

The 15th May 1865.

Present :

The Hon'ble W. Morgan and Shumbhoonath Pundit, *Judges.*

Suit for enhancement by Auction-purchaser (before Act X. of 1859)—Uniform payment by Ryot before Decennial Settlement—Onus probandi.

Case No. 551 of 1865.

Special Appeal from a decision passed by the Judge of the Small Cause Court, exercising the powers of a Principal Sudder Ameen of Furreedpore, in Dacca, dated the 24th December 1864, affirming a decision passed by the Moonstiff of that District, dated the 31st December 1861.

Showdaminee Dossia (Plaintiff), *Appellant,*

versus

Gooroo Pershad Dutt and others (Defendants), *Respondents.*

Baboo Mohinee Mohun Roy and Chunder Madhub Ghose for Appellant.

None for Respondents.

In a suit for enhancement brought by an auction-purchaser before Act X. of 1859, the ryot cannot avail himself of the presumption arising under section 4 of that Act from a uniform payment for 20 years, but must prove uniform payment for 12 years before the Decennial Settlement. Notwithstanding proof of such payment, he will still be liable to enhancement in respect of lands held by him in excess of the quantity mentioned in his lease.

THIS suit having been instituted before Act X. of 1859 came into operation, and therefore not being a case under that Act, the presumption arising under section 5 of the law from a uniform payment for twenty years does not apply to this case.

The findings of the Lower Appellate Court are not sufficient to debar the special appellant from obtaining a decree for enhancement against the defendant. The ryot must show that the lands have paid a uniform amount of rent from a time 12 years prior to the Decennial Settlement, before he can successfully answer the claim of enhancement at Pergunnah rates brought against him by a plaintiff claiming to be an auction-purchaser. Even, if the defendant had succeeded in establishing such a payment, he would still be liable for the rents of the lands said to be held by him in excess of the quantity originally leased out, and for which he was hitherto paying.

The case is, therefore, remanded to the Lower Appellate Court to ascertain whether

the plaintiff is an auction-purchaser entitled to enhance at Pergunnah rates under the laws in force before Act X. of 1859 came into operation, and to find out from what times what rents have been paid for the tenure, what was the quantity of land originally leased out, what quantity of it has been since taken away for public purposes, and how much at present the defendant holds in excess of the remainder of the original quantity. It will then proceed to fix what is the proper Pergunnah rate of rents for the whole of the lands held by the defendant, or, as the case may be, of the quantity that he may be found to hold in excess of the original quantity leased out, *minus* the lands taken for public purposes.

The 15th May 1865.

Present :

The Hon'ble G. Loch and W. S. Seton-Karr, *Judges.*

Adoption—Sale by Widow—Judgment on permission to adopt, and on adoption and legitimacy, is a judgment in rem

Case No. 292 of 1864.

Regular Appeal from a decision passed by the Judge of Moorshedabad, dated the 18th June 1864.

Rajkristo Roy (Defendant), *Appellant,*

versus

Kishoree Mohun Mojoomdar (Plaintiff), *Respondent.*

Messrs. R. V. Doyne, G. C. Paul, and R. T. Allan, and Baboo Kishen Kishore Ghose, Dwarkanath Miller, Onocool Chunder Mookerjee, Ashootosh Dhur, and Umbica Churn Banerjee for Appellant.

Baboo Sreenath Doss and Unnoda Pershad Banerjee for Respondent.

Suit laid at Rupees 21,045-8-10-2.

An adopted son is not actually precluded from ever questioning acts done by his mother during his minority or before his adoption, in the same manner as any other reversioner might question such acts. Yet a sale by a widow, with the consent of all legal heirs at the time existing, and ratified by decrees of Courts, is binding on reversioners as well as on an adopted son adopted long after the sale.

A matter of adoption and legitimacy or the like decided by one Court should be considered settled and not open to question in another Court, unless the opposing party, on whom lies the burden