

1869
 RAMSAHAYA
 SING
 v.
 GUD MUZWAR
 ALI.

is even suggested. We need not go into that question and decide it because we are of opinion that the special appellants have wholly failed to show that the Principal Sudder Ameen was wrong in any points in which it is suggested in the grounds of special appeal that he has committed errors in law. It appears to us that there is no ground for supposing that the Principal Sudder Ameen did not consider the report of the amin. The report of the amin does not shew that the defendants were in actual possession of the shares now claimed by them previous to the date of the batwara.

The Principal Sudder Ameen is quite right in saying that 7 cowries awarded by the Moonsiff, out of the 9 annas pati in Ibruhimpore, were not claimed in the plaint, and he was quite justified in rejecting the copy of the hissanama; the original not having been produced or proved in any way.

It is very difficult in this special appeal, owing to the great confusion in the case, to form a satisfactory opinion as to the real merits of it. We can only say that we see no reason to conclude that the decision of the Principal Sudder Ameen is not right. The appeal will be dismissed with separate sets of costs payable to the different respondents who have appeared.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

1869
 March, 5.

MOHAMMED HOSSEIN (DEFENDANT) v. RAJA AKHAYA NARAYAN PAL
 (PLAINTIFF.)

Jurisdiction—Objection—Appellate Court.

The defendant objected to the jurisdiction in first Court, but took no objection to the jurisdiction before the lower Appellate Court.

Held, that objection to the jurisdiction was waived.

Mr. R. E. Twidale for appellant.

Baboo Mahendra Lal Shome for respondent.

The judgment of the Court was delivered by

MARKBY, J.—In this case the plaintiff, having borrowed money from the defendant, gave his zemindari in farm to the defendant, who was to reimburse himself from the proceeds, paying to the plaintiff rupees 300 a year as malikana. This suit is brought to recover some arrears of that allowance.

* Special Appeal, No. 581 of 1868, from a decree of the Officiating Judge of Midnapore, dated the 18th December 1867, affirming a decree of the Principal Sudder Ameen of that district, dated the 18th June 1867.

The two lower Courts, in this case, have given a decision in favor of the plaintiff, and the only ground on which we are asked to set that decision aside, is that the Civil Court has no jurisdiction to try the case.

The defendant objected to the jurisdiction in the first Court, but took no objection to the jurisdiction in the lower Court of appeal.

Without determining the question whether the Civil Court or the Revenue Court is the proper tribunal in this case, I think, that, under such circumstances, we ought not to set aside a decision which we must presume to be correct on the merits. I think that for the purpose of this appeal we ought to consider the objection to the jurisdiction as waived. Whether or no the defendant can take this objection in any other form, it is not necessary to say.

I think the appeal ought to be dismissed with costs.

JACKSON, J.—I concur in this judgment.

1869

MOHAMMED
HOSSEIN
v.
RAJA AKHAY
NARAYAN PA

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

MAHIMA CHANDRA ROY (ONE OF THE JUDGMENT-DEBTORS) v. PYARI
MOHAN CHOWDHRY AND ANOTHER (DECREE-HOLDERS,)*

1869
Mark, 9.

Joint decree—Execution.

Where two joint decree-holders, each interested in an eight-anna share in money decree, issued joint execution, and one of them after the death of the other, received the whole amount due under the decree, held, that this was only satisfaction as respects half of the decree, and that the representatives of the deceased were entitled to issue execution for the remaining half.

Baboo *Gopinath Mookerjee* for appellant.

Baboo *Nalit Chandra* for respondents.

The judgment of the Court was delivered by

HOBHOUSE, J.—One Shama Sundari sued the judgment-debtor, who is the special appellant before us, for a certain sum of money, and got a decree in her own name on the 6th September 1862. The judgment-debtor appealed to the Judge; and during the hearing of that appeal, one Ramkishor Chowdhry was made a co-respondent with Shama Sundari to the extent of an eight-anna share in the money decree.

* Miscellaneous Special Appeal, No. 21 of 1869, from a decree of the Judge of Dacca, dated the 27th October 1868, reversing a decree of the Subordinate Judge of that district, dated the 24th June 1868.