

1859, *e. g.* land on which stands the house of a ryot, who is engaged in cultivating the surrounding lands; and in the absence of any plea by the defendant, or of any suggestion even by him in the lower Courts that the lands, the subject of suit, belong to the former class, it certainly seems to me that it would be preposterous for us, upon a mere suggestion (for it is nothing more than a mere suggestion), of the appellants now made by them in special appeal, to send the case back in order to ascertain what kind of bastu land it is for the enhancement of the rent of which a decree has been obtained, and in order now to consider whether the Revenue Court had jurisdiction or not.

Our decision in no way conflicts with any of the cases quoted by the special appellant; nor do we at all dissent from the rules to be found laid down in them.

1869

NAIMUDDA
JOWARDAR
v.
R. SCOTT
MONCRIEFF.

Before Mr. Justice Kemp and Mr. Justice Glover.

SATTO SARAN GHOSAL BAHADUR (DEFENDANT) v.
TARINI CHARANGHOSE, AGENT OF BABOO DIGAMBAR
MITTER (PLAINTIFF.)*

1869.
July 12.

Application for Review—Lapse of Time Specified.

This was an application for review of judgment of three out of five analogous cases decided by the High Court, the judgment in two of which had been reversed by the Privy Council. The application was made after a lapse of more than 90 days from the date of judgment.

Held, a lapse of 90 days, under the circumstance, would not be a bar to the granting of the review.

Shama Churn Chuckerbully v. Bindabun Chunder Roy (1) distinguished.

Baboo *Hem Chandra Banerjee* and *Abhai Charan Bose* for petitioner.

Baboo *Mahendra Lal Shome* and *Khettranath Bose* for opposite party.

* Applications of Reviews, Nos. 91, 92, and 93 of 1869, against the judgments of Mr. Justice Kemp and Mr. Justice Seton-Karr, dated the 3rd August 1865, in Special Appeals, Nos. 937, 1635, and 3288 of 1865.

(1) Case No. 1395 of 1866; January 30th, 1868.

1869

SATTO SARAN
GHOSAL
BAHADURv.
TARINI CHA-
RAN GHOSE.

The judgement of the Court was delivered by

KEMP, J.—These are three applications to review the judgement of this Court, dated 30th of August 1865.

It appears that Baboo Digambar Mitter brought five separate suits for enhancement of rent against Raja Satto Saran Ghosal. The five cases were appealed to this Court specially, and on the 30th August 1865 the Court, (present: Kemp and Seton-Karr, JJ.) dismissed the appeals. The Raja appealed two of the five cases, the valuations of which were above 10,000 rupees, to the Privy Council, and the decision of this Court was reversed. The Raja now applies, praying that, with reference to the decision of the Privy Council, this Court will reverse its decision in the three cases, which were not appealed to England.

The other side contend that as this application has been made more than 90 days from the date of the decision of this Court, and as the applicant did not ask for a review of the decision of this Court in the three cases, the subject of this application, nor take any step to obtain the permission of the Privy Council to include those three cases in the appeal made to that tribunal, the application ought to be rejected. A decision in *Shama Churn Chuckerbutty v. Bindabun Chunder Roy* (1), and other decisions by Divisional Benches following that ruling, have been quoted.

We think that the present application must be granted. The ruling of the Full Bench refers to a case in which a new exposition of the law had been laid down contrary to that which had governed the decision of cases for years past. It was held that it would not be right to permit a review of decisions which had been passed years ago, merely because this Court had taken a different view of the law from that hitherto taken, not by one Bench, but by the Courts throughout the country. In the case before us, the interpretation put by the Court upon a decision of the Privy Council in the case of *Ranee Surnomoyee v. Maharajah Sutteeschunder Roy Bahadoor* (2), and upon Regulation XI. of 1822, was held by their Lordships (of the Privy Council) to be erroneous. One decision governed

(1) Case No 1395 of 1866; January 30th, 1868. (2) 10 Moore's J. App., 123.

the five cases appealed to this Court, and the cases are cognate cases.

It is true that the applicant might have asked this Court to review its decision in the three cases which were not appealed to the Privy Council, or he might, following the precedent laid down in the case of *Baboo Gopal Lal Tagore v. Teluck Chunder Rai* (1), have applied to that tribunal to call for the three cases and decide them with the cases appealed; but it is clear to us that the applicant did not take this step, because he was under the impression that an appeal in a case of a valuation below 10,000 rupees was wholly inadmissible.

Taking, therefore, into consideration that the five cases were cognate cases; that one judgment governed the five cases; and that the judgment of this Court had been set aside in appeal by the superior Court, we think that a just and reasonable cause has been shown by the applicant, why he did not apply for a review at an earlier date.

We may observe that this application had been made within 90 days from the decision of the Privy Council.

The decision of this Court in special appeals, Nos. 937, 1635, and 3288, as also the decision of the Principal Sudder Ameen of the 24-Pergunnas, are reversed, and the special appeals, Nos. 937, 1635, and 3288, are decreed with costs, including the costs of this application.

Before Mr. Justice Kemp and Mr. Justice Glover.

MUSSAMUT INDUBANSI KUNWAR (PLAINTIFF) v. MUS-SAMUT GRIBHIRUN KUNWAR AND OTHERS (DEFENDANTS)*

1869
July 12.

Hindu Law—Possession of one Widow not adverse to the co-Widow—Cause of Action.

A Hindu of Tirhoot died in 1849, leaving two widows and a brother. A compromise was made by the three, whereby they agreed that the brother should remain in possession of the property left by the deceased; and that some land should be

* Special Appeal, No. 877 of 1879, from a decree of the Judge of Tirhoot, dated the 24th November 1868, reversing a decree of the Principal Sudder Ameen of that district, dated the 11th February 1868.