

The 7th June 1869.

Present:

The Hon'ble H. V. Bayley and C. Hobhouse, *Judges.*

Decree inter alios.

Case No. 386 of 1869.

Special Appeal from a decision passed by the Subordinate Judge of Dacca, dated the 25th November 1868, modifying a decision of the Moonsiff, of Bohur, dated the 31st December 1867.

Goluck Monee Debia and another (Plaintiffs),
Appellants,

versus

Ram Monee Bose and others (Defendants),
Respondents.

Baboo Nuleet Chunder Sein for Appellants.

Baboos Romesh Chunder Mitter, Kalee Mohun Doss, and Kalee Kishen Sein for Respondents.

In a suit to have it declared that a certain howlah was the property of (*W*) plaintiff's judgment-debtor, defendants contended that it had been the property of another person and that they had purchased it in execution of a decree against that person. The Lower Appellate Court found for the defendants on the basis of a decree dismissing a suit by *W*'s representative to have the property declared to be *W*'s.

Held that that decree could not bind plaintiffs who were not parties to it.

Hobhouse, J.—THIS was a suit on the part of the plaintiff to have it declared that a certain kharija howlah called *Saleh Mahomed*, was the property of one Wosseemooddeen, judgment-debtor.

It was contended by defendants that the property belonged to another person, and that they had purchased it in execution of decree against that person.

The Lower Appellate Court found for the defendants on the basis of a decree of the 29th of July 1865 in their favor.

That was a decree in a case in which Hatoo Bibee, the representative of Wosseemooddeen, sued to have this property declared

to be Wosseemooddeen's property, and in which, in default of evidence on her part, the Court passed a decree dismissing her suit.

In special appeal, it is contended that that decree is no evidence against the plaintiffs. We think this contention is good in law.

It was a decree *inter alios*, and we cannot see how it can be held to bind the plaintiffs who were not parties to it.

It is, however, contended by the pleader for the special respondent that on the strength of the decision to be found in page 67, Volume VIII. of the Weekly Reporter, such a decree would bind the plaintiffs.

The facts stated in that decision leave some doubt as to what was exactly the position of the parties to the suit. But we think we may safely conclude that there the plaintiff was a person who sued, on the strength of a certain *zur-i-peshgee* lease, two persons who were the judgment-debtors of the defendant.

It was held that the *zur-i-peshgee* in question was the act of the judgment-debtors, and inasmuch as it was an act which preceded the defendant's execution, and which was done in good faith, the defendant was bound to take the estate of his judgment-debtors saddled with the *zur-i-peshgee* which they had executed.

That is not the case now before us. In this case, Wosseemooddeen is the judgment-debtor of the plaintiff, and there was no act on his part by which his property became alienated to the defendants. On the contrary, the defendant's contention is that the property was not the property of Wosseemooddeen, but of some one else. And if the plaintiffs are the judgment-creditors of Wosseemooddeen, we know of no law or precedent of the Court which would prevent him from seeking to have it established that the property now in dispute is the property of his judgment-debtor.

We are told that there is evidence on the record to show that the property in question is the property of Wosseemooddeen. We, therefore, reverse the judgment of the Lower Appellate Court and remand the case to be determined on the evidence on the record, excluding the decision of the 29th of July 1865.

Costs will follow the result.