

period until it is properly put an end to by either party. We think that a potta, the term of which is defined by these words, falls within the 4th clause of section 17, Act XX. of 1866; and that it is a lease for a term exceeding one year. Therefore, by the provisions of that section, the document must be registered, otherwise, by section 49 of the same Act, it cannot be received as evidence in any Court whatever. It follows that the first objection made on special appeal to the judgment of the Court below falls to the ground. The remaining objection is one which is based upon the nature of the title of the defendant, but inasmuch as the title-deed, which is the primary evidence of that title, cannot be received, the Court would have been wrong if it had looked at secondary evidence of the same. This objection, therefore, also fails, and the special appeal must be dismissed with costs.

1863

KAMKUNAR  
MANDAL  
v.  
BRAJAHARI  
MRIDHA

*Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.*

RAJCHANDRA BOSE v. DHARMACHANDRA BOSE \*

*Movable Property—Jurisdiction of Small Cause Court—Act XL of 1865.*

1863  
Nov. 23

Huts are not "movable property" within the meaning of Act XL of 1865.

THIS was a reference by the Judge of the Small Cause Court of Jessore. In stating the case he said:

"This is a suit brought under section 245 of Act VIII. of 1859 by the plaintiff, to establish his right to the huts mentioned in the plaint, and to recover possession of the same; but there is no prayer in the alternative for the value of the same.

"Two questions, therefore, arise: *Firstly*, whether huts in this country are to be considered personal property; and, *secondly*, whether the suit, as laid in the plaint, is cognizable by a Small Cause Court.

"I think that huts should not be considered personal or movable property in this country, and that no action for the recovery of the same or its value can lie in a Small Cause Court, and that

Reference by the Judge of the Small Cause Court of Jessore.

1868

KASHICHANDRA  
BOSE  
v.DHARMA-  
CHANDRA  
BOSE.

huts ought not to be attached in execution of a decree of such a Court. The plaintiff's suit has, accordingly, been dismissed with costs, contingent on the opinion of the honorable Judges of the High Court."

The Judge, in the statement of the case referred by him, alluded to the decision of Bayley and Macpherson, JJ., in *Kashichandra Dutt v. Jadrnath Chuckerbutty* (1).

The judgment of the High Court was delivered by

PEACOCK, C. J.—We think that the opinion expressed by the Small Cause Court Judge is correct. We think that huts are not movable property within the meaning of section 19 of the Small Cause Court Act, and consequently that they cannot be seized in execution. The word "movable" in that section is used in contra distinction to the word "immovable" in section 20. The word used is "movable" not "removable," and that word does not, in our opinion, comprehend any thing which the judgment-debtor has a right to remove. It means property which is capable of being moved in its existing state.

A man has a right to remove a house which is built upon his own land, but it could not be contended that a pukka house built by a man upon his own land is movable property, because he had a right to remove it, and that the land itself is immovable. If a house built upon a man's own land is not movable property, a house built upon a land which is rented from another does not seem to fall within the word "movable." If such a house is not movable property, there seems to be no reason why a mud house should be held to be movable property; and the same reasoning appears to be applicable to a hut. In any one of these cases, a right to remove may exist, and the materials of which the erection is composed are capable of being removed, although the removal in one case would be attended with greater degree of labor than in the other. But the question as to whether the property is movable or not, cannot depend upon the amount of labor which is required to remove

it. The words "personal property" in section 6 seem to be used in the sense of movable property; for as regards Hindus and Mohammedans, there is no distinction between real and personal property, the distinction being between movable and immovable. That the word "personal" is used in section 6 as referring to moveable property, is borne out to some extent by section 19, which gives power to issue execution against the movable property of the debtor; and in the subsequent part of it uses the word "personal" apparently in the sense of movable. The words are "if the warrant be directed against the movable property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor."

There is no more reason why the Small Cause Court should have power to seize in execution a hut erected upon a small piece of land than it should have to seize the land itself.

*Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.*

IN THE MATTER OF KOKYA DINE, DECEASED.\*

*Will of a Buddhist—Indian Succession Act. (X of 1865), s. 331.*

Probates may be granted of the will of a Buddhist made after the 1st January 1866. It is not necessary that the will of a Buddhist should be executed according to the formalities required by the Indian Succession Act.

THE following case was stated for the decision of the High Court by the Recorder of Rangoon.

"Mah Mee, Mah Lay, and Moungh Yoon, the children of Kokya Dine, deceased, ask for probate of the will of Kokya Dine.

"The deceased was a Buddhist, and the petitioners are Buddhists.

"The deceased died upon the 3rd of September 1868, leaving property, both real and personal, within the jurisdiction of this

\* Referres by the Recorder of Rangoon.

1865

RAJCHANDER  
BOSE  
D.  
DHARMA-  
CHANDRA  
BOSE.

1868

Nov. 28.