

The present suit is to recover the moneys so collected, and the costs of the suits which were dismissed, in the shape of damages. The Judge held that this suit was not cognizable by the Civil Court.

We think that the Judge is wrong. This is not a simple suit against an agent or his surety for money received in the course of the employment of such agent, but a suit for moneys received as not within the scope of his authority to receive, and for damages which the plaintiff alleges he has sustained by having to pay costs in sixty-four suits which he brought for rent against his tenants. A third party is also arrayed amongst the defendants, who is not a surety for the agent. This defendant is charged with collusion. The suit is cognizable by the Civil Court, and is remanded for trial. Costs to follow the result.

The 3rd June 1868.

Present:

The Hon'ble G. Loch and F. A. Glover,
Judges.

Objection first taken in special appeal—Sale by
Hindoo widow—Legal necessity.

Case No. 2425 of 1867.

*Special Appeal from a decision passed by
the Judge of Sylhet, dated the 27th July
1867, reversing a decision passed by the
Moonsiff of that District, dated the 8th
March 1867.*

Kool Chunder Surmah (Plaintiff), *Appellant,*
versus

Ramjoy Surmona (Defendant), *Respondent.*

Baboo Gopal Lall Mitter for Appellant.

Baboo Greesh Chunder Ghose for
Respondent.

Where plaintiff claimed as his inheritance what had been sold to defendants by his mother to liquidate debts due by his late father, it was held, *1st*, that it was too

late in special appeal to raise doubts as to his mother having been plaintiff's guardian, when the objection had not been taken below at any stage of the proceedings; and, *2ndly*, that there was such an apparent necessity as would justify the purchase, and that the mere fact of the widow having been able to make a more advantageous arrangement would not nullify a sale to a *bona-fide* purchaser for value.

Glover, J.—WITH regard to the 8-annas share said to have been purchased by the special appellant from Luckhee Kant Surmah, no objection is taken to the Judge's finding in the grounds of special appeal. The Judge's decision, moreover, on this part of the case, is distinctly one of fact with which there would be no interference possible in special appeal.

There remains the 8-annas share which the plaintiff claims as his inheritance, and which the Judge has found to have been legitimately sold to the defendants by the plaintiff's mother to liquidate debts due by his late father.

In special appeal, the plaintiff objects to this decision on two grounds:—

1st.—Because his mother, Sunkuree Debia, is not shown to have been his guardian, and therefore had no right to sell his patrimony under any circumstances.

2nd.—Because, even if she did act as his guardian, her alienation would not be valid, unless shown to have been for the benefit of the minor.

The first objection does not appear to have been taken below at any stage of the proceedings. It seems to have been tacitly conceded by both parties that the mother had authority to act for her son, and it appears to us too late now to raise doubts as to her having been his guardian. The special appellant has been of age for many a year; and had his mother not been his guardian, he would hardly have let slip such a certain means of defeating his adversaries' claim, for he would not have been bound by any act of his mother, unless she had been duly appointed his guardian under Act XL. of 1858. (*Vide Sreenath Koondoo versus Huree Narain Mudduck, 7 Weekly Reporter 399.*)

With regard to the second objection, it is argued that the mere fact of the special appellant's father dying in debt would be, *per se*, no sufficient reason for selling his estate. It would have to be seen what proportion his debts bore to his assets, and

whether or not the widow could have paid them off from the income. In short, the special appellant wishes to place upon the purchaser the burthen of a very distinct proof as to the necessity for the sale.

The Judge has found on the evidence adduced that the widow sold to pay her husband's debts, and that the defendant bought *bonâ fide*. There can be no question that the son would take his father's property burthened with his liabilities; and if these were cleared off by the sale of that property, or part of it, it cannot be said that such alienation was to the minor's disadvantage, or that it was one which a guardian would not have been justified in making.

But even if there were a question as to the propriety of the guardian's conduct, the mere fact of her having been able to make some more advantageous arrangement for the estate of the minor would not nullify a sale to *bonâ-fide* purchasers for value. The well-known case of Hunooman Pershad Pandey has laid it down that such a purchaser would be protected, if he had exercised due care and had made such enquiry as was open to him, and had believed in the existence of a reasonably credited necessity. The ruling has been followed by this Court in the case of a guardian. (*Vide* Radha Kishore Mookerjee *versus* Mirtunjoy Gao, 7 Weekly Reporter 23.)

And as the Judge has found as facts that there were debts due by the special appellant's father, and that the widow sold the property in order to pay off those debts, it would seem that there was such an apparent necessity as would justify the purchase. It is nowhere shown that there were any other means of paying off incumbrances, or that the widow had any income of her own sufficient for the purpose.

We think that there is no ground of special appeal in this case, and that the application should be rejected with costs.

The 3rd June 1868.

Present :

The Hon'ble G. Loch and F. A. Glover,
Judges.

Onus probandi—Possessory suit—Mokurruree lease.

Case No. 120 of 1867.

Special Appeal from a decision passed by the Judicial Commissioner of Chota Nagpore, dated the 15th June 1867, reversing a decision passed by the Assistant Commissioner of that District, dated the 14th July 1866.

Rughoonath Dobe (Plaintiff), *Appellant,*

versus

Puresh Ram Mahata (Defendant), *Respondent.*

Baboos Mohendro Lall Shome and Kedar-nath Chatterjee for Appellant.

Baboo Mohinee Mohun Roy for Respondent.

In a suit to recover possession of land under a mokurruree lease granted to plaintiff by the zemindar (defendant, who admitted its validity) from the other defendant who had been in possession 20 years, and who also claimed a mokurruree interest—HELD that the *onus* lay with the substantive defendant to show that his lease was mokurruree.

Glover, J.—THIS was a suit to recover possession of certain lands alleged to have been granted to the plaintiff under a mokurruree lease by the zemindar defendant, but of which plaintiff had not been allowed to take possession by the other defendant, who likewise claimed a mokurruree interest.

The zemindar defendant admitted the plaintiff's right, and alleged that the mokurruree lease set up by the other defendant was false, he never having had anything beyond a terminable lease, at the expiry of which the land had been given to the plaintiff.

The substantive defendant pleaded a mokurruree lease from the year 1235 B. S.

The Court of first instance held the mokurruree pottah of the defendant to be spurious, and consequently gave plaintiff a decree; but the Judicial Commissioner considered that, as the defendant had admittedly been in possession of the land for the last 20 years, the *onus* of proving that he held on a terminable lease only was on the plaintiff, and, as he was unable to discharge it, the Judi-