

1872

NATTU MIAH
v.
NAND RANI.

of the 10th December 1862, *George Meares v. Achobur Sheik* (1), which was laid down before that date, that straw houses were

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.
The 28th November 1868.

RAJCHANDRA BOSE v. DHARMO
CHANDRA BOSE.*

THE following case was submitted for the opinion of the High Court by the Judge of the Small Cause Court of Jessore:—

This is a suit brought under section 246 of Act VIII of 1859, by the plaintiff to establish his right to the huts mentioned in the plaint, and to recover possession of the same, but there is no prayer in the alternative for the value of the same.

Two questions therefore arise: *firstly*, whether huts in this country are to be considered personal property; and, *secondly*, whether the suit, as laid in the plaint, is cognizable by a Small Cause Court.

I have already expressed my opinion, in the case of *Rahini Kant Ghose v. Mahabharat Nag* (a), that it does not appear to me that huts in this country fall within the definition of personal property, and the High Court held with me that the suit, as laid in the plaint, did not appear to fall within the cognizance of the Small Cause Court, but I find that, in the case of *Kasi Chandra Dutt v. Jadu Nath Chuckerbutty* (b), which was on all fours with the one in which I made the reference Bayley and Macpherson, JJ., held that a suit for the materials, bamboos, post, veranda, &c., appertaining to four thatched huts, wherein plaintiff sought a decree to break up and remove them, or to obtain their value to the extent of Rs. 29-4 was held to come under section 6, Act XI of 1865, and to be a case in which, by section 27, Act XXIII of 1861, no special appeal would lie.

It is said that every man's house is his castle (*domus sua unicuique est tutissimumrefugium*). It therefore becomes necessary to consider whether a man's hut in this country is to be considered his castle. I think it must be so considered, as there are few *pakkah* houses to be found in the mofussil, and those are inhabited by the rich. People in middling circumstances and the very poor all live in thatched huts, and whole villages are to be seen studded with them. Apart from this argument, huts do not fall within the definition of "personal property," as laid down in the English law books; and as it was held, in the case of *Thakur Chandra Paramanik v. Ramdhun Bhuttacharjee* (c), that the "option of taking to the building, or allowing the removal of the material remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he may possess," it would appear that huts cannot be considered personal property in this country; for, if they were, the option spoken of could not be exercised by the owner of the land in the event therein contemplated, as personal property can always accompany the person of the owner.

It would also be an anomaly to hold that Small Cause Courts in the mofussil can attach thatched huts in execution of their decrees, if an action for recovery of possession of the same, or their value, be held not cognizable by the same Court.

For the above reasons I think that huts should not be considered personal or moveable property in this country, and that no action for the recovery of the same, or their value, can lie in a

(1) S. C. C. R., 29.

* Reference by the Judge of the Small Cause Court at Jessore.

(a) *Post*, p. 514.
(b) *Post*, p. 512.

(c) B. L. R., Supl. Vol., Case No. 108 of 1865.

held as moveable property. From this it appears that, before the first mentioned precedent was laid down, the Small Cause Court held, according to the last mentioned precedent, that straw houses were moveable property, and sold the disputed houses on the 21st July 1868, and at the same auction-sales, the plaintiff's husband purchased the said houses. When there exists no doubt as to the regularity of the sale of the said two houses by the Small Cause Court

1872

 NATTU MIAH
 v.
 NAND RANI

Small Cause Court, and that huts ought not to be attached in execution of a decree of a such Court. The plaintiff's suit has accordingly been dismissed with costs contingent on the opinion of the Hon'ble Judges of the High Court.

The opinion of the High Court was delivered by

PEACOCK, C. J.—We think that the opinion expressed by the Small Cause Court Judge is correct.

