

facts with which no interference is possible in special appeal; but it appears to us that, as the Judge had no power to interfere with the order issuing notice on the judgment-debtor, his decision is not in reality one of fact at all, and cannot debar this Court, in special appeal, from allowing the judgment-creditor to execute his decree.

We think that the application of the 13<sup>th</sup> August 1854 was sufficient to keep the decree alive, and that the present application being within three years from the application preferred on the 13<sup>th</sup> August 1854, is in time, and that the decree ought to be executed accordingly.

The decision of the lower Appellate Court is therefore reversed, and the appeal decreed with costs.

1869

DHANPAT  
SING  
v.  
LILANANI  
SING.

*Before Mr. Justice Kemp and Mr. Justice Glover.*

SHEIKH RAMZAN ALI (DEFENDANT) v. SYED ANWAR ALI (PLAINTIFF).—  
*Jurisdiction—Act X. of 1859, s. 23, cl. 6.*

1869  
Jan. 20.

A suit for the declaration of the right of the plaintiff to a share in the produce of certain trees, on the allegation that these trees were planted by a person, whose rights had passed to the plaintiff by a bill of sale, is cognizable by the Civil Courts, and does not come within the meaning of clause 6, section 23 of Act X. of 1859.

Moulvie *Murhamut Hossein* for appellant.

Mr. *R. E. Twidale* for respondent.

The judgment of the Court was delivered by

KEMP, J.—In these two special appeals, the same parties were plaintiffs and defendants in the Court below.—The Judge has given the plaintiff a decree, in confirmation of the decree of the first Court. One point taken in special appeal in the two cases is, that the suit is not cognizable by a Civil Court, and that it ought to have been brought under clause 6 of section 23 of Act X. of 1859. This objection was not taken below; but as it is a question of jurisdiction, we shall notice it. The suit was not to recover the occupancy or possession of any land, farm, or tenure from which the ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same. It was a suit for a declaration of the right of the plaintiff to a half share in the produce of certain trees, on the allegation that these trees were planted by the person, whose rights had passed to the plaintiff by a bill of sale.

This ground of special appeal is clearly untenable.

Special Appeals, Nos. 2120 and 2125 of 1868, from the decrees of the Judge of Patna, dated the 26<sup>th</sup> December 1868, affirming the decrees of the Moonsiff of that district, dated 3<sup>rd</sup> December 1867.