

JACKSON, J.—This case is very clear. The plaintiff alleges that she had paid the rent to the zemindar's gomasta or agent. Subsequently a suit was brought against her by the zemindar, and she was compelled to pay over again the rent which she had already paid. The present suit is, in fact, to recover, by decree of the Civil Court, the money which she has had to pay under the Revenue Court's decree. It seems to me that the decision of the Moonsiff, who held that the suit could not lie, is quite correct. The Principal Sudder Ameen was wrong in thinking that the suit was cognizable in the Civil Court, and I think, also, that the precedent, *Gocool Chunder v. Ali Mohamed* (1) referred to by him, is quite inapplicable. It relates to a different subject. I think therefore that the decision of the Subordinate Judge must be set aside, and that of the Moonsiff restored with costs.

MARKBY, J.—I am of the same opinion.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

SHAMA CHARAN GHOSE (ONE OF THE DEFENDANTS) v. TARAK NATH MUKHOPADHYA AND OTHERS (PLAINTIFFS.)\*

1869  
June 30.

*Error in Description of a Defendant as a Minor—Discretion of Lower Appellate Court.*

The father of a defendant filed an appeal from the judgment of the first Court, describing his son as a minor. It afterwards appeared that the defendant was not a minor; and the lower Appellate Court refused to pass an order allowing the appeal by the father to stand as an appeal by the defendant.

*Held*, that the lower Appellate Court could, in the exercise of its discretion, allow the appeal to stand as an appeal by the defendant, but the High Court could not interfere with the order in special appeal.

Baboo Bama Charan Banerjee and Barada Prasad Shome for appellant.

Baboo Srinath Banerjee for respondent.

THE judgment of the Court was delivered by.

JACKSON, J.—In this case the suit was brought against one Shama Charan, who, it appears, is the son of Prem Chand. Judgment being given for the plaintiff, Prem Chand came to the Judge's Court, and preferred an appeal describing himself as appellant on behalf of his minor son, Shama Charan. When the appeal came on for hearing before the Subordinate Judge, to whom it had been referred, it was found that the defendant Shama Charan was not a minor, but that he was of full age, and had defended the suit in person, and had in person applied to the Court below for a review of judgment. It appears that Shama Charan had, after the filing of the appeal, put in a petition, stating that the

\* Special Appeal, No 3045 of 1868, from a decree of the Subordinate Judge of Hooghly, dated the 13th July 1868, affirming a decree of the Moonsiff of Serampore in that district, dated the 9th December 1867.

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appeal had been filed by mistake in the name of his father; that he himself desire to carry on the appeal, and prayed to be made appellant. The Subordinate Judge refused to make the order requested, on the ground that there had been no mistake in the matter, that the party interested, Shama Charan, had been falsely described as a minor, and he therefore declared that the appeal be dismissed.

I observe that there could hardly have been a mistake in this matter, because not merely was the appeal preferred in the name of the father, and the son described as a minor, but the vakalutnama to prosecute the appeal was executed and signed by the father. Still I do not question, but that the Subordinate Judge, if he had thought fit, and considered that the conduct of the parties made it desirable, might have ordered the record to be amended by placing the name of Shama Charan, in the place of the appellant.

But I think it was entirely a matter in his discretion. It cannot be said that under the circumstance, the Subordinate Judge was in law bound to make the alteration, and therefore I think the special appeal must be dismissed with costs.

MARKBY, J.—I am of the same opinion:

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

HARI KISHOR DUTT AND OTHERS (PLAINTIFFS) v. THE  
 COLLECTOR OF DACCA AND ANOTHER (DEFENDANTS)\*

1869  
 July 3.

*Nadi Bharati—Accretion.*

Nadi Bharati, or land raised out of the river, is not an accretion, and belongs to the person to whom the river was released by the Resumption Authorities.

Mr. G. C. Paul and Baboos Chandra Madhab Ghose and Ananda Chandra Ghosal for appellant.

Baboo Jagadmand Mookerjee for respondent.

BAYLEY, J.—The plaintiff in this case sued for possession of two plots of land as belonging to his Patni Mehal, which he says he acquired from one Aka Golam Ali. The plaintiff's allegation was that his cause of action arose from the fact of the lands being demarcated in Magh 1264 (1857) as Jagir and Khas Mehal lands in the Dacca Collectorate, and that then his lessor Golam Ali and he himself were dispossessed. The defendants pleaded limitation and their right to the lands as Jagir and Khas Mehals.

The first Court held that the suit was barred by limitation.

\*Special Appeal, No. 616 of 1869, from a decree of the Judge of Dacca, dated the 17th December 1868, affirming a decree of the Sudder Ameen of that district, dated the 25th March 1868.