

1869

SHEIKH
BAHARULLA
alias
BAROMIA
v.
SHEIKH
M'AGAN

the suit for the kabuliat was brought, actually admitted the plaintiff's right, and that but for the intervenor's coming in the plaintiff's case would have been thereby proved. The case was distinctly one in which under the law cited (section 77, Act X, of 1859), it was for the intervenor to prove the fact of the actual receipt and enjoyment of the rents *bona fide* by him, and as the lower Appellate Court seems to have misplaced the *onus* on the plaintiff, we remand the case to that Court to re-try the case, putting in issue whether the intervenor was in actual receipt and enjoyment of the rents *bona fide* before and up to the institution of the suit.

Costs will follow the result.

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

1869
May 15

GUPINATH ROY AND ANOTHER (DECREE-HOLDERS) v. DINABANDHU
NANDI AND OTHERS (JUDGMENT-DEBTORS).*

Satisfaction of Cross Decrees—Application to issue Execution.

By mutual agreement two decree-holders entered up satisfaction in respect of their cross-decrees. Nevertheless one of them appealed from the decree passed against him and obtained its reversal. He then applied to issue execution on his cross-decree.

Held, that the application could not be entertained as satisfaction had been entered.

The grounds upon which the application could have been entertained discussed.

Baboo *Kishendayal Roy* for appellant.

Baboo *Mahendra Lal Seal* for respondent.

JACKSON, J.—IN this case, the special appellants before us, Gupinath Roy and another, gained a decree against Dinabandhu, that is to say, he was entitled to recover the costs of the suit in which he was defendant. Dinabandhu had another decree under which he was entitled to recover 138 rupees against Gupinath. On these decrees coming for execution before the Moonisiff in whose Court they were, the parties by mutual agreement caused satisfaction to be entered of both decrees. Notwithstanding this, Gupinath proceeded with an appeal against the decree on which he was liable, and obtained a reversal of that decree. Having done so, he applied to the Moonisiff for execution of his own decree, inasmuch as that which had been set off against it having been set aside, he considered that he was entitled to execute his decree, without reference to what had passed. The Moonisiff took this view of it, and ordered execution to proceed. The Judge, when the case came before him on appeal, found that the Moonisiff had on a first application declined to allow this execution, but that subsequently he reviewed his order, and admitted execution. The Judge considered that the lower Court was not competent to review

*Miscellaneous Special Appeal, No. 115 of 1869, from an order of the Judge of East Burdwan, dated the 16th December 1868, reversing an order of the Officiating first Moonisiff of that district, dated the 23rd July 1868.

ts first order, and also that the decree-holder, Gupinath, ought to have prosecuted his remedy by a regular suit. So he reversed the order of the Moons. As the matter now stands, it appears to me that we have no choice but to affirm the order of the Judge, because the decree-holder, Gupinath, merely applied to execute his decree, on the ground that the cross-decree had been set aside, and that there was nothing to set off. To this bare statement, it appears to me that the opposite party had an amply sufficient answer in pointing to the entry of satisfaction upon the back of that decree. It is probable that if Gupinath had made an application to the Court supported by an affidavit, setting out the whole of the circumstances, showing how it happened, that notwithstanding the adjustment an appeal had proceeded, proving that his conduct in carrying on the appeal had been *bona fide* and honest, and showing that in fact the order of adjustment had been obtained by mistake and contrary to the real intention of the parties, his execution might have been allowed to proceed. But he did nothing of the sort. He simply relied on the fact that the other decree had been set aside, and on that statement merely he asked for execution of his own decree. I do not think on such a statement he ought to have been allowed to execute. I therefore think that the special appeal must be dismissed with costs.

MARKBY, J.—I am of the same opinion.

1869
GUPINATH
ROY
v.
DINABANDHU
NANDI

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

RAMANATH RAKHIT AND OTHERS (PLAINTIFFS.) v. MUCHIRAM
PARAMANIK AND OTHERS (DEFENDANTS).*

1869
May 17

Power of Collector—Standard of Measurement—Act VI. of 1862

B. C., ss. 9 & 11.

In an application for assistance to measure the land of a ryot under section 9, Act VI. of 1862, B. C., the Collector has no power under section 11 to fix with what pole the measurement is to be made, but such questions are to be reserved for after-proceedings when any action is taken upon the result of such measurement.

Baboo *Ashutosh Dhur*, *Bhawani Charan Dutt*, and *Prasanna Kumar Roy* for appellants.

Baboo *HemChandra Banerjee* and *Chandra Madhab Ghose* for respondents.

JACKSON, J.—IN these cases the plaintiffs, who were alleged to have recently purchased a fractional share in the Mehal Serampore, applied to the Collector, under section 9, Act X. of 1862, Bengal Council, for assistance in measuring the lands of that mehal, in which operation they alleged that they had been opposed by the ryots.

*Special Appeals, Nos. 2634 and 2635 of 1868, from a decree of the Officiating Judge of Midnapore, dated the 13th of June 1868, reversing a decree of the Deputy Collector of that district, dated the 28th April 1869.