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undivided share. The plaintiff appealed, and took the ground that no issue was raised as to whether or not the 5½-anna share-holders of Laskarpore held a separate portion of the land, or whether the whole of the defendant's holding was part of an ijmali holding, and the plaintiff asks that the case may be remanded. This, however, appears to be unnecessary, because even assuming that the 5½-anna shareholders held separately 12 bigas of the land occupied by the defendant, it is clear that the plaintiff does not allege that he held any distinct portion of this land as a separate estate.

We do not find in Act X., or under any decision of this Court, any authority to the effect that one, who is entitled to a fractional share of an undivided estate, though he receives a definite portion of the rent from the tenant or ryot, is entitled to maintain a suit for a separate kabuliat in respect of such undivided share. We are not now considering what may be his rights to sue to enhance the rent which is paid with respect to his undivided share. We think that Act X. contemplates only the giving of pottas of entire holdings and kabuliats of entire rents. We think it would be a grievous hardship on ryots, if they were compellable to take separate pottas from the several holders of undivided shares, or to give separate kabuliats to such persons. The decision of the Court below appears to be correct. The appeal is dismissed with costs.

This decision governs the special appeal No. 1341 of 1868, which is also dismissed with costs.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

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BIR CHANDRA JUBARAJ GOSWAMI, INTERVENOR, *v.* MADHAB KAIBARTA, PLAINTIFF.*

Act X. of 1859, *s.* 77—*Adding Parties.*

In a suit against ryots for arrears of rent of certain lands, the appellant intervened, seeking to be added as a party under section 77 of Act X. of 1859, on the ground that his title to the lands in question had been declared by the decree of a Civil Court. *Held,* (reversing the decision of the Collector) that the Deputy Collec-

* Special Appeal, No. 154 of 1868, from the decision of the Judge of Tipperah, dated 4th May 1868, reversing a decision of the Deputy Collector of Brahmanbaria' dated 26th March 1868.

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for was right in limiting his enquiry to the question whether the lands in dispute were covered by the decree.

THIS was a special appeal from the decision of the Judge of Zilla Tippera, reversing a decision of the Deputy Collector of Brahmanbaria, before whom the suit was originally brought.

The plaintiff, manager on behalf of Annada Prasad Roy, minor zemindar of 12-annas 12-gandas share of Pergunna Surail, within the jurisdiction of the Court of Wards, sued the ryots for arrears of rent of "three kanis of land comprised of 2 plots of *boro* land in Bund Khaijortich, in Kismat Shuldaha, appertaining to the 12-annas 12-gandas share of Pergunna Surail. Plaintiff alleged that the land was included in Mauza Sandab. Bir Chandra Jubaraj Goswami was added as a party to the suit under section 77 of Act X. of 1859. He sought to be added on the following grounds:

That the land in question did not appertain to Kismat Shuldaha in Pergunna Surail, but that it appertained to the *Diara* of the river Titash, in Pergunna Nurnagar, within his (the petitioner's) zemindari of Chakla Roshenabad. That a suit had been instituted in the Civil Court by the father of the present minor, for declaration of title to the *Diara* for possession thereof, but his suit was dismissed by the Civil Court, and the land declared to appertain to his (the petitioner's) zemindari, and that decision had been upheld by the High Court in appeal. That the land now in dispute is part and parcel of the *Diara* and included within the said decree and Thak Map as such, except himself (the petitioner) nobody else was in any way entitled to the rents of the said land.

The Deputy Collector was of opinion that the Court was not called upon to enter into the question of previous receipt and enjoyment of rent, for, if the plaintiff was in previous receipt of rent, that circumstance could avail him nothing in the face of the Civil Court decisions. By a local investigation held by an Ameen, he had satisfied himself that the land in question was included in the decree; he, therefore, considered it unnecessary to examine the plaintiff's witnesses, and dismissed the suit with costs.

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From this decision the plaintiff appealed to the Judge of Tippera, who, on the 11th May 1868, reversed the decision of the Deputy Collector, upon the ground that he ought not to have decided on a question of title, but should have put the intervenor to the proof of previous receipt of rent from the defendants.

From this decision the intervenor appealed to the High Court.

Mr. *Paul* (with him Baboos *Anukul Chandra Mookerjee* and *Atul Chandra Mookerjee*) for the intervenor, appellant.—The intervenor having shown by a final decree of a competent Court in which the right of the intervenor to the land was declared by a Civil Court, the plaintiff, respondent, cannot succeed under section 77 of Act X. of 1859, even if he succeeds in proving receipt of rent by him, for a Collector cannot annul a Civil Court decree.

The question in issue is whether the plaintiff was in *bona fide* receipt of rents. With the decree of the Civil Court against him, any receipt of rent after date of such decree would be *mala fide*. *Ramjeebun Chowdry* v. *Pearylall Mundle* (1). The case should be remanded to ascertain whether the land in dispute really was covered by the decree relied on.

