

1871  
 WILLIAM FARQUHARSON  
 v.  
 DWARKANATH SING

With respect to the cases which have been referred to, all that they really show is this, that different Courts at different times have given greater or less weight to similar returns. All the Courts agree that they are admissible in evidence, and they have been admitted in evidence in this case. In each particular case the Courts have considered what weight ought to be given to them; and it is nothing very surprising if the Courts at different times have not given exactly the same weight to these documents. Their Lordships are of opinion that the Courts in this particular case have given quite as much weight to these returns as they deserve, and the weight of evidence cannot be regulated by precise rules, as the admissibility of evidence may be.

Their Lordships will, therefore, humbly recommend to Her Majesty that this appeal be dismissed with costs.

*Appeal dismissed with costs.*

Agent for appellant : Mr. *Barrow*.

Agent for respondent : Messrs. *Lawford and Waterhouse*.

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[FULL BENCH.]

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*Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Bayley, Mr Justice L. S. Jackson, Mr. Justice Macpherson, Mr. Justice Glover, and Mr. Justice Mitter.*

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NATTU MIAH AND OTHERS (DEFENDANTS) v. NAND RANI  
 (PLAINTIFF).\*

*Act XI of 1865. s 19—Moveable property—A Hut—Jurisdiction of Small Cause Court—Sale of a Hut in Execution of a Decree of a Small Cause Court, Right of Purchaser at.*

See also A hut is not moveable property within the meaning of section 19 of Act XI of 14 B.L.R. 204 1865. A Small Cause Court has no jurisdiction to sell a hut. A purchase of a 10 B.L.R. 449 hut, sold by a Small Cause Court, in execution of a decree, acquires no title to it.

\* Special Appeal, No. 503 of 1871, from a decree of the Additional Judge of Dacca, dated the 28th January 1871, affirming a decree of the Moonsiff of that district, dated the 3rd September 1870.

On the 21st July 1868, the plaintiff's husband purchased two huts at a sale in execution of a decree of a Small Cause Court against one Nattu Miah. Subsequently under a decree passed by the Moonsiff of Naraingunge against the same judgment-debtor, the two huts were attached and put up for sale, and separately purchased by the other two defendants on 31st Jaishtha 1276 (12th June 1869). The plaintiff, her husband then being dead, objected in the Moonsiff's Court to the sale of the huts on the ground of her husband's prior purchase. Her claim, however, was rejected; and she thereupon sued the defendants in the Moonsiff's Court for the value of the huts, and for a declaration of her rights under her husband's purchase, and to set aside the Moonsiff's order rejecting her claim. In the plaint the huts were described as resting on posts, with thatched roof and verandah, surrounded by mat wall s.

The defendants objected *inter alia* to the jurisdiction of the Moonsiff to try such a suit, as the subject-matter was moveable property and of a value within the jurisdiction of the Small Cause Court. They also objected that, if the huts were immoveable property, the sale by the Small Cause Court was without jurisdiction, and passed nothing.

The lower Courts, without deciding whether the huts in question were moveable or immoveable property, held that the suit would lie. On the question of jurisdiction, the lower Appellate Court observed :—

"It appears that the plaintiff has brought this suit to recover the price of houses on declaration of her right by purchase, and for having the summary proceedings set aside, consequently a suit of this nature is triable by the Civil Court, and not by the Small Cause Court."

They also held that the sale by the Small Cause Court was valid, and must have priority over the sale, held by the Moonsiff, in which the huts were purchased separately. As to the validity of the sale by the Small Cause Court, the Subordinate Judge observed :—

"Although it is held, in the precedent of the 23th November 1868, *Rajchandra Bose v. Dharmo Chandra Bose* (1), that huts, *i. e.* straw houses, are immoveable property, still it appears, from the precedent

(1) See *post*, p. 510.

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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.