

[APPELLATE CIVIL.]

Before Mr. Justice E. Jackson and Mr. Justice Mookerjee.

1871
April 19.

IN THE MATTER OF THE PETITION OF SRIMATI NASSIR JAN
AND ANOTHER.*

*Suprintendence, High Court's Power of, under s. 15 of 24 & 25 Vict
c. 104—Issues—Jurisdiction.*

A. sued B, a ryot, for arrears of rent. C. was added a party under section 77, Act X of 1859. The Collector in appeal refused to try C.'s claim under section 77, because she had not produced her title-deed.

Held, that the refusal to try C.'s claim by the Collector was a denial of jurisdiction on his part, and the High Court sent back the case to the Collector for trial of C.'s claim.

In this case one Akbar Mazumdar, an ijaradar, sued one Hanif Bhuia for arrears of rent of the year 1276 (1869), with interest in the Court of the deputy Collector of Tipperah. The ryot, defendant, denied the plaintiff's ijaradari right and the genuineness of the kabuliat filed by him purporting to have been executed by the defendant, but stated that he paid rent to another party, named Srimati Nassir Jan.

Srimati Nassir Jan was made a party under section 77 of Act X of 1859.

The Deputy Collector, who first tried the case, fixed the following issues:

1. Has the kabuliat filed by plaintiff been really executed by the defendant?
2. Has defendant paid the rent of 1276 (1869) to Srimati Nassir Jan; and, if so, can he now be made to pay the same to the plaintiff?
3. Who has been in actual receipt and enjoyment of the rent—the plaintiff or Srimati Nassir Jan?

On the first issue the Court decided that the plaintiff had

* Rule Nisi, or Motion No. 908 of 1871, from a decree of the collector of Tipperah, dated the 18th May 1870.

failed to establish his ijaradari right and the genuineness of the kabuliat.

1871

IN THE
MATTER OF
THE PETITION
OF SRIMATI
NASSIR JAN.

On the second and third issues, the Court held that the plaintiff was ~~not~~ in actual enjoyment and receipt of the rent, which the defendant had been paying to the mother of Srimati Nassir Jan., The Deputy Collector dismissed the plaintiff's suit. The plaintiff appealed to the Collector of the zillah, who reversed the decision of the Deputy Collector, and decreed the plaintiff's claim on the grounds set forth in the following judgment:—

“ I am of opinion that the third party should file the deed of gift on which she claims, and that in the absence of any such document, her claim cannot hold good. I see no sufficient reason to impugn the authenticity of the kabuliat filed by the plaintiff purporting to be executed by the defendant, and decree this appeal with costs.”

Baboo Nalil Chandra Sen, on behalf of the defendant ryot and Nassir Jan, applied to the High Court (E. Jackson and Mookerjee, JJ.), under section 15 of 24 & 25 Vict. c. 104, praying for, and obtained, a rule calling on the plaintiff in this case to show cause why the decision of the Collector should not be set aside as passed without jurisdiction, on the ground that the Collector had no authority under the provisions of section 153, Act X of 1859, to entertain the appeal, which properly lay to the Judge; that in trying the appeal, the Collector had not tried the real issue in the case under section 77, and had erroneously rejected the claim of Srimati Nassir Jan on the ground of the non-production of the deed of gift.

Baboo Ramas Chandra Mitter for the plaintiff appeared to show cause.

He contended that the High Court had no power to interfere with the decision of the Collector, against which there was no appeal, for there was no assumption of jurisdiction which the Collector had not, nor a denial of jurisdiction which he had. He contended that the High Court could not, except on the two grounds of excess or denial of jurisdiction, interfere in any way with a decision of an inferior Court which was final by law;

1871
 IN THE
 MATTER OF
 THE PETITION
 OF SRIMATI
 NASSIR JAN.

that in this case the appeal was rightly preferred to the Collector; and that, therefore, no point of jurisdiction could arise.