Baboo *Jagadanand Mookerjee* (with him Baboos *Ambika Charan Banerjee* and *Ashutosh Chatterjee*.—The Deputy Collector should have enquired into the actual receipt of rent, *Musst. Tarinee* v. *Bamundoss Moakhef* (2).

BAYLEY, J.—The real contention in this special appeal is that whereas a Civil Court has already decreed the lands, the rents of which form the subject of the plaintiff's suit, to the intervenor, the plaintiff could not sue as in actual receipt of the rents, *bona fide* with reference to the terms of section 77 of Act X. of 1859, as he would thus render inoperative a Civil Court decree.

The plaintiff sued the defendant in this case, for arrears of rent. alleging that the lands appertained to the plaintiff's property, Surrail.

(1) 4 W. R., Act X. Rul., 30. (2) 1 W. R., 331.

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The Maharaja (appellant) intervened, alleging that the lands did not belong to the plaintiff's talook, but to his the (Maharaja's) property, Nurnagar.

It is clear from the proceedings of the Court, and from the state of pleadings on the record before us, that if the lands be found to be in the plaintiff's estate of Surail, the intervenor (Maharaja) has no claim under the Civil Court decree. On the other hand, if the lands are found to be within the Maharaja's estate of Nurnagar, the plaintiff has no claim to the rents of such lands. The first Court has clearly found, as a fact, that the lands for the rents of which the plaintiff sues, belong to the Maharaja's estate of Nurnagar.

The lower Appellate Court comes to no decision upon the correctness of this finding of the first Court, but remands the case to the Deputy Collector, with an order that the latter should "satisfy himself as to whether the relationship of landlord and "tenant exists between the parties, and after taking such evi- "dence as plaintiff was ready to produce, decide the case on its "merits and with reference to the above remarks."

Without going further into the facts and pleadings in this particular case, I am of opinion that the ground taken by the special appellant is good and valid, because both the parties admit in their pleadings that if the lands belonged to the plaintiff's estate, the plaintiff was in actual and *bonâ fide* receipt of the rents; and if they belonged to the intervenor's estate, the intervenor (Maharaja) was in actual and *bonâ fide* receipt of the rents. It was certainly, therefore, essential that there should be a proper finding by the lower Appellate Court as to who was in actual receipt and enjoyment of the rents *bonâ fide, i. e.*, it was essential for the lower Appellate Court to decide whether the first Court was right in finding the lands to be decreed by the Civil Court to the Maharaja as his lands of Nurnagar or not.

The case ought, accordingly, to be remanded to the lower Appellate Court, in order that it may clearly find whether, according to the allegations of the parties respectively, the lands appertained to the plaintiff's estate, Surail; or to the defendants, Nurnagar; and according to the finding decide as to whether

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the actual receipt and enjoyment of the rents *bona fide* is with the one party, or the other.

HOBHOUSE, J.—I agree that this case must be remanded, but I think it better to state separately the reasons upon which I have arrived at that judgment.

The plaintiff sued for arrears of rent of Pergunna Surail. The intervenor claimed to be heard under section 77, alleging that he was in actual receipt and enjoyment of the rents as proprietor of Pergunna Nurnagar, and stated that the particular lands, in dispute were covered by a decree of the Civil Court, dated the 20th April 1866, by which it was declared that the lands were part of his estate Mauza Nurnagar.

The plaintiff's agent was then asked by the Court as to whether this fact was so or not, and he denied that it was so.

The intervenor then asked for a local investigation in the matter, and such investigation was granted. It seems to me to follow from the contentions on either side, that both parties were agreed that the question as to the actual receipt and enjoyment of the rents by the intervenor should depend upon the result of the investigation as to whether the lands were covered by the decree of 20th April 1866.

If they were so covered by that decree, then it was conceded that the intervenor was the person in actual receipt and enjoyment of the rents; if not, he was not such person; and the only question then remaining would be a question between the plaintiff and the ryots (defendants). In this view of the case, I think that the first Court had jurisdiction to determine, and was right in determining as a matter of fact, as to whether the lands were covered by the decree of the 20th April 1866, and I also think that the lower Appellate Court was wrong in not determining the same fact. I would, therefore, remand the case in order to have the point determined. If it should be found that the lands are covered by the decree, then the plaintiff's suit must be dismissed; if not, the only question still remaining will be a question as between the plaintiff and ryots (defendants). Costs will follow the event.

Before Mr. Justice Bayley and Mr. Justice Markby.

IN THE MATTER OF THE PETITION OF DURGA CHARAN SIRKAR * 1869 *Jany.* 8.

Superintendence—Appeal—24 & 25 Vic. c. 104. s. 15.

A certificated purchaser of property sold in execution of a decree, applied to the Judge for an order of confirmation of sale, and was refused *Held*, that the High Court had no power to interfere with a Judge's decision, even though erroneous on a point of law, upon a matter entirely within his jurisdiction, and from which there is no appeal. See Act XIV. of 1882 Sec. 622.

