

The 4th January 1871.

Present:

The Hon'ble E. Jackson and Onookool
Chunder Mookerjee, *Judges.*

Reversioners—Parties.

Kristo Sunkur Dutt Roy (Defendant),
Petitioner,

versus

Koylashnath Dutt Roy (Plaintiff),
Opposite Party.

Baboo Mohinee Mohun Roy for Petitioner.

No one for Opposite Party.

In a suit to recover possession of property held by a widow, the reversioner was held to have been erroneously made a co-defendant.

Jackson, J—THIS is an application to be allowed to appeal *in forma pauperis* from a decision of Moulvie Syed Abdoolah, Subordinate Judge of Mymensingh. Kristo Sunkur Dutt Roy, who is the applicant, states that his interests are affected by the decree in this case. The plaintiff had brought a suit to recover possession of certain property as the adopted son of the husband of one Hurro Soondurree, who, as the widow, was in possession of her deceased husband's property. Kristo Sunkur Dutt Roy came in claiming to be the reversioner. He was at first made a co-defendant. Subsequently, however, the Subordinate Judge considered that, as his interests were remote and contingent upon his being alive upon the death of the widow, and that he at present had not any interest in the property, he accordingly, in deciding the case, removed Kristo Sunkur Dutt Roy from the category of the defendants, and ultimately decreed the plaintiff's claim only against the widow. Kristo Sunkur Dutt Roy now asks this Court to allow him to appeal from that decision.

We are inclined to think that Kristo Sunkur Dutt Roy ought not to have been made a defendant in this litigation at all. He is not at present interested in this property, and it is a question whether he will ever have any interest at all. At the same time, it is a great pity that the Subordinate Judge did not see this from the very first. The applicant's rights may undoubtedly be very much injured by the course adopted by the Subordinate Judge, first by making him a defendant and then striking his name off,

and finally actually inserting his name in the decree as one of the parties to the suit. Looking at the circumstance that Kristo Sunkur Dutt Roy should not have been made a party, we think we ought not at present to allow him to appeal. But we direct that the Subordinate Judge strike his name out of the list of the defendants in the decree. The Subordinate Judge, having previously removed him from among the co-defendants, appears to have made a mistake in inserting his name in the decree afterwards. If there is any difficulty in carrying out this order, we will admit an appeal to carry out the order.

The decision in this case will not in any way affect the interests of the reversioner, as he was no party to that decision.

A copy of this order will be forwarded to the Subordinate Judge.

The 5th January 1871

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The Hon'ble E. Jackson and Onookool
Chunder Mookerjee, *Judges.*

**sale of portion of a tenure—Section 108, Act
VIII., 1859.**

Case No. 1401 of 1870.

*Special Appeal from a decision passed by the
Additional Subordinate Judge of Dacca,
dated the 4th May 1870, reversing a deci-
sion of the Moonsiff of Lechragunge, dated
the 30th September 1869.*

Nund Lall Roy and others (Plaintiffs),
Appellants,

versus

Gooroo Churn Bose and others (Defendants),
Respondents.

Baboo Hem Chunder Banerjee for
Appellants.

*Baboos Kishen Dyal Roy, Grija Sunkur
Mojoomdar, and Chunder Mohun Sein* for
Respondents.

Where a sharer in an undivided talook, after obtaining a decree for money due to him on account of his share of the rent, brings to sale a portion of the tenure corresponding with the share of the rent for which he obtained a decree, the sale has no further effect than any other sale in which the right of the judgment-debtor is sold.

Jackson, J.—THERE seems from the facts of this case as put before us to have been a shikmee talook called Prankisto Roy, which was the joint property of Tripoorah Soondurree and Ram Soondur Roy, each holding an 8-annas share. The share of Ram Soondur Roy was purchased, we are not told when, by Soodharam Roy, and that share was afterwards sold in execution of a decree against the sons of Soodharam Roy, and was purchased partly in August 1860 by the plaintiffs Nos. 2 to 8, and partly in September 1854 by the plaintiff No. 1. Subsequent to these purchases, the 4 annas proprietor of the zemindaree in which the shikmee talook was situated brought an action for arrears of rent due to him upon his 4-annas share of that talook. He made Tripoorah Soonduree and Ram Soondur Roy defendants in that case. Against them he obtained a decree, and in execution of that decree he put up for sale 4 annas of the shikmee talook, and one of the defendants in this suit became the purchaser.

The present plaintiffs allege that by these proceedings in the Collector's Court, and the purchase by the defendant who has been put into possession by the Collector, they have been dispossessed of 2 annas out of the 8 annas share belonging to Ram Soondur Roy, and they bring this suit to recover possession.

The first Court gave the plaintiffs a decree, considering that they had been in possession of Ram Soondur's share with the knowledge of the zemindar. The Lower Appellate Court reversed the decision of the first Court, and dismissed the plaintiffs' suit, because the plaintiffs, after their purchase, had not registered themselves as proprietors of the shikmee talook in the zemindar's serish-ta, and because the Appellate Court presumed from that fact that the zemindar was not acquainted with the fact of the purchase; and he considered that, in the absence of the registration, the zemindar was entitled to sue for arrears of rent against the registered talookdar, and that the Collector was right to sell the property as against such

registered talookdar, and that the defendant obtained a good title under such sale.

There has been a long contention on both sides as regards the law which is applicable to this case. The first question which appears to arise upon it is as to the law under which the sale by the Collector was held. It has been argued that it was the tenure which was sold. But we are quite satisfied that the sale, whatever might be the effect of it, was held under the provisions of Section 108, Act X. of 1859, and that it was not the tenure which was sold. Under this Section, a sharer in an undivided talook, after obtaining a decree for money due to him on account of his share of the rent, can bring to sale the whole under-tenure under certain circumstances. But in this case the proprietor, instead of adopting that course, brought to sale only a portion of the tenure which corresponded with the share of the rent for which he obtained a decree. There might possibly be some argument, if he had brought to sale the whole tenure, that the sale would have come under the provisions of Act VIII. of 1865, B. C., by which a tenure is sold free from all incumbrances. But looking at the course which the proprietor has adopted by selling only a portion of the tenure, that portion was sold, as stated in Section 108, "in the same manner "as any other immoveable property may be "sold in execution of a decree for money "under the provisions of the two next following Sections." The sale, therefore, would have no further effect than any other sale in which the right of the judgment-debtor was sold.

Applying this view of the law to this case, there can be no doubt about the effect of the sale, as the right of Ram Soondur Roy had long ago passed away from him by sale, first to Soodharam Roy, and afterwards to the present plaintiffs. The sale of 2 annas of Ram Soondur Roy's share in the tenure in the year 1868 by the Collector carried with it no results whatever. The purchaser having purchased only the rights and interests of Ram Soondur Roy in those 2 annas, and those rights being no longer in existence, purchased nothing. This is the point upon which the special appeal has been laid before us, and we think that the contention is good. We shall, therefore, set aside the decision of the Subordinate Judge on this point, and decree the plaintiffs' suit for 2 annas of the shikmee talook, with costs.