

1869
 IN THE MAT-
 TER OF THE
 PETITION OF
 DURGA
 CHARAN SIB-
 KAR.

meeting these objections to the ruling of the Zilla Judge. But as there are undoubted difficulties in construing the sections of the Code upon which the questions turn, I do not wish to express any final opinion on the points raised. It is unnecessary to do so, because the Judge's decision, whether right or wrong, was upon a matter entirely within his jurisdiction, and upon which there is no appeal. I conceive, therefore, that this Court has no power whatever to interfere. There would be an end of the finality of all decisions if this Court, under some supposed general and undefined power (1) other than by way of appeal, could entertain applications, the object of which was to question the propriety of decisions in the Courts below. When the Courts below exceed their jurisdiction, or refuse to exercise it, we can interfere; but we cannot do so on the sole ground that the decision has been erroneous on a point of law.

BAYLEY, J.—I concur in the order of Mr. Justice Markby.

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

RAM CHANDRA GOSWAMI (DEFENDANT) v. MATILAL BAGCHI
 AND ANOTHER (PLAINTIFFS)*

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 Jan'y. 8.

Costs.

In a suit against several defendants to recover possession of land, one of them stated in defence that he had nothing to do with it, and made good his defence. The other defendants claimed to be entitled to the land, and proved their title. The disclaiming defendant appeared by a separate pleader and incurred a separate set of costs. *Held*, that the Sudder Ameen rightly awarded a separate set of costs to him, and the Judge had not exercised a sound discretion in modifying the Sudder Ameen's decree by awarding on set of costs only to all the defendants.

Baboo *Girija Sankar Mozoomdar* for appellant.

Baboo *Girish Chandra Mookerjee* for respondents.

(1) "Each of the High Courts may be subject to its Appellats established under this Act shall have Jurisdiction, &c."—24 and 25 Vic., C superintendence over all Courts which 104, Sec. 15.

*Miscellaneous Special, Appeal No. 485, of 1868, from a decree of the Officiating Judge of Nuddea, dated the 15th August 1868, modifying a decree of the Sudder Ameen of that district, dated the 15th November 1867.

The judgment of the Court was delivered by

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**RAMCHANDRA
GOSWAMI
v.
MATILAL
BAGCHI.**

PEACOCK, C. J.—This a very clear case. In this case a suit was brought against several defendants to recover possession of land. One of the defendants stated that he had nothing to do with the land. The other defendants claimed to be entitled to it.

The defendant who stated that he had not interfered with the land, conducted his defence by a separate pleader, and incurred separate costs, and the first Court considered that, as he had made good his defence, he was entitled to a separate set of costs, and awarded one set of costs to him and another set of costs to the other defendants who claimed title, and who also succeeded in their defence. It has been held that although an Appellate Court may entertain an appeal upon the subject of costs only, still, in dealing with the decision of the lower Court, any interference upon the subject of costs ought to be exercised with discretion. It appears to me that the order of the first Court in that respect was very reasonable, and that the plaintiff, if he thought fit to sue the defendant who had nothing to do with the case, had no reasonable cause of complaint if he was ordered to pay a separate set of costs to that defendant.

The Judge, upon appeal, held that as all the defendants were members of the same family, they ought to have had only one set of costs amongst them. No evidence, whatever, was given to show that all the defendants were joint in estate, nor was there any evidence, as I understand, even to show what relationship existed between the several defendants. Even if they were joint in estate, some of the members of the family might have separate property.

Under these circumstances, it appears to me that the Judge did not exercise a sound discretion in modifying the order of the *Sudder Ameen* and awarding one set of costs only to all the defendants, upon the assumption that they were members of the same family, without having any regard to the circumstance that they set up separate defences of different natures.

The order of the Judge is reversed with costs of this appeal and costs in the lower Appellate Court. The decision of the *Sudder Ameen* is affirmed.