Baboo *Mohini Mohan Roy*, on behalf of Durga Charan Sirkar, moved to make absolute a rule *Nisi*, which had been granted by Bayley and Mitter, JJ., on the following petition :—

"That in execution of a decree obtained by Thakur Das Roy in the Sealdah Small Cause Court, and executed under a certificate in the Court of the Judge of the 24-Pergunnas, a piece of land, with a house standing thereon, belonging to the Judgment-debtor, was put up for sale, and purchased by your petitioner on the 30th May.

"That, on the 6th June, the judgment-debtor applied under section 256 to have the sale set aside, and the 27th June was fixed for the hearing of this application, on which date, the judgment-debtor withdrew his objections to the sale, and asked that the surplus-proceeds might be paid over to him.

"That, on the 3rd July, after the expiration of 30 days from the sale, your petitioner applied for the usual certificate of purchase under section 259, and the Judge ordered that the certificate should be given.

"That, on the 11th July, one Durga Charan Ghosal, who held another decree against the judgment-debtor, which decree was then in course of execution in the Court of the Subordinate Judge, presented an application, praying for the sale proceeds on the ground of his prior attachment. The said Durga Charan Ghosal had likewise presented a similar application to the Subordinate Judge on the 7th July.

* *Rule Nisi*, No. 17 of 1869.

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"That at the hearing of Durga Charan Ghosal's application for the sale proceeds, his vakil raised certain objections as to the regularity of the sale proceedings, and appears to have asked the sale to be set aside on the ground of inadequate price.

"That the Court below, although rejecting the objections urged by Durga Charan Ghosal as inadmissible, has refused to confirm the sale, and has declared it to be null and of no effect for certain reasons contained in its judgment of the 13th August.

"That your petitioner, therefore, humbly prays that this Hon'ble Court will be pleased, under its general power of superintendence, to set aside the order of the Judge, declaring your petitioner's purchase to be null and of no effect, and to order the said Judge to confirm the sale."

Upon this petition, a rule was granted, calling upon Durga Charan Ghosal to show cause why the Judge's order should not be set aside.

Baboos *Taraknath Sen* and *Khettra Mohan Gangooly*, on behalf of Durga Charan Ghosal, showed cause.

MARKBY, J.—In this case the facts appear to be that one Thakur Das Roy received a decree, in the Sealdah Small Cause Court, on the 21st February 1866, for rupees 160, against one Ishan Chandra Chatterjee. Being desirous to execute this decree against the immovable property of the defendant, he applied to the Judge's Court of the 24-Pergunnas, under section 20 of Act XI. of 1865, for this purpose. That Court actually attached certain immovable property of the judgment-debtor within its jurisdiction on the 23rd March 1868, the sale followed in regular course, and the property was sold to one Durga Charan Sirkar, on the 30th May, for rupees 306.

On the 15th March 1867, or rather more than a year after the first judgment was received, one Durga Charan Ghosal received a judgment against Ishan Chandra Chatterjee in the Court of the Principal Sudder Ameen of the same Zilla, and in execution of this decree, by proceedings in the Court of the Principal Sudder Ameen, he attached the same property. This was on the 9th March 1868, that is to say, 14 days before the attach-

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ment of the property effected by Thakur Das Roy. In consequence of some claim to the property made in the Principal Sudder Ameen's Court, there was some delay in proceeding with the execution in that Court, and during this delay the property was sold under the execution in the Zilla Judge's Court.

On the 11th of July, Durga Charan Ghosal made an application to the Zilla Judge of 24-Pergunnas to set aside the sale to Durga Charan Roy, on the ground of certain irregularities, and the inadequate price obtained for the property. The Zilla Judge considered that Durga Charan Ghosal's application was inadmissible on two grounds: *first*, inasmuch as he was not the judgment-debtor; and, *secondly*, as it was not made within 30 days after the sale took place.

When, however, the Zilla Judge was called upon by the purchaser to confirm the sale, he conceived that he was at liberty to consider whether or no the judgment and sale had been made sufficiently public, and, generally, whether the sale ought to be confirmed.

Ultimately, he refused to confirm the sale for two reasons: *first*, because the attachment and order of sale by his own Court were, in his opinion, not made sufficiently public; *secondly*, because the attachment in the Principal Sudder Ameen's Court having been prior to the attachment in his own Court, he thought that no legal sale could be made by his order, and by his order declared the sale to be void.

Durga Charan Sirkar, the purchaser, has now obtained a rule calling upon the decree-holder, Thakur Das Roy, to show cause why this order of the Zilla Judge should not be set aside.

Two objections to the order have been made by the pleader for the applicant in the argument upon this rule: *first*, that the Judge having found that the requirements of the Statute as to publication had been formally complied with was not at liberty to find that the publication had been insufficient; and, *secondly*, that the Judge was wrong in holding that the prior attachment in the Principal Sudder Ameen's Court prevented him from making an order for the sale of the property in his own Court.

Were it necessary now to express an opinion upon these two points, I must say that I should have considerable difficulty in

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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 Mitter.

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

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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 Appellate 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.