

1869

SHAW KHAJR-  
UDDIN AHMED  
v.SHEIKH  
ABDUL BAKI.

But whatever his real meaning may be, I take it that there is no jurisdiction in the Revenue Courts to try a case like this. There can be no doubt (indeed the batwara papers shew this very clearly) that the Collector gave the seven bigas of land to the defendant as an appanage to his dwelling-house, which appears to have comprised a considerable block of buildings, including a mosque. Whether or not the grant was excessive for the purpose, is a question with which we have nothing to do now. It is enough that the Collector was authorized, under the batwara law, to give such land as he thought proper to consider "attached" to the defendant's homestead as an appurtenance to that homestead, and it seems to me therefore, that the rent fixed on that land must be considered as the rent of the homestead of the house and grounds, as it would be called in England, and that such rent could not be the subject of a suit under Act X. of 1859; the proper forum would be the Civil Court. For these reasons I think that this special appeal should be dismissed with costs.

KEMP, J.—I concur in this judgment. It appears to me that the land is immediately attached to the house of the defendant, special respondent, "forming, as it were, one compound or set of premises." *Bipro Dass Dey v. William Wollen* (1). The suit ought to have been brought in the Civil Court.

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*Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.*

GIRISH CHANDRA DUTT (PETITIONER) v. BUZUL-UL-HUQ  
(OPPOSITE PARTY)\*

1869  
May 1.

*Act XVI. of 1864—Act XX. of 1866, ss. 3, 53, and 55—Registration—Bond.*

A petition for payment of a bond, which had been specially registered under Act XVI. of 1864, was presented on the 3rd of April 1866. *Held*, that it must be considered as having been presented under section 53 of Act XX. of 1866, by virtue of the 3rd section of that Act, which repealed Act XVI. of 1864, consequently the decision of the Principal Sudder Ameen, to whom the petition was presented, was,

(1) 1 W. R., 223.

\* Motion, No. 337 of 1869, from a decree of the Judge of Jessore, dated the 25th September 1867, reversing a decree of the Principal Sudder Ameen of that district, dated the 14th December 1866.

under section 55 of Act XX. of 1866, final. There could be no appeal from that decision ; therefore the Judge had no jurisdiction to reverse the Principal Sudder Ameen's decision.

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Baboos *Jadunath Dás* and *Prasanna Kumar Roy* for petitioner.

Baboo *Ramanath Bose* for opposite party.

PETITION of *Girish Chandra Dutt*, of *Bolla Pergunna*, *Zilla Jessore*.

*Girish Chandra Dutt* executed a bond in favor of the *Munshi Buzul-ul-Huq*, which was specially registered under Act XVI. of 1864.

On the 3rd April 1866, *Buzul-ul-Huq* presented a petition, under Act XVI. of 1864, to the Principal Sudder Ameen of *Jessore*, for the enforcement of the bond. The bond contained a condition that, if the amount due upon it should not be paid by the 29th *Aswin* 1272, interest should be charged at the rate of one *anna* per *rupee* per *diem*. On the 14th December 1866, the Principal Sudder Ameen ruled that the obligee could not recover penal damages in the shape of interest, but could only claim the sum lent with interest, at the ordinary legal rate. He therefore referred the obligee to the Small Cause Court, which had jurisdiction to try the case.

From this order of the Principal Sudder Ameen, the obligee appealed to the Judge, who on the 25th September 1867, reversed the decision of the Principal Sudder Ameen, and decreed the entire claim of the obligee. *Girish Chandra Dutt* was not served with the notice of the appeal, and applied to the Judge for a re-trial of the case, objecting that he had no jurisdiction to entertain the appeal. On the 8th June 1868, the Judge held that the suit having been instituted under Act XVI. of 1864, section 55 of Act XX. of 1866 did not apply to the case, and he accordingly rejected *Girish Chandra Dutt's* application for a new trial. Act XX. of 1866 received the assent of the Governor-General on the 2nd April 1866, and came into operation on the 1st May of that year. On 12th September 1868, *Girish Chandra Dutt* presented a

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 petition to the High Court against the Judge's order on the ground that, although the suit was instituted under Act XVI. of 1864, yet, when that Act was repealed by section 3 of Act XX. of 1866, and the decree in the case was passed under section 55 of Act XX. of 1866, that section 55 of the later Act does, therefore, apply to the case.

The Court (PEACOCK, C. J., and MITTER, J.) granted a rule.

On 1st May 1869, the above rule was made absolute under the following judgment delivered by

PEACOCK, C. J.—It appears to me to be clear that the presentment of the petition under Act XVI. of 1864 must be considered as having been done under Act XX. of 1866, by virtue of section 3 of that Act. That being so, the decision of the then Principal Sudder Ameen, which was made after the passing of Act XX. of 1866, must have the same effect as if it had been passed upon a petition presented under Act XX. of 1866; and consequently, under the provisions of section 55 of that Act, no appeal would lie from the Principal Sudder Ameen to the Judge. The Judge had no authority, therefore, to reverse the decision of the Principal Sudder Ameen, and all that he did was without jurisdiction. The rule must be made absolute for setting aside the decree or order of the Judge reversing the decree of the Principal Sudder Ameen, and all subsequent proceedings. The plaintiff must pay the costs of this application, and the costs in the lower Appellate Court.

Before Mr. Justice Bayley and Mr. Justice Mitter.

MAHIMA CHANDRA KUNDU (PLAINTIFF) v. MOULVI  
 NURUDDIN AND OTHERS (DEFENDANTS)\*

1866  
 May 3.

*Execution—Claimants—Act VIII. of 1859, s. 246—Onus of Proof.*

A decree-holder caused the right, title, and interest of his debtor in certain land to be attached in execution. A claim was preferred, under section 246, Act VIII. of 1859 against the attachment by the previous purchaser, but was rejected. The claimant then instituted the present suit for confirmation of his possession upon

\* Special Appeal, No. 2778 of 1863, from a decree of the Judge of Dacca; dated the 31st January 1863, affirming a decree of the Principal Sudder Ameen of Furreedpore, dated the 29th December 1866.