchased talook;" and then the Court goes on, "as no objection has been made to the rate of rent, and as defendant, having held and enjoyed the lands since the sale, is liable to an "equitable rent for them, I give a decree for Rs. 10-14, and costs Rs. 4-4, and fees As 8-9. Total, Rs. 15-10-9."

On appeal, the Judge records: "I think with the Deputy Collector that the "defendant holds rent paying land and land for which rent has been received "by plaintiff's predecessor, within the plaintiff's talook. The evidence is scanty "on this point, but I think sufficient." Then, as regards the rates, the lower Appellate Court remarks: "I do not think that the defendant in his deposition

\* Special Appeal, No. 780 of 1869, from a decree of the Judge of Tippera, dated the 26th January 1869, affirming a decree of the Officiating Deputy Collector of that district, dated the 21st October 1868.

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“on oath before this Court, and which with the plaintiff's statement formed the grounds from which to frame issues, raised any objection as to the rates so that it is necessary now to return this case for trial on this point” The lower Appellate Court then concludes its judgment by dismissing the appeal with costs.

The defendant appeals specially.

The fifth and the last ground is that the provisions of Act X of 1859 have reference only to lands held for agricultural and horticultural purposes, and not to lands on which actual dwelling-houses are erected, and held by persons other than actual cultivators.

In regard to the last plea that this being a case for lands for building purposes, the provisions of Act X. of 1859 do not apply. *Kali Mohan Chatterjee v. Kali Krishna Roy Chowdhry* (1) has been cited. But the facts of that case were totally different from the facts in this. There the building was part of a range of buildings in the centre of the town, and therefore the rent of those houses, would not fall within the purview of Act X. of 1859.

It is to be here also noticed that part of the land occupied by defendant was not occupied by the house, and besides this the point was not taken in either of the Courts below.

On the whole I see no error in law in the judgment of the lower Appellate Court, and I would therefore dismiss this appeal with costs.

1869  
 July 19.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

SHEEKH GOLAM YABEYA (DECREE-HOLDER) v. MUSSAMUT SHAMA SUNDARI KUARI (JUDGMENT-DEBTOR)\*

*Execution—Striking off Case—Release from Attachment.*

The striking off of a case from the file, while pending in execution, does not release a property from attachment.

Mr. R. E. Twisdale for appellant.

Baboo Kali Krishna Sein for respondent.

The facts are fully stated in the judgment of

NORMAN, J — The plaintiff in this case is a decree-holder, who had attached a certain property belonging to the judgment-debtor, called Rasulpore. By

\* Miscellaneous Special Appeals, Nos. 206 and 207 of 1869, from an order of the Judge of Bangalore, dated the 22nd February 1869, affirming an order of the Moonsiff of that district, dated the 5th June 1868.