

1874

Chowdhry (1) and Raja Mohesh Chunder Singh Surman v.

KRISHNA
KISHORZ
PODDAR
v.
WOMESH
CHUNDER
ROY

(The learned Judge then stated the facts as above, and continued) :— It appears to us to be clear that the Deputy Collector had no jurisdiction in the matter and that under Beng. Act III of 1870 it was by the Munsif, and the Munsif alone, that the application for the rehearing of the case under s. 58, Act X of 1859, could be heard. I think the whole of the proceedings of the Deputy Collector are irregular and without jurisdiction. But the fact that the Deputy Collector was acting without jurisdiction does not give the Collector jurisdiction in the matter. The Deputy Collector's proceedings were wholly irregular; but so far as I know, no provision is made for any appeal to the Collector in such cases, and the proper remedy would have been by an application to this Court.

In strictness, therefore, I think the petitioner is entitled to a rule (if it be worth while to issue it) calling upon the opposite party to show cause why the Collector's order should not be set aside.

Baboo *Rash Behari Ghosa* and *Bhowani Churn Dutt* showed cause.

Baboo *Anundo Chunder Ghosal* in support of the rule.

The judgment of the Court was delivered by JACKSON, J.—We do not consider it necessary to quash the order of the Collector by which the original order of the Deputy Collector was set aside, but we add to it the direction that the application made by the defendant to the Deputy Collector for a new trial

be transferred to the Court of the Munsif, who will consider the propriety of granting such application. We do not allow any costs.

(1) *Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainslie.*

The 24th June 1872.

OODWUNT MAHTOON (JUDGMENT-DEBTOR) v. BIDDHI CHAND CHOWDHRY (DECREE-HOLDER).*

Beng. Act III of 1870—Transfer of Decree—Procedure.

THE judgment-debtor in this case having been arrested in execution of an *ex parte* decree passed against him by the Revenue Court, which decree was afterwards transferred to the Civil Court under Beng. Act III of 1870, applied to the Munsif for a review of judgment. This application was made more than fifteen days after process of execution first issued. The Munsif held that the case must be decided under Act X of 1859, and refused the application, and his order was confirmed on appeal by the Judge, who was of opinion that the cases of *In re Sreemutty Juggo-dumba Dossee (a)* and *In re Wooma Churn Mozoomdar (b)* clearly showed that the case must be reheard under s. 58, Act X of 1859, and not under s. 119, Act VIII of 1859.

The judgment-debtor then preferred the present appeal.

Baboo *Nal Madhub Sen* for Appellant.

Baboo *Kalikishen Sen* for Respondent.

(a) 10 B. L. R., App., 22.

(b) *Ante*, p. 215.

* Miscellaneous Special Appeal, No. 125 of 1872, from an order of the Judge of Zilla Patna, dated the 19th January 1872, affirming an order of the Munsif of Behar, dated the 9th September 1871.

Bhoobun Moyee Debia (1), being in conflict with the decisions in
The following judgments were delivered.

Couch, C.J.—It is possible that the Judge may have been misled by a passage in the judgment in the case of *In re Wooma Churn Mozoomdar* (a), where it is said that the application for the rehearing of the case under s. 58, Act X of 1859, could be heard, and he may have supposed that the Court was laying down that the application was one under s. 58, Act X of 1859, and must be dealt with according to that Act. But Macpherson, J., was there only describing the application in the terms in which it had been made by the party. It had been erroneously made to the Munsif under S. 58, Act X of 1859, when it ought to have been made according to the provisions in s. 119, Act VIII of 1859, because it was by that Act that the procedure in the transferred suits was to be regulated.

The provisions of the law appear to me to be clear in the first instance, the suits which were pending in the Revenue Courts were not transferred to the Civil Courts, but suits which were brought after Act VIII of 1869 came into force were to be brought in the Civil Courts and to be regulated by Act VIII of 1859. The suits which remained in the Revenue Courts were naturally allowed to be regulated by the practice of those Courts. The Act of 1870 provided for the transfer from the Revenue Courts of the suits which had been allowed to remain there, and it having been provided by the Act of 1869 that the new suits

should be regulated by the Code of Civil Procedure, it was natural that the Bengal Legislature should say that all future proceedings in the transferred suits should be regulated in the same way, and that the Civil Court should not apply to the transferred suits a procedure which it was not accustomed to.

The provisions appear to me to be quite consistent. In this case the application was governed by s. 119 Act VIII of 1859, and the period allowed by that section ought to have been given to the party.

We must reverse the order of the lower Court, and remand the case for rehearing. The appellant will have the costs in this Court.

Ainslie, J.—I wish to add that in the order granting the rule in *In re Wooma Churn Mozoomdar* (a), the only question before Mr. Justice Macpherson and myself was, what Court had jurisdiction to try the case. We did not consider what procedure was to be applied by the Court that might eventually have to try the case, and it was not intended to decide that s. 58, Act X of 1859, would apply.

(1) *Before Mr. Justice Bayley and Mr. Justice Ainslie.*

The 2nd July 1872.

RAJA MOHESH CHUNDER SINGH SURMAN AND OTHERS (PLAINTIFFS) v. BHOOBUN MOYEE DEBIA (DEFENDANT).*

Beng. Act III of 1870—Transfer of Decree—Jurisdiction.

Baboo Gopal Lall Mitter for the appellants.

(a) *Ante* p. 215.

*Miscellaneous Special Appeal, No. 194 of 1872, against an order of the Officiating Judge of Zilla Mymensingh; dated the 7th February 1872, reversing an order of the Deputy Collector of that district, dated the 4th October 1871.

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