

and not merely by sale of her own limited interest therein, she must make out a distinct case of necessity, and must prove that she was driven to sue in order to protect herself and her husband's estate.

Attorney for the plaintiff: *Baboo Kallynath Mitter.*

Attorneys for the defendant: Messrs. *Rogers and Remfry.*

1873  
KISTORAMINY  
DASSEE  
v.  
MIRTOONJOY  
DUTT.

Before Mr. Justice Markby and Mr. Justice Birch.

RAMNIDHY KOONDOO AND ANOTHER (JUDGMENT-DEBTOBS) v. RAJAH  
OJOODHYARAM KHAN (DECREE-HOLDER).\*

1873  
May 31.

*Power of Mofussil Courts to make orders in pōndām against Persons not Parties to a Suit—Order for Payment of Costs on Person not Party to the*

*Suit, and after Dismissal of Suit.*

*Baboos Kally Mohun Doss, Romesh Chunder Mitter, and Bhobany Churn Dutt for the appellants.*

*The Advocate-General offg. (Mr. Paul), Mr. Woodroffe, and Mr. R. T. Allan for the respondent.*

THE facts are stated in the judgment of the Court, which was delivered by MARKBY, J.—In this case it has been established to the satisfaction of the District Judge, upon an inquiry instituted by him, that Ramnidhy Koondoo and Bykantnath Koondoo, being desirous of entering into a transaction for the purpose of assisting certain persons called the Bhooyas in establishing their claim to certain landed property in Midnapore, agreed that they should receive as a consideration for so doing the half of any property that might be recovered in the suit; and in order to carry out this arrangement, purchased from the Bhooyas at a nominal sum one half of their interest in this property: but the Koondos, instead of taking a conveyance in their own names and joining with the Bhooyas as plaintiffs in the suit, took a conveyance in the name of one Shama Soondery, an indigent member of their family, and dependent upon them for support: and they caused the suit to be brought in her name and that of the Bhooyas jointly. The District Judge has found that Shama Soondery was thus put forward by the Koondos in order to save themselves from having to pay the costs of the suits which were to be brought to establish

\* Miscellaneous Regular Appeals, Nos. '62 and 63 of 1873, from the orders of the Judge of Midnapore, dated the 14th February 1873.

1873

RAMNIDHY  
KOONDOO  
v.  
RAJAH  
OJODHYA-  
RAM KHAN.

the claim in case they should be unsuccessful. The District Judge is further of opinion that Ramnidhy Koondoo and Bykantnath Koondoo are the real plaintiffs in the suit, though acting in the name of Shama Soondery. Upon these facts being established, the District Judge directed that the names of Ramnidhy Koondoo and Bykantnath Koondoo should be added to the decree for costs which the defendant had obtained in the two suits brought in the name of the Bhooyas and Shama Soondery Dossee under the above arrangement, and which the District Judge had dismissed. Having had the depositions taken by the Judge read to us, and having heard the arguments thereon, we have no reason whatever to doubt that his conclusions of fact are fully justified by the evidence.

The question for consideration is whether the District Judge had power to make such an order as was made by him upon these facts being brought to his notice.

Whether or no, if the application had been made whilst the suit was still pending in the District Judge's Court, the Koondos could have been made liable in the decree for costs, we need not now determine. No doubt, the District Judge had facts before him which showed that Shama Soondery's ownership was a mere fiction; that in fact, as put by Mr. Woodroffe, she was no more a reality than the John Doe or Richard Roe in the old-fashioned English action of ejectment, and possibly it might have been considered that, in making the Koondos by name liable for costs, he was in reality only drawing up the decree in accordance with the real facts of the case. But, however desirous we may be to support the District Judge in checking an undoubted fraud, we feel unable to say that he had power to make such an order in the present case, because when that order was made, the suit was no longer pending in his Court. The record had left his Court, and had been brought up to this Court upon appeal against the decree dismissing the suit. Even, therefore, if the District Judge had power to draw up a decree making the Koondos liable for costs whilst the suit was still pending in his Court, it was clearly impossible for him to do so, after it had been carried out of his Court into the Court of Appeal.

