

“ then is of equal force, whether the thing is divisible or other-  
 “ wise.” The writer of the Hedaya then assigns the reason why the right is not applicable to movables, because of the saying of the prophet, “ *shoofa* affects only houses and gardens” and “ also because the intention of *shoofa* being to prevent the vexation arising from a bad neighbour, it is needless to extend it to property of a movable nature.” Looking at the chapter on *shoofa* in the Hedaya, the right appears to be limited to parcels of land, houses, &c., does not contemplate the right to purchase a separate estate, because a part of it is counterterminous with that of the *shufee*. It is true that a person may have a bad neighbour, as a zemindar, and so suffer as much vexation from him as from a bad neighbour next-door, or holding the next field, but still it appears to me that the law was intended to prevent vexation to holders of small plots of land who might be annoyed by the introduction of a stranger among them. I think I would apply the ruling laid down in the judgment of the Court quoted above, to the present case, and allow the judgment, of the lower Court to stand, for the property to which the right of pre-emption is claimed is a separate estate paying revenue to Government. I would dismiss the appeal with costs.

MITTER, J.—I concur. The property in dispute is an estate paying revenue to Government, and I am not prepared to say that this case is not governed by the decision relied upon by the respondent.

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

RAMBAKSH CHETLANGI, PLAINTIFF, v. MAHARAJA BANWARI  
 GOBIND BAHADUR, DEFENDANT.\*

Purchase of Decree held by Judgment-debtor in Execution—Act VIII. of  
 1859, s. 288.

A. obtained a decree in the Nuddea Court against B, who had obtained a decree against C. in the Beerbhoom Court. The latter was attached by the Nuddea Court, and sold to A. in execution of his decree. A. then petitioned the Beerbhoom Court for execution against C. He'd, that the Nuddea Court had jurisdiction to attach and sell B.'s decree against C., and A. had a right to apply to the Beerbhoom Court for execution thereof.

\* Miscellaneous Regular Appeals, Nos. 314, 315, 316, and 317 of 1868, from an order of the Subordinate Judge of Beerbhoom.

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ABDUL AZIM  
 v.  
 KHONDKAR  
 HAMED ALI.

1868  
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1868

RAMBAKSH  
CHETLANGI  
v.  
MAHARAJA  
BANWARI  
GOBIND  
MAHADUR.

The plaintiff, appellant, had obtained a decree against one Jadunath Roy, in the Court of the Subordinate Judge of Nuddea, within whose jurisdiction Jadunath Roy resided. Jadunath Roy had obtained a decree against Banwari Gobind, in the Court of the Subordinate Judge at Beerbhoom. The latter decree was attached by the Court at Nuddea in execution of the plaintiff's decree against Jadunath Roy, and all Jadunath Roy's right, title, and interest in that decree was sold to the plaintiff. Subsequently, the plaintiff filed a petition in the Court of the Subordinate Judge of Beerbhoom, for execution of the decree against Banwari Gobind, Jadunath Roy's judgment-debtor.

The petition of the plaintiff was dismissed by the Subordinate Judge of Beerbhoom, under the following judgment :

" It has been laid down in section 285 of Act VIII. of 1859, that in enforcing a decree on a property, whether movable or immovable, situated in a place out of the local jurisdiction of the Court by which it has been passed, that Court should send copy of the decree with a certificate to the Civil Court of the district where the said property may be situated; and that the attachment and sale of the property should be effected in that district. The properties covered by these decrees, though situated in the local jurisdiction of this Court, were attached and sold by auction at the Court of the Principal Sudder Ameen of Nuddea, and was purchased by the petitioner. The said properties being situated in the jurisdiction of this Court, the Principal Sudder Ameen of Nuddea should have followed the direction laid down in section 285. But, as instead of doing so, he has caused them to be sold at his own Court, that sale is invalid, and the petitioner has derived no right from that purchase; and he cannot, therefore, be allowed to represent the decree-holder."

The petitioner appealed to the High Court.

Baboo *Kali Prasanna Dutt* and *Ramanath Bose* for appellants. The respondent was not represented.

The judgment of the Court was delivered by

PEACOCK, C. J.—The plaintiff obtained a decree against

Jadunath Roy in the Court of the Subordinate Judge of Nuddea, within the jurisdiction of which Court Jadunath Roy resided. Jadunath Roy had obtained a decree in the Beerbhoom Court against Banwari Gobind, which was attached by the Nuddea Court, under the decree of the plaintiff, and sold to the plaintiff himself under the execution. It appears to us, that the Nuddea Court had jurisdiction to sell Jadunath's right, title, and interest in that decree, and having done so, the plaintiff, who had purchased under that execution, became the assignee of the decree, and as such assignee has a right to apply to the Beerbhoom Court to have execution of it.

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BAMBARSH  
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BANWARI  
GOBIND  
PARADUR.

Under these circumstances, we think that the order of the Subordinate Judge must be reversed with costs.

This decision will govern Miscellaneous Appeals, Nos. 315, 316, and 317 of 1868 in which the orders of the Subordinate Judge are reversed without costs.

Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice L. S. Jackson,  
and Mr. Justice Mitter.

RADHA CHARAN GHATAK AND OTHERS (PLAINTIFFS) v. ZAMIRUN-  
NISA KHANUM (DEFENDANT).\*

Mesne Profits—Possessor, Decree—Act XIV. of 1859, s. 15.

1868  
Sept. 9.

A decree for possession in a suit under section 15 of Act XIV. of 1859, is *prima facie* evidence that the plaintiff in that suit is entitled to recover from the defendant therein, mesne profits for the period of dispossession.

THIS was a suit for mesne profits of a certain share in Kismats Ramhari and others, for the year 1272 (1866), valued at Rs. 74-11, which the plaintiffs, who had recovered possession from the defendant, under section 15 of Act XIV. of 1859, sought to obtain from the defendant, for the time during which they alleged that she had been in wrongful possession.

The defendant contended, *inter alia*, that the plaintiffs were not entitled to recover mesne profits, without proving their title to the disputed property.

\* Special Appeals, Nos. 10 to 20 of 1868, under section 15 of the Letters Patent of 1865, for the High Court at Calcutta, from a judgment of Mr. Justice Macpherson and Mr. Justice E. Jackson, dated the 20th May 1865, in Special Appeals, Nos. 2097, 2296, 2298 to 2301, 3284, 3285, and 3286, from decrees of the Judge of Rajshahye.