

Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Jackson, Mr.  
Justice Phear, Mr. Justice Markby, and Mr. Justice Ainslie.

1873  
April 1.

CHUNDER COOMAR MUNDUL AND ANOTHER (PLAINTIFFS) v.  
NUNNEE KHANUM AND OTHERS (DEFENDANTS).\*

*Res Judicata—Decision by Deputy Collector—Evidence of Title—Act X  
of 1859, s. 23, cl. 6—Jurisdiction of the Revenue Courts—Act VIII  
of 1859, s. 2.*

See also  
15 B L R 241  
15 B L R 247

A, a ryot, brought a suit in the Court of the Deputy Collector against B, his zemindar, for recovery of possession of a piece of land, on the ground that he was the holder of a *maurasi* potta, and that he had been illegally ejected by B. The Deputy Collector held that the *maurasi* potta was genuine, and that B had illegally ejected A. He passed a decree in favor of A, in execution of which A obtained possession of the land in dispute. In a suit brought by B, against the heirs of A, in the Civil Court, for recovery of possession of the said piece of land, on the ground that the *maurasi* potta was a spurious document, and that no *maurasi* potta had been granted to A, *Held* (JACKSON, J., doubting) that the decision of the Deputy Collector was not conclusive between the parties.

IN 1866, one Backer Ali brought a suit in the Court of the Deputy Collector of the 24-Pergunnas, against the present appellants, Chunder Coomar Mundul and Jodoonath Mundul, under the provisions of cl. 6, s. 23, Act X of 1859, to recover possession of a certain piece of land, on the ground that he had been in possession thereof under a *maurasi* potta, and that he had been ejected therefrom by the then defendants under color of a decree to which he was no party. The defence set up was that there was no relation of landlord and tenant between Backer Ali and the then defendants, and that the *maurasi* potta set up by Backer Ali was a spurious document. The Deputy Collector held that the potta was genuine, and that Backer Ali had been illegally ejected. He, accordingly, passed a decree

\* Special Appeals, Nos. 1035 and 1036 of 1870, from the decrees of the Judge of the 24-Pergunnas, dated the 19th March 1870, reversing the decrees of the Additional Munsif of that district, dated the 30th April 1869.

infavor of Backer Ali. This decree was confirmed by the Judge in appeal. A special appeal was preferred to the High Court, but it was rejected by a Division Bench.

The present suit was brought by Chunder Coomar Mundul and Jodoonath Mundul in the Court of the Additional Munsif of the 24-Pergunnas, against Nunnee Khanum and others, the heirs of Backer Ali, for the recovery of possession of the piece of land for which Backer Ali had obtained a decree from the Court of the Deputy Collector, on the ground that the *maurasi* potta set up by Backer Ali was spurious; that no *maurasi* potta had been granted by the plaintiffs; and that whatever right Backer Ali might have had in his lifetime to hold possession of the land in dispute, his heirs had no right to hold it after his death. The plaint stated that the cause of action arose when the special appeal in the former suit had been rejected by the High Court. The defendants set up (*inter alia*) in their written statement that the suit was barred by s. 2, Act VIII of 1859, as the *maurasi* potta had been found by the Deputy Collector to be a genuine document; and that the potta was genuine.

The Subordinate Judge citing *Gooroodoss Roy v. Ramnarain Mitter* (1), held that the suit was not barred by s. 2, Act VIII of 1859, but that the plaintiffs were not entitled to recover possession, as the *maurasi* potta was a genuine document. He, accordingly, dismissed the plaintiffs' suit.

On appeal, the Judge held that the suit was barred by s. 2, Act VIII of 1859; that *Gooroodoss Roy v. Ramnarain Mitter* (1) was not applicable to the present suit; that, as the *maurasi* potta had been held to be genuine by a Court of competent jurisdiction, the plaintiffs were barred from instituting a civil suit to contest its genuineness, that the decision of the Deputy Collector was final and conclusive between the parties, and as the tenure was *maurasi* and hereditary, the plaintiffs had no right to eject the defendants. He, accordingly, dismissed the appeal.

The plaintiffs appealed to the High Court.

The appeal came on for hearing before a Division Bench

(1) B. L. R., Sup. Vol., 628.

1873

CHUNDER  
COOMAR  
MUNDUL  
v.  
NUNNEE  
KHANUM.

1873

CHUNDER  
COOMAR  
MUNDUL  
v.  
NUNNEE  
KHANUM.