It was, however, contended that this was not really what the Judge intended to do; that this order should be looked upon not as a decree or as part of a decree against parties to a suit, but as an order made *in pœnam* against the Koondos, similar to the orders which have been sometimes made in the High Court on the original side against persons not parties to the suit to pay the costs of a suit which they have promoted or instigated. It is not necessary for us, on this occasion, to examine accurately upon what grounds such orders are made by this Court. The general principle cannot be denied that Courts of Justice have only power to deal with persons brought before them by regular process of law, and they have not power otherwise than by such process to summon before them any persons they may choose, to answer for their misconduct. There are, no doubt, exceptions to this principle.

such as the power to punish what is called "contempt of Court," and it has been considered that this Court on its original Side has very wide powers in this respect. But we do not feel justified in saying that the Civil Courts of the mofussil have these wide and general powers. If one such Court has them, all must have them; and we think it must not be too hastily assumed that Courts of such various grades have all precisely the same wide and general powers as are possessed by this Court. No authority has been produced before us for holding that mofussil Courts possess power to make an order *in pœnam* against persons who are not parties to a suit such as the Judge has made in this case, and no instance has been shown in which such powers have been exercised. Special powers to punish by fine not exceeding Rs. 200 any person guilty of contempt in open Court, or of undue arrogations of the authority of the Court, or of illegal execution of judicial authority in his own cause, were conferred upon these Courts at their foundation (Regulation IV of 1793, s. 21), and these powers have been since slightly extended by the Legislature. But no attempt was made to bring this case within any legislative provision.

It was also contended for the respondent that no appeal lies to this Court against such an order, or that if it lies at all, it can only be heard as part of the general appeal which has been preferred to this Court against the decision of the suit by the District Judge; but whether an appeal lies or no, the matter having been fully discussed, and the order complained of having been made in a suit of which the record is now in this Court, we have no doubt that we ought to set it aside; but we do not think we ought to allow any costs; for though Ramnidhy Koondoo and Bykantnath Koondoo have succeeded in setting the order aside, we cannot too strongly express our disapprobation of their conduct.

Before Sir R. Couch, Kt., Chief Justice.

IN THE GOODS OF BRINDABUN GHOSE, DECEASED.

*Court Fees Act (VII of 1870), Sch. I, art. 2—Financial Resolution, No. 2004  
14th July 1871—Administration—Trust Property.*

1873  
March 13.

The following case was referred to the Chief Justice, under s. 5 of the Court Fees Act, 1870, by the taxing Officer:—

"Brindabun Ghose and Bistodoss Ghose were brothers, and were joint in estate. Brindabun Ghose had died unmarried, leaving no relative, except Bistodoss Ghose. Bistodoss Ghose has obtained an order for letters of administration of the property and credits of the deceased, consisting of a half share

"(1) of moneys in the Government Savings Bank, deposited in the name of the deceased;

"(2) of Government securities standing in the name of the deceased

"(3) of a family dwelling-house and small outstanding dues.

See also  
14 B.L.R. 186.

1873  
RAMNIDHY  
KOONDOO  
v.  
RAJAH  
JODHYA-  
RAM KHAN.

1873  
 IN THE GOODS OF BRINDABUN GHOSE.

“The other half share of the property above specified is claimed by Bistodoss Ghose as belonging to him.  
 “The letters of administration will enable the administrator to deal with the whole of the moneys and Government securities deposited or standing in the name of the deceased, and not only of his half share,  
 “The question submitted for determination is  
 “Whether or not Bistodoss’ half share is to be treated as trust property within the meaning of the Financial Resolution, No. 2004, dated 14th July 1871 (1), and exempted from the payment of the two *per centum ad valorem* fee prescribed by the Court Fees Act, 1870, Sch. I, art. 2?”

The judgment of the Court was delivered by

COUCH, C. J.—Bistodoss’ half share should be treated as trust property, and be exempted from the two *per centem ad valorem* fee.

Before Mr. Justice Phear and Mr. Justice Mitter.

1873  
 July. 1.

MONINDRO CHUNDER SIRCAR (PLAINTIFF) v. MONEERUDDEEN  
 BISWAS AND ANOTHER (DEFENDANTS).\*

*Landlord and Tenant—Sub-tenant—Excavation of Tank—Suit for Restoration of Land to original state or for damages.*

THIS was a suit to compel the defendants to restore certain land, of which they were in possession, and on which they had excavated a tank, to its former state, or in lieu thereof to recover damages for the injury done to the land by the excavation.

Baboo *Amarindro Nath Chatterjee* for the appellant.

Baboo *Mohendro Lall Mitter* for the respondents.

\*Special Appeal, No. 333 of 1873, from a decree of the Additional Judge of Jessore, dated the 23rd November 1872, reversing a decree of the Subordinate Judge of that district, dated the 21st December 1871.

(1) “In the exercise of the power vested in him by s. 35 of the Court Fees Act, 1870 the Governor-General is pleased to remit in the whole of British India the fees chargeable under Sch. I, art. 2 of the said Act in respect of probate of wills or letters of administration, in so far as such wills or letters of administration relate to property which a deceased person was possessed of or entitled to, not beneficially, but as a trustee for any other person or persons; . . . provided that this remission shall not extend to cases in which a trustee has the power of appointing or otherwise conferring a beneficial interest in the said property.”