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RADHA GOBINDA SHAHA v. SHEIK TAWEU JAMADAR.

Criminal Procedure, to have all his decrees paid in full to the exclusion of other attaching creditors. I understand the words of section 270, *viz.* "the person on whose application such property was attached" to mean not the individual but the executing-creditor, looking upon him simply as the person interested in that particular suit.

Then it cannot be said that there is any efficacy in the decrees which the plaintiff obtained declaring him entitled to be paid in all the four suits out of the property attached and released, because the defendants before us were no parties to that decree.

It was contended that the four attachments, made in the year 1864 (if there were four attachments,) were revived by the efficacy of the decrees which the plaintiff obtained against the claimants; but plaintiff's own conduct in afterwards taking out a separate attachment in the first of those cases appears to militate against this view. Whether or not, however, I think as I have already said, that the plaintiff can only be regarded as first attaching creditor, in respect of one of his decrees which he held; consequently, on this ground the Court below ought to have dismissed his suit.

The special appeal, therefore, in my opinion, must be dismissed with costs.

MITTER, J.—I concur with my learned colleague in dismissing this appeal.

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Before Mr. Justice Phear and Mr. Justice Hobhouse.

UMATARA DEBI (PLAINTIFF) *v.* KRISHNAKAMINI DASI AND OTHERS (DEFENDANTS)*

Res judicata—Cause of Action—Act VIII. of 1859, *s.* 2.

A sued B to recover possession of certain land, claiming it as part of her talook. In a former suit, A had sued B to recover possession of the same land, claiming it as towfir (or excess), and her suit had been dismissed. *Held*, that A's present suit was barred under section 2 of Act VIII. of 1859 (1).

See also 1 B. L. R, (Ac) 68.

THIS was a suit instituted in the Court of the Principal Sudder Ameen of the 24-Pergunnas to obtain possession of

* Regular Appeal, No. 19 of 1868, from a decision of the Principal Sudder Ameen of the 24-Pergunnas.

(1) See *Kripamoy* v. *Bhagaw a Das*. 1 B. L. R. (A. C.), 63.

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UMAATARA DE v. KRISHNAKA MINI DASI.

777 bigas, 10 katas, and 9 chataks of land, which the plaintiff alleged belonged to her talook Mauza Shahazadpore. The plaintiff had brought a suit in 1854, against the defendants, for possession of a certain quantity of land, which she claimed as *towfir*, or excess land, of her talook Shahazadpore, and her suit was dimissed. The Principal Sudder Ameen, on the evidence, came to the conclusion that the land claimed by the plaintiff in the present suit was the same as that for which she had sued before; and, consequently, held that the plaintiff's claim was barred by section 2 of Act VIII. of 1859. The plaintiff appealed to the High Court, and her grounds of appeal bearing on the question of *res-judicata* were the following:—

1. "Admitting that the land now sued for was identical with that claimed in the *towfir* suit, the present action is not affected by *res-judicata*. The Principal Sudder Ameen has wholly erred in the application of the doctrine aforesaid."

2. "The several tests by which Courts of Justice are to determine, whether a suit is affected by *res-judicata*, are wholly wanting. In the present suit the claim is different, the right asserted would be different, the issues would be different, and the adjudication of those issues can never clash with the decision in the other case."

Baboos *Anukul Chandra Mookerjee* and *Ashutosh Chatterjee* for appellant.

Baboos *Annada Prasad Banerjee* and *Ramesh Chandra Mitter* for respondent.

The judgment of the Court was delivered by

PHEAR, J.—This is a suit to recover possession of certain land from the defendants. The present plaintiff also, in 1854, instituted a suit against the present defendants to recover possession of land from them.

I am distinctly of opinion from the evidence that the land which is the subject of the present suit was part of the land which the plaintiff sued for in 1854. She was defeated in the

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suit of 1854, and has never had possession of the land in question since that date. It follows, therefore, as it appears to me, that her cause of action was in both suits the same. In both she sought to recover from the defendants the same land on the ground that it was wrongfully withheld from her by them, and the wrong-doing of the defendants was the same act or series of acts in the one case as in the other. It is true that the title to possession on which the plaintiff now relies is different from that which she set up in the suit of 1854. In the present suit, she claims the land as being part of her talook Shahazadpore, while in 1854 she maintained that this land was *towfir* which she had reclaimed and occupied as proprietor of the talook, and on that account was entitled, as against the defendants, to have settled with her by Government. But I think the difference in the title put forward does not change the cause of action within the meaning of section 2 of Act VIII. of 1859. The plaintiff's cause of action, that which obliges her to seek the aid of a Court of justice, is simply this, namely that she is, as she alleges, wrongfully deprived by the defendants of the enjoyment by possession of certain land which she is entitled to have. It is for her at the trial to make out such a title to possession as will prevail against the defendants. If she omits to put forward her strongest title or her real title, so much the worse for her. The adjudiction in the suit determines as between her and the defendants not only the matter of the particular title which she sets up, but the actual right to possession at the date of the plaint, by whatever title it might be capable of being then supported.

It appears to me that this suit is barred by the operation of section 2 of Act VIII. of 1859; and, consequently, that this appeal should be dismissed with costs.

HOBHOUSE, J.—I am of the same opinion.