He next contended that even if the decision of the Collector did not deal with the interests of the parties concerned in a proper manner, yet that could be no ground for calling for the exercise by this Court of its extraordinary powers under section 15 of 24 & 25 Vict., c. 104, particularly as the rights of the parties, whatever the Collector's decision may be, could only be finally settled by a regular suit.

In support of this argument, he cited the following cases—*In the matter of the Petition of Durga Charan Sirkar* (1), *In the matter of the Petition of Kasinath Roy Chowdhry* (2), and *In the matter of A. B. Miller* (3).

(1) 2 B. L. R., A. C., 165.

(2) *Before Mr. Justice L. S. Jackson and
 Mr. Justice Markby.*

The 18th April 1869.

IN THE MATTER OF THE PETITION OF
 KASINATH ROY CHOWDHRY AND
 OTHERS (DECREE-HOLDERS.)

Mr. R. T. Allan and Baboo Ashu-
 tosh Dhar for the petitioner.

JACKSON, J.—I think this is an application that we cannot entertain. The contention advanced by Mr. Allan is one which has been often unsuccessfully made in this Court. The object of the motion is to induce us to interfere, under the 15th clause of 24 & 25 Vict., c. 104, with an order which the Deputy Collector of Howrah has made, allowing an objection and refusing to carry out the sale and execute the decree in favor of the present petitioner. It is admitted that the Collector was competent to decide the question whether or not the sale could take place; and, in fact, he has acted in the matter at the instance of the petitioner himself. The sole question is,

whether the order which the Collector made is one which, on the true interpretation of the law, he ought to have made. I think it quite clear that the interference of this Court, in the exercise of its powers of superintendence under the 15th clause of 24 & 25 Vict., c. 104, should be confined to cases in which the lower Court has acted without jurisdiction, or, in other words, was not competent to deal with the subject-matter, or else has improperly declined jurisdiction; and should not be extended to cases in which the Court, though competent in respect to the subject-matter, has misconceived the law, and therefore given an erroneous order. I think the application should be refused.

MARKBY, J.—I am entirely of the same opinion. I think it is no ground whatever for this Court to interfere with the order of any of the Courts inferior to it, by way of motion, that that Court has put an erroneous interpretation upon a provision of law. This identical matter came before Mr.

(3) 4 B. L. R., A. C., 72.

Baboo *Nalit Chandra Sen*, in support of the rule, relied on the following cases as showing to what extent the High Court had interfered with the decisions of lower Courts which were final;—*Bhyrub Chunder Chunder v. Shama Soonderee Debea* (1), *Greesh Chunder Lahoree v. Kasheesuree Debit* (2), and *Judodputtee Chatterjee v. Chunder Kant Bhattacharjee* (3).

1871
IN THE
MATTER OF
THE PETITION
OF SRIMATI
NASSIR JAN.

JACKSON, J.—The applicant in this case obtained a rule calling upon the other side to show cause why the decision of the Collector of Tipperah, dated 18th May 1870, in the case of *Jamiruddin Bhuia v. Hanif Bhuia*, should not be set aside on the ground that it had been passed on irrelevant grounds. Cause has this day been shown, and it is alleged that this Court has no jurisdiction to interfere, partly because this is not a case in which the Court has refused jurisdiction which it should have exercised, and partly because the parties have an opportunity to set aside this decision by a regular suit.

On the first point we are of opinion, looking to the decision of the Collector, that he has refused to exercise the jurisdiction which he should have exercised. He has in no way tried the question at issue between the plaintiff and the intervenor, upon which also must depend the question as between the plaintiff and the ryot defendant. Looking to the terms of section 77 of Act X of 1859, the question at issue was whether the intervenor, third party, or the plaintiff, was in receipt of rent from the ryot defendant before the institution of this suit. This issue was distinctly laid down as one of the points to be tried by the

Justice Bayley and myself in *In the matter of the petition of Durga Charan Sirkar (a)*, and there were then some cases referred to which have not been referred to in this case, in which I owned that it appeared to me that the Court had put too liberal a construction upon its powers under the 15th clause of 24 & 25 Vict., s. 104; and in consequence of that, we considered this matter very carefully, and the conclusion which we came to then, and the conclusion which I still clearly hold is, that not only the language of this clause, but, with very few exceptions, the uniform practice of this Court has been not to interfere, except in cases of excess or refusal of jurisdiction.

