

given up her rights to her husband's property, alleging that her husband was not separate but a member of a joint family. The only doubt that existed in my mind was as to the form and extent of relief which we should give the plaintiff, whether it would be sufficient to declare that the property of Chedee Lall was held by him separately, and that on the death of the widow notwithstanding her acquiescence in the possession of the other defendants, the legal heirs might take it from their hands, or whether the plaintiff is entitled to get possession as prayed for. It is clear that the other defendants cannot be permitted to hold possession because they have no legal right to do so. The widow cannot have possession, for she does not ask for it, and has colluded with the other defendant to the injury of the heirs of her husband. Under these circumstances, I think the plaintiff should, as proposed by my colleague, be allowed to hold possession in the capacity of manager during the life of the widow, and a decree will be made accordingly. The special appeal is dismissed with costs.

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The 8th December 1871.

*Present :*

The Hon'ble Sir Richard Couch, *Kt.*, Chief Justice, and the Hon'ble F. A. Glover, Judge.

*Execution (Suit to recover money received in)—Collectors' Courts—Section 11 Act XXIII of 1861.*

Case No. 796 of 1871.

*Special Appeal from a decision passed by the Additional Subordinate Judge of Chittagong, dated the 26th April 1871, reversing a decision of the Moonsiff of Cox's Bazaar, dated the 23rd September 1870.*

Kristo Chunder Goopto and others  
(Plaintiffs) *Appellants*,

*versus*

Ramsoonder Sein (Defendant) *Respondent*.

*Baboo Chunder Madhub Ghose for Appellants.*

*Baboo Nuleet Chunder Sein for Respondent.*

Before bringing suit to recover money which defendant had received in execution of decree, and which he was no longer entitled to retain, plaintiff is not bound to make application to him for the money. There is no express provision of law with regard to the Collectors' Courts as there is in Section 11 Act XXIII of 1861 with regard to the Civil Courts.

*Couch, C. J.*—I am not at all prepared, nor is it necessary for me, to decide whether the Collector had or had not jurisdiction to order the return of this money. But whether he had or had not jurisdiction, it was not incumbent upon the plaintiff to make any application to him before bringing this suit, which he was entitled to bring, in order to recover back the money which the defendant had received in execution of the decree, and which he was no longer entitled to retain.

There is no express provision of law with regard to the Collectors' Courts as there is in Section 11 Act XXIII of 1861 with regard to the Civil Courts.

I think the decree of the Lower Appellate Court must be set aside, and that of the first Court restored with costs.

*Glover, J.*—I concur.

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The 8th December 1861.

*Present :*

The Hon'ble Sir Richard Couch, *Kt.*, Chief Justice, and the Hon'ble F. A. Glover, Judge.

*Rent Suit—Question as to Agency.*

Case No. 729 of 1871 under Act X of 1859.

*Special Appeal from a decision passed by the Additional Judge of Jessore, dated the 22nd March 1871, affirming a decision of the Deputy Collector of that district, dated the 30th October 1869.*

Rangutty Mundul and others (Defendants)  
*Appellants*,

*versus*

Gourish Chunder Pauray and others  
(Plaintiffs) *Respondents*.

*Moulvee Murhumut Hossein* for Appellants.

*Baboo Bipro Doss Moakerjee* for Respondents.

The question was, for which party M had received rent. The High Court, on the former occasion, said it was not sufficient for M to say that he was plaintiff's agent, and directed the question to be determined upon the issue whether plaintiff was the landlord or not. HELD that what the Court meant was not to order the Revenue Court to go into the question of title between the parties and determine it, which the Revenue Court would have no power to do, but to find whether M had been acting as plaintiff's agent and receiving rent for him or not; and that as the Judge found that M was plaintiff's agent and received rent for him from defendant, this was sufficient to determine defendant's liability to pay his rent to plaintiff.

*Couch, C. J.*—THIS was a suit for rent brought in the Revenue Court, and there was no question but that the defendant paid rent to Mohadeb Mundal; the only question was whether Mohadeb Mundal had received the rent as the agent of the one party or the other, and for which party he had received it.

The High Court, when the case was before them on the former occasion, said, and very justly, that it was not sufficient for Mohadeb Mundal to say that he was the agent of Gour Chunder, and they directed the question to be determined upon the issue whether Gour Chunder was really the landlord or not. Now we must read this language of the Court with reference to the nature of the suit. What was meant was whether Mohadeb Mundal had been acting as the agent of Gour Chunder and receiving rent for him or not, because the Revenue Court would have no power to go into the question of title between these parties and determine it. We must certainly presume that the High Court meant to order the Revenue Court to do that which it had power to do and not that which it had no power to do: and that question having gone down to the Revenue Court to be tried, there is a very distinct finding of the Judge after a lengthy judgment, some portions of which might very well have been omitted. He says "What I now determine upon the evidence before me is, that Mohadeb Mundal was the plaintiff Gour Chunder's Go-mastah and collected rents from Moheshpara and from defendant appellant for him." Therefore, the result is, that the defendant is found to have been paying his rent to the agent of Gour Chunder and for Gour Chunder. That was sufficient to decide the question raised between the parties in this rent suit; and whatever other questions may exist between Gour Chunder and the other parties have to be determined in some other

suit. The defendant was bound as regards this matter to pay his rent to Gour Chunder, to whose agent he was found to have been hitherto paying it.

The decision of the Judge will be affirmed, and this appeal dismissed with costs.

The 13th December 1871.

Present :

The Hon'ble R. A. Glover and Dwarkanath Mitter, *Judges*.

*Onus probandi—Ousut Talook—Sale—Bonâ fide purchaser—Estoppel—Attachment—Execution—Benamie holder—Priority.*

Case No. 586 of 1871.

*Special Appeal from a decision passed by the Officiating Judge of Backergunge, dated the 6th March 1871, reversing a decision of the Subordinate Judge of that District, dated the 6th August 1870.*

Jugobundhoo Sein and others (Plaintiffs)  
*Appellants,*

*versus*

Bhugwan Chunder Doss and others  
(Defendants) *Respondents.*

Baboo Doorga Mohun Doss and Chunder Mudhub Ghose for Appellants.

Baboo Sreenath Doss for Respondents.

Defendants having pleaded that the *ousut talook* (the subject-matter of this suit) which they had hitherto claimed as a real *ousut talook* purchased by them for valuable consideration was a mere fiction, the *onus* of proof lay on them, and not on plaintiff.

It being proved that M purchased the rights of the I. defendants not only in the *ousut talook* but also in the two superior *talooks* within which it was situated, if the validity of his purchase of these two *talooks* could not be impugned, it followed as a matter of course that he had succeeded to all the rights which the I. defendants had in the disputed lands, whether as *talookdars* only or as *talookdars* and *ousut talookdars*. M's title to the two *talooks* could not be affected by a former decision in a suit to which he was not a party.

Defendants' alleged purchase was null and void, because made at a time when the properties covered by it were under attachment in execution of M's decree against the I. defendants. Whether M knew or not that the order striking off the execution case contained a provision to the effect that the attachment should continue in force, the mere fact of an execution case being struck off the record does not put an end to the attachment.

The Judge having found that defendants were mere *benamie* holders for the I. defendants, M's purchase must prevail over defendants' pretended purchase, notwithstanding the alleged priority of the latter