

1869

The judgment of the Court was delivered by

BEUBANES-
WARI DEBI
v.
MAHENDRA
NATH CHOW-
DHRY.

LOCH, J.—We think the order passed by the Judge is not correct. The question has been determined by a Full Bench in the case of *Bipro Das Gossain v. Chunder Sekhar Bhuttacherjee* (1) in which it is held that “if upon the application for review or the petition of appeal, the person in whose favor the original decree was given, appears in person or by *vakil* (whether voluntarily or upon service of notice) to oppose the application, and files a *vakalatnama* for the purpose of preventing the Appellate Court or the Court of Review from setting the judgment aside, we think that within the fair interpretation of the words, such act being an act of the person in whose favor the judgment has been given for the purpose of preventing it from being set aside, is an act done for the purpose of keeping the judgment in force.”

The facts in this case are similar to those set forth in the judgment just quoted. We, accordingly, set aside the order of the lower Appellate Court, and restore the order of the *Moonsiff*.

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

1869
April 28.

GOPAL CHANDRA ROY (PLAINTIFF) v NABIN CHANDRA BHAN-
DARI AND OTHERS (DEFENDANTS)*

Kabuliat Res-Judicata.

In a previous suit, the plaintiff sought to obtain a *kabuliat* from the defendant in respect of land held by him, alleging the quantity to be 8 bigas and 17 katas. It was therein determined that the defendant held only 7 bigas, and no more. In the present suit brought to eject the defend from 1 biga 17 katas of land, *Held*, that it was not maintainable, as it was for the determination of a question decided in the former suit.

Bahoo Naba Krishna Mookerjee for appellant.

Baboos Jagadanand Mookerjee Ramanath Bose for respondents.

JACKSON, J.—I think it quite clear that the plaintiff cannot maintain this suit. He had previously brought a suit against the defendant to obtain a *kabuliat* from him in respect of the land which he held under the plaintiff, alleging that land to be 8 bigas 17 katas, and in that suit it was conclusively determined by the Revenue Court and in the appeal from that Court that the land held by the defendant was 7 bigas, and no more. The plaintiff now brings this suit to eject the defendant from 1 biga and 17 katas. It is not alleged that the defendant has got possession of any land of the

* Special Appeal, No. 2175 of 1868, from a decree of the Principal Sudder Ameen of Hooghly, dated the 21st May 1868, affirming a decree of the *Moonsiff* of that district, dated the 24th February 1868.

(1) Case No. 583 of 1866 ; May 31st 1867.

See B. L. R. Sup. Vol. F. B. E.

plaintiffs more than that which he occupied at the time of the previous decision, and which land was then adjudged to be 7 bigas. That being so, it is quite clear that the plaintiff is only endeavouring to raise in a slightly different form the same question which he unsuccessfully raised in the former suit, and that he cannot successfully maintain his present suit. The decision must be affirmed with costs.

MARKEY, J.—I am of the same opinion.

Before Mr. Justice Kemp and Mr. Justice Glover.

NANKU ROY (PLAINTIFF) v. MAHABIR PRASAD AND OTHERS
(DEFENDANTS).*

Suit to reverse an Order of the Revenue Court—Jurisdiction of Civil Court.

Parties suing to reverse an order of the Revenue Courts, may do so in Civil Courts.

Baboo *Rammath Bose* for appellant.

Baboo *Kali Krishna Sen* for respondents.

THE facts sufficiently appear in the judgment of the Court, which was delivered by

GLOVER, J.—This was a suit to recover possession of certain land, from which the plaintiff had been dispossessed by an order of the Deputy Collector, afterwards confirmed by the Collector, under section 25 of Act X of 1859. On an application made to him by the zemindar, the Court of first instance went into the case, and on the merits decreed the plaintiff's claim; but the Subordinate Judge, on appeal, held that this being a suit to get rid of the Collector's order under section 25 of Act X. of 1859, it was not cognizable in any other Court than that of the Collector, and that the Moonsiff had no jurisdiction; he therefore reversed the order of the first Court, and threw out the plaintiff's case. It seems to us quite clear that the Principal Sudder Ameen's decision in this matter was wrong. It has been laid down in the case of C. J. Phillips, decided on the 19th June 1833, that a suit to contest the orders of a Collector under section 25 of Act X, may be brought either in the Collector's Court or in the Civil Court, as the case may be, and this ruling has been upheld in a Full Bench Decision of this Court, in the case of *Mudun Mohan Roy v. Gourmonee-Goopto* (1) and in many others, which it is needless to mention; parties suing to reverse a Collector's order under that section, may do so either in the Revenue or in the Civil Courts. It is quite clear, therefore, that the Moonsiff had jurisdiction to try this case, and that the Subordinate Judge was wrong in setting aside his decision, on the ground that he had no jurisdiction.

*Special appeal, No 160 of 1869 from a decree of the Subordinate Judge of Shahabad, dated the 26th November 1868, reversing a decree of the Moonsiff of that district, dated the 23rd April 1868.

(1) Case No 2313 of 1862; August 21st, 1863.

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GOPAL CHAN-
DEA ROY
v.
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