

In a case decided by Mr. Justice Bayley and Mr. Justice Hobhouse, *Nussurut Ali Chowdhry v. Mahomed Kanoo Sikdar* (1), where this point was argued, the learned Judges say that a Court of Appeal has power to make such an order; and if the lower Appellate Court has such a power, it is clear that this Court which has all the powers of the Court below, has also that power. On the authority, therefore, of the decision last cited, which is fully in support of the view that we now take, we are of opinion that this contention of the pleader for the special appellant is a proper contention; and that as soon as the error was discovered, the plaint ought to have been returned to him, whether that was discovered in the first Court or in appeal before the lower Appellate Court, or in this Court.

We dismiss the special appeal with costs, but direct that the plaint be returned to the plaintiff, in order that he may present it in proper form.

1870

MUSSAMAT
LADU
v.
SHEIKH HIFA-
ZAT HOSSEIN.

Before Mr. Justice Bayley and Mr. Justice Mitter.

SHEO GOBIND RAWUT (PLAINTIFF) v. ABHAI NARAYAN SING AND OTHERS
(DEFENDANTS).*

1870
April 26.

Valuation of Suit—Jurisdiction—Appellate Court.

When it appears, on appeal, that the suit has not been rightly valued, and, if rightly valued, the Court of first instance would not have had jurisdiction to try it, the Appellate Court may entertain the objection, though it had not been raised in the Court below.

This suit was brought in the Moonsiff's Court of Sarun, for recovery of possession of a one anna eight gundas share of Mauza Futehpore, valued at rupees 105, being ten times the Government revenue payable for the said share. The plaint disclosed that the market value of the whole property was about rupees 31,100.

The defendants took no objection to the valuation.

The Moonsiff, after trying it on the merits, dismissed the suit.

On the appeal of the plaintiff, the Judge held that since, from the statement of the plaintiff himself, it is evident that the value of the property in dispute far exceeds ten times the Government revenue, the claim should have been valued at rupees 2,700, being the proportionate value of the share sought to be recovered. That as the plaintiff had not done so, the suit had been undervalued, and the Moonsiff had therefore no jurisdiction to try the suit. He, accordingly, dismissed the suit.

The plaintiff appealed to the High Court.

Baboo Kalikrishna Sen for the appellant.

Baboo Anukul Chandra Mookerjee for the respondent.

* Special Appeal, No. 2833 of 1869, from a decree of the Subordinate Judge of Sarun, dated 28th August 1869, affirming a decree of the Moonsiff of that district, dated the 31st March 1869.

1870
 SHEO GOBIND
 RAWUT
 v.
 ABHAI NARA-
 YAN SING.

MITTER, J.—We see no reason to interfere with the judgment of the lower Appellate Court. It is admitted that the suit was under valued, and it is also admitted that if the claim were properly valued, the suit could not have been instituted in the Court of the Moonsiff who tried it in the first instance. Under these circumstances, the lower Appellate Court was right in reversing the decision of the Moonsiff, upon the ground that it was heard without jurisdiction.

It is contended that the objection as to valuation was not taken before the Court of first instance, but whether it was so taken or not, the jurisdiction of the Court by which the suit was heard, is admittedly affected, and the lower Appellate Court was, therefore, justified in taking up the point even though it was not urged by the defendant before the Court of first instance.

We dismiss the special appeal with costs.

Before Mr. Justice Loch and Justice Sir C. P. Hobhouse, Bart.

1870
 April 28.

NILMADHAB KARMOKAR (PLAINTIFF) v. SHIBU PAL (ONE OF THE DEFENDANTS).*

Act VIII of 1869, s. 16—Act X of 1859, s. 6—Sale of a Tenure for Arrears—Right of Purchaser—Ejectment—Incumbrance by former Tenant.

A purchaser of a tenure sold under Act VIII of 1865 (B. C.), for arrears of rent, cannot, under section 16, eject a ryot who has acquired a right of occupancy, under section 6 Act X of 1859, under the former tenant.

Baboo Bamacharan Banerjee for appellant.

Baboo Girija Sankar Mazumdar for respondent.

HOBHOUSE, J.—The plaintiff in this case, who is the special appellant before us, became the purchaser at an auction-sale under Act VIII of 1865 (B. C.) of a certain under-tenure. The person who held that under-tenure, previous to the plaintiff's purchase, created an incumbrance on that tenure in the shape of a mokurrari lease, in favor of the defendant. After the acquiring of his purchase, the plaintiff sued to recover from the defendant khas possession of the land covered by the mokurrari. The Judge of the Appellate Court has found as a fact that the defendant has been at any rate more than twelve years the cultivator of the land, and has, therefore, further held, that the plaintiff

* Special Appeal, No 2851, of 1869 from a decree of the Judge of West Burdwan, dated the 4th September 1869, reversing a decree of the Moonsiff of that district, dated the 21st June 1869.