(1) 6 W. R., Act X. Rul., 68. (2) 8 W. R., 26. (3) 9 W. R., 309.

(a) 2B. L.R., A. C., 165.

1871

IN THE
MATTER OF
THE PETITION
OF SRIMATI
NABSIJ JAN.

Collector ; but instead of deciding it, he refused to consider or take any notice whatever of the claim of the third party, because that third party had not filed a deed of gift on which her title rested. It is evident that this is no decision whatever upon the case. It was not for the Collector to ascertain whether the intervenor's title was good or bad. The deed of gift could only be of any use in order to ascertain the validity of her title, and the mere filing of the document could not possibly be any evidence whatever in the suit. It is in fact, therefore, a direct refusal to try the case altogether. To lay down that because such and such a document was not filed, therefore her claim must be utterly bad, is no decision on the point at issue. The Collector might have as well decided the case upon any other equally irrelevant ground than that which was before him for decision. It is possible that the intervenor might have brought a separate suit in the Civil Court to rectify this decision. But it is a question what effect that would have on the claim as between the plaintiff and the ryot defendant.

We think we ought not to allow this decision to stand as it is, but that the case should be sent back to the Collector, with directions to him that he will consider the evidence upon the record, and try the question as between the intervenor and the plaintiff, looking especially to the provisions of section 77, Act X of 1859, and upon his decision as between the intervenor and the plaintiff, and upon the consideration of any other fact or any other point which may arise as between the plaintiff and the defendant, he will decide the case as between the plaintiff and the ryot. Costs of this proceeding will be paid by the plaintiff.

MOOKERJEE, J.—I concur. It is evident that in this case the Collector has refused to try the appeal or any of the issues which legitimately arise in a case, under section 77, Act X of 1859. He declines to try the case, simply on the ground that the intervenor has not filed the deed of gift under which she claims possession. The question he had to decide was, whether the intervenor "was in the actual receipt and enjoyment of the rent." He fixes the issues correctly, but declines to try them

merely because the deed of gift has not been filed. If he had tried the question of possession and actual receipt of rent, his decision on that point, however wrong or improper, would perhaps have been final according to law. But as the Judge has refused to try the real issue before him, and disposed of the case on a matter wholly irrelevant to the point before him, it must be held that he has refused to exercise a jurisdiction vested in him by law. Under the powers of superintendence given to this Court by the Charter Act, I hold that we can direct Courts subordinate to this Court to do their duty, and to see that they do not avoid to try and determine cases simply because a party to the suit has not done that which he was not imperatively required to do, and which is irrelevant to the real question which the Court had to decide. This I should consider a refusal to exercise a jurisdiction which he had under the law.

1871

IN THE
MATTER OF
THE PETITION
OF SRIMATI
NASSIE JAN

Rule absolute.

Before Mr. Justice Glover and Mr. Justice Mookerjee.

GAJADHAR PRASAD AND ANOTHER (DEPENDANTS) v. GANESH
TEWARI AND ANOTHER (PLAINTIFFS)*

1871
May 3.

Appeal—Purchaser of Defendant's Interest in Subject of Suit.

The purchaser of the right, title, and interest of a defendant in a suit in and to the land, the subject-matter of that suit, has no right as such to appeal from a decree passed against the defendant.

THIS was suit to obtain possession of a mangoe garden together with 3 bigas of land.

The defendant set up in his written statement that the plaintiff was not entitled to possession, but only to receipt of rent.

The Moonsiff dismissed the plaintiff's suit.

On the 28th May 1870, the Subordinate Judge in appeal passed a decree in favor of the plaintiff.

On the 30th May 1870, in execution of another decree against

* Special Appeal, No. 2438 of 1870, from a decree of the Subordinate Judge of Tirhoot, dated the 28th May 1870, reversing a decree of the Moonsiff of that district, dated the 24th January 1870.