(JACKSON and MITTER, JJ.), who, in consequence of a conflict of decisions and a difference of opinion between their Lordships, referred the following question for the opinion of a Full Bench, *viz* :—“ Whether the previous decision as to the potta is or is not conclusive between the parties ?”

In referring the question the following judgments were delivered :—

JACKSON, J.—The question raised in this special appeal is certainly not free from doubt. It is one on which the two Judges constituting the present Bench are not entirely agreed ; and, under any circumstances, I should think it more advisable to abstain from pronouncing judgment in a case where that is so.

But in the present case, the state of the authorities is one which entitles us to abstain from coming to a final decision, and to refer the question for the decision of a Full Bench.

In a case decided by a Division Bench of this Court, in which my learned colleague was one of the Judges, *Aradhun Dey v. Golam Hossein* (1), it has been determined, without much argument so far as we can discover from the judgment, that the “ judgment of the Collector in the matter of the genuineness of the potta is the judgment of a Court competent to determine that question in order to the determination of the further question of rent or of ejection ; but as it is not the judgment of a Court of concurrent jurisdiction with the Civil Courts, it cannot be pleaded as an estoppel in the Civil Court in an action for the ejection of the defendant as a trespasser.”

That ruling has been relied on as an authority for contending in the present case, that the plaintiffs, whose suit was to eject the defendant, one Backer Ali, claiming to hold as hereditary *mokurraridars*, are not precluded by a previous decision of the Collector’s Court in favor of the same Backer Ali in a suit brought by him against the zemindars (who are identical in title with the present plaintiffs) under cl. 6, s. 23 of Act X of 1859.

In pronouncing the judgment which I have just cited, Loch, J., refers, in support of the view taken, to a then recent judgment in the case of *Mussamut Edun v. Mussamut Bechun* (2), in

(1) 8 W. R., 487.

(2) 8 W. R., 175.

which difference of opinion having occurred between the two Judges of a Division Bench (Campbell and Phear, J.J.), the matter was re-argued before the learned Chief Justice, and Sir Barnes Peacock, concurring with Phear, J., held that the Collector's Court and Judge's Court were not Courts of concurrent jurisdiction, and, therefore, that the decision of the Collector is not conclusive except on the question of rent.

The matter which was under consideration in that case was very different from the matter in the present case. The question there was, whether, in a suit for rent, the defendant having set up a *zer-i-peshgi* ticca bond, and the Collector's Court having decided in favor of the validity of that bond, such decision was afterwards conclusive and binding in a suit on that bond in a Civil Court.

It is somewhat remarkable that, in a case occurring some time afterwards before a Division Bench of this Court, in which Loch, J., was the senior Judge,—namely, in the case of *Huro Lall Saha v. Sree Tirthanund Thakoor* (1)—that learned

(1) *Before Mr. Justice Loch and Justice Sir C. P. Hobhouse, Bart.*

*The 2nd May 1870. \**

HURO LALL SAHA (PLAINTIFF) *v.*  
SREE TIRTHANUND THAKOOR  
AND OTHERS (DEFENDANTS).\*

*Res judicata—Jurisdiction of Revenue Courts.*

Baboo *Khetter Mohun Mookerjee* for the appellants.

Baboo *Tarruck Nabh Sen* for the respondents.

THE COURT delivered the following judgments:

LOCH, J.—The plaintiff in this case is the proprietor of a resumed *malik* which he purchased from the former owners in 1274 (1867) by a private sale. He

took possession and ejected the defendants, who brought a suit under the provisions of s. 23, Act X of 1859 to recover possession, on the ground that they held the land under a potta from the plaintiff's vendors, and that the period of that potta had not expired. The Collector found that they held the land under a potta as alleged by them, and directed that they should be restored to possession.

The plaintiff brings the present suit to recover possession of the land, and to set aside the potta propounded by the defendants. The first Court gave him a decree. But the lower Appellate Court held that the question between the parties could not be disposed of by the Civil Court, that it had already been disposed of by the Revenue Court, and that the Civil Court could not interfere.

\* Special Appeal, No. 2840 of 1869, from a decree of the Subordinate Judge of Purneah, dated the 23rd September 1869, affirming a decree of the Munsif of that district, dated the 29th May 1869.

1873

CHUNDER  
COOMAR  
MUNDUL  
*v.*  
NUNNEE  
KHANUM.