We think that huts are not moveable property within the meaning of section 19 of the Small Cause Court Act, and consequently that they cannot be seized in execution. The word "moveable" in that section is used in contra-distinction to the word "immoveable," in section 20. The word used is "moveable," not "removeable," and that word does not in our opinion comprehend everything which the judgment-debtor has a right to remove. It means property which is capable of being moved in its existing state. A man has a right to remove a house which is built upon his own land, but it could not be contended that a *pakkā* house built by a man upon his own land is moveable property, because he has a right to remove it, and that the land itself is immoveable. If a house built upon a man's own land is not moveable property, a house built upon land which is rented from another does not seem to fall within the word "moveable." If such a house is not moveable property, there seems to be no reason why a mud house should be held to be moveable property; and the same reasoning appears to be applicable to a

hut. In any one of these cases a right to remove may exist, and the materials of which the erection is composed are capable of being removed, although the removal in one case would be attended with a greater degree of labor than in the other. But the question as to whether the property is moveable or not, cannot depend upon the amount of labor which is required to remove it.

The words "personal property" in section 6 seem to be used in the sense of moveable property; for as regards Hindus and Mahomedans, there is no distinction between real and personal property, the distinction being between moveable and immoveable. That the word "personal" is used in section 6 as referring to moveable property is borne out to some extent by section 19, which gives power to issue execution against the moveable property of the debtor, and, in the subsequent part of it, uses the word "personal" apparently in the sense of moveable. The words are:—"If the warrant be directed against the moveable property of the judgment-debtor, it may be general against any personal property of the judgment debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor."

There is no more reason why the Small Cause Court should have power to seize in execution a hut erected upon a small piece of land than it should have to seize the land itself.

1872
 NATTU MIAH
 v.
 NAND RANI.

by auction, agreeably to the last mentioned precedent, which was laid down before the first mentioned precedent, and when it does not appear from the records that the defendants ask for the reversal of the said sale, or raised any objection thereto, this suit must proceed on the ground that the said sale is valid and regular, and must stand, *i. e.*, the plaintiff's husband and plaintiff must be entitled to the houses which were purchased at the said auction-sale."

Against this decision the defendants appealed to the High Court.

Baboo *Nallit Chandra Sen*, for the appellants, contended that the huts in question were immoveable property; that the sale by the Small Cause Court was without jurisdiction; and that the plaintiff's husband purchased nothing. He relied on the case of *Rajchandra Bose v. Dharma Chandra Bose* (1).

Baboo *Chandra Madhab Ghose*, for the respondent, urged that the huts were moveable property, and that the sale by the Small Cause Court was therefore valid. He cited the cases of *Kasi Chandra Dutt v. Jadu Nath Chuckerbutty* (2) and *George Meares v. Ackobur Sheik* (3) in support of his contention.

(1) *Ante*, p. 510.

(2) *Before Mr. Justice Bayley and Mr. Justice Macpherson.*

The 8th June 1868.

KASICHANDRA DUTT (PLAINTIFF) v.
 JADU NATH CHUKERBUTTY DE-
 FENDANT)*

Baboo *Mahini Mohan Roy* and *Atul Chandra Mookerjee* for the appellant.

Baboo *Abhai Charan Bose* for the respondent.

BAYLEY, J.—Upon this special appeal coming on for hearing, respondent took the preliminary objection that this is a case coming within the jurisdiction of the Small Cause Court, and that, under section 27, Act XXIII of 1861, no special appeal would lie.

On referring to the plaint, we consider that this objection is valid. After hearing the plaint read, we are clearly of opinion that the suit is one for "personal property, or for the value of such property" and for a sum not exceeding 500 rupees. Therefore, under section 6 Act XI of 1865, the suit would clearly be cognizable by Courts of Small Causes.

The plaint distinctly claims the materials, bamboos, post, veranda, &c., specifying that those materials appertain to four distinct thatched huts. It seeks a decree to break up and remove them or, as an alternative, to obtain their value to the extent of Rs. 29-8 as that share, which plaintiff's vendor by his sale transferred to plaintiff.

(3) S. C. C. R., 29.

* Special appeal, No. 2433 of 1867, from a decree of the Principal Sudder Ameen of Tipperah, dated the 31st July 1867, affirming a decree of the Moonsiff of that district, dated the 24th April 1869