They might have proceeded under section 207 of Act VIII. of 1859.

The order of the lower appellate Court is reversed with costs.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

RAMLOCHAN DAS *v.* MANSUR ALI.*

1863
July 2.

Form of Decree.

In a suit for possession of lands under purchase of a share in an ancestral estate, the Judge, in pronouncing a decree for the plaintiff, ought to declare specifically whether the plaintiff is entitled to recover the share in an undivided estate, or specific lands as representing that share.

BAKAR ALI and Taib Bibi had originally instituted a suit, against Mohammed Dowlut and others, for possession, by right of inheritance, of a one-third share of lands, comprised in certain mouzas. On the 22nd July 1850, the following decree was passed: "That the defendant, Dowlut, do give possession to the plaintiff, of 4 drons, 1 kani, 8 gandas, 2 krants, 2 tils, 8 renus of land, out of the above-mentioned mouzas, as per schedule annexed to the decree, and do pay Rs. 1,889-11-10, for value of produce, interest, paddy, and kine, together with interest up to date of realization."

They afterwards sold a portion of the lands of the mouzas decreed to them to Ramlochan and others, who failing to obtain possession sued Mohammed Dowlut and the vendors for possession and mesne profits. Mohammed Dowlut brought a separate suit against Ramlochan and others, claiming the right of pre-emption, as a co-sharer of Bakar Ali and Taib Bibi, the vendors of Ramlochan. Both suits were tried together by the Principal Sudder Ameen of Chittagong, who dismissed the suit of Ramlochan, but gave a decree for Mohammed Dowlut, on the 23rd December 1862. On appeal, the Judge, Mr. Balfour, on the 18th April 1864, gave a decree for Ramlochan, and dismissed the suit of Mohammed Dowlut. The decree was in

* Miscellaneous Appeal, No. 196 of 1863, from a decree of the Judge of Chittagong, affirming a decree of the Principal Sudder Ameen of the district

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the following words: "The appeals are both decreed with costs, and the orders of the lower Courts reversed. The plaintiff, in the first case, will get a decree for possession and balance of rents as claimed."

The decree-holders, namely, Ramlochan and others, now sought to execute their decree against Mohammed Dowlut, but he objected with reference to the lands—possession whereof had already been delivered under the first decree—that the quantity of the lands decreed did not actually exist in those mouzas. The decree-holders, on the other hand, contended, that they were entitled to get possession of the lands mentioned in the decree, whether such mention was rightly or wrongly made.

The Principal Sudder Ameen found, as a fact, that the different plots specified in the suit, at the instance of Taib Bibi and Bakar Ali, the decree-holder's vendors, in these mouzas, did not actually exist. He held, "that the first decree was made in respect of a certain share, and the extent of that share only was determined thereby; that the decree-holder had taken possession of more lands in the different mouzas, than had been decreed to him or his vendors." On these grounds, he declared 'the former delivery of possession to be null and void; and that in a fresh execution, the decree-holders should be put into possession of lands actually existing in the mouzas, with reference to the share of the decree-holder, as determined in the former decree."

On appeal, the Judge affirmed the decision of the Principal Sudder Ameen. He held, that "there was no adjudication as to the exact quantity of land that appertained to the joint shares of Taib Bibi and Bakar Ali; and that the quantity of land specified in the decree was simply entered in accordance with the quantity of land that was supposed by the Court, guided by the plaint, to be comprised in the entire estate of the common ancestor; that the present decree-holders purchased only a certain portion of the joint shares of Taib Bibi and Bakar Ali, which shares formed 11 as. 6 gs. 2 cs. 2 ks. proportion of the one-third of the aforesaid estate, as appeared by the decree of the 22nd July 1850. Further, that the second decree of the 18th April 1864 could only be executed under the provisions

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of section 225 of Act VIII. of 1859, as the lands appertained to a joint undivided estate, and the decree-holders were declared to have obtained a decree for a twelve-thirteenths of the 11 annas 6 gs. 2 cs. 2 ks. proportion of the one-third share of the estates mentioned in the decree of the 22nd July 1850."

The decree-holders, Ramlochan and others, appealed on the following grounds:

"1. The Judge has misconstrued the decrees of the 22nd July 1850 and the 18th April 1864.

"2. The present decree-holders sued for a specific quantity of lands, and obtained a decree for that quantity. The Judge was wrong in holding that the decrees were for shares only, or that the petitioners were only entitled to possession of shares.

"3. The lower appellate Court was wrong in holding that the decree of the 18th April can only be executed under section 225 of Act VIII. of 1859."

Baboo *Srinath Banerjee* for appellants.

Baboo *Girija Sankar Mazumdar* for respondents.

The Judgment of the Court was delivered by

PEACOCK, C. J.—I think that the decision of the Judge is right, and that what the plaintiffs recovered was a share of an undivided estate; and, consequently, that they were not entitled to be put into possession of any specific lands as the share of what they had purchased. The specific lands, which constitute the share of the plaintiffs, can be ascertained only by partition, and not in execution of this decree. If the plaintiffs had been entitled to specific lands, as the share which they had purchased, they would have been able to give in their plaint the boundaries of the specific lands which they claimed; but they have not done so. The whole of the confusion and of the litigation subsequent to the decree of the 18th April 1864, has been caused by the want of sufficient care on the part of the Judge who pronounced the decree, in specifying what he intended that the plaintiffs should recover. Instead of declaring specifically

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whether the plaintiffs were to recover the share in an undivided estate which they had purchased, or specific lands as representing that share, the Judgment says that the plaintiffs will get possession with wasilat. But the lands, of which they were to get possession, is wholly undefined, and it is uncertain whether the Judge meant that they should get possession of a share of an undivided estate or of some specific lands.

The Principal Sudder Ameen and the present Judge have both, as it appears to me, put a proper construction upon the judgment of Mr. Balfour.

In preparing decrees, the Judges ought clearly to define what are their intentions, and the vakeels who represent the parties do not perform their duty simply by arguing the case, but they ought always to see that the decrees are drawn up according to the judgments of the Judge. If the Judges and the vakeels were more attentive to their duties in this respect, much of the litigation which commences after a decree is pronounced, and which frequently lasts for many years afterwards, would be avoided. A little time bestowed in seeing that the decrees are drawn up properly, would save the expenditure of much valuable time, which is often incurred in endeavouring to arrive at the real meaning of the decree.

The order of the lower Court is affirmed.

Before Mr. Justice Phear and Mr. Justice Hobhouse.

KRIPARAM *v.* BHAGAWAN DAS.*

1868
July 2.

Res judicata—Cause of Action—Estoppel.

A. claimed certain property as the adopted son of B., and it was decided in that suit, that A. had failed to prove that he was the adopted son of B. *Held*, that this decision was no legal bar to A.'s proving in another suit that he was the adopted son of B., in which A. sought to obtain a different property upon a different cause of action, though the parties to the suit were the same.

See also *ante* p. 1.

* Special Appeal, No. 80 of 1863, from a decree of the Principal Sudder Ameen of Sarup, affirming a decree of a Moonsiff of that district.