

duly proved, and on the finding of fact as to the genuineness of the *kobalah*, we think we should be wrong in special appeal, simply because the name of Manick Chunder in a joint family like this appears instead of that of his father Nityanund, to set aside the concurrent finding of the two Courts below on a question of fact. We, therefore, dismiss the special appeal of the defendant with reference to the findings as to the adoption of Ramessur, and as to the purchase from Nityanund, and decree his appeal with reference to the share which the plaintiff takes as heir of Krishnanund and Ashanund, and modify the decision of the Court below to this extent by declaring that the plaintiff is only entitled to one-seventh of the estate of Krishnanund and Ashanund and not to one-fourth.

The costs of this appeal will be paid by the special appellant as he has failed in the main point in the case.

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The 1st May 1872.

*Present*

The Hon'ble F. B. Kemp and F. A. Glover,  
*Judges.*

**Interest—Costs.**

Case No. 85 of 1872.

*Miscellaneous Appeal from an order passed by the Officiating Additional Subordinate Judge of Dacca, dated the 23rd December 1871.*

Bharut Chunder Sircar and others (Judgment-debtors), *Appellants,*

*versus*

Gouree Pershad Roy (Decree-holder),  
*Respondent.*

*Baboo Kashee Kant Sen* for Appellants.

*Baboo Nulit Chunder Sen* for Respondent.

Costs in the suit carry interest unless the contrary is distinctly stated in the decree.

*Kemp, J.*—THE question raised in this appeal is whether the costs in the suit are to bear interest or not. We may observe that this point was not raised below and has been raised for the first time in this Court. The decree is silent as to awarding interest on costs, but it has been the practice of this Court to award interest on costs on the ground that costs generally carry interest

without any distinct order to that effect being required. There are two decisions to that effect to be found in Volume I. *Weekly Reporter*, *Miscellaneous Rulings*, page 1, and in Volume II., *Miscellaneous Rulings*, page 21. There is no ruling that we can find, nor has any such ruling been brought to our notice which rules otherwise, and the ruling of the Full Bench which has been quoted by the pleader for the appellant is, we think, inapplicable to the facts of this case. The question there decided was whether interest could be awarded on the principal sum decreed or on the subject-matter of the suit when the decree is silent on that point, and the Full Bench decided that it could not, but there was no ruling as to interest on costs. Moreover, interest on costs is not of the same character as interest on the subject-matter of the suit. Costs, as observed by Mr. Justice Glover in the course of the argument, are advanced by parties from time to time during the progress of the suit; and when party succeeds in a case, he is, we think, entitled to interest upon any sums duly and fairly spent by him in litigation. We hold therefore, that, as a general rule, unless it is distinctly stated in the decree that no interest is to be given on the costs, we ought to award them. The appeal is dismissed with costs.

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The 2nd May 1872.

*Present:*

The Hon'ble Louis S. Jackson and  
W. Markby, *Judges.*

**Plea of Limitation—Defendant's Possession**  
(in his own right and as farmer of Plaintiff,  
—Decree (for lands unascertained).

Cases Nos. 1287 and 1288 of 1871.

*Special Appeals from a decision passed by the Subordinate Judge of Bhaugulpore, dated the 21st August 1871, affirming a decision of the Sudder Moonsiff of this district, dated the 29th July 1870.*

Nuthoo Singh and others (Defendants),  
*Appellants,*

*versus*

Rami Baksh Singh (Plaintiff); *Respondent*

*Baboo Kalee Kishen Sen* and *Chunder Madhub Ghose* for Appellants.

*Mr. C. Gregory* and *Baboo Bookh Sen Singh* for Respondent.

The plea of limitation was held to fail in a case where it was impossible to distinguish the defendant's possession in his own right from his possession as farmer of the plaintiff.

But the Court refused to allow a decree to stand which gave to the plaintiff something (*i. e.*, lands whose boundaries were) unascertained and which might after all not be ascertainable.

*Jackson, J.*—These two appeals have been argued almost simultaneously, and both cases have been disposed of in a single judgment by the Moonsiff as well as by the Lower Appellate Court. The plaintiffs are mainly, it seems, the same parties, though there are some one or more concerned in one case who are not concerned in the other. In suit No. 1288 the defendants are Lalljee Singh and others, and in suit No. 1287 the defendants are Nuthoo Singh and others. In both cases the plaintiff sued to recover certain specified parcels of land, being portions of putnees, described and set out with particularity in the *khusrah* of the Collectorate.

The defendants set up the plea of limitation, and they moreover denied the plaintiff's title. It will be more convenient to deal with the case in which Lalljee and others are defendants, namely, appeal No. 1288, first. The plaintiffs have had decrees in their favor in both suits. As to the defendant Lalljee Singh, the plea of limitation must fail, because the defendants who, it appears, hold other lands in the vicinity, also held in farm some share of the plaintiffs, and therefore it does not lie in their mouths to say that they have been holding adversely to the plaintiffs. If the lands now in dispute be found to belong to the plaintiff they must be given up, because it would be impossible to distinguish the defendant's possession in his own right from his possession as farmer of the plaintiff. But there is another and a very serious objection to the judgment of the first Court which has been confirmed by the Subordinate Judge.

The decree as we read it, taken by itself, has the appearance of a final decree, for it purports to give the plaintiff the parcel of land claimed according to the boundaries and the description given in the *khusrah*. But it is manifest, on looking to the judgment, that the Court was unable to ascertain before the decision of the suit what were the precise position and boundaries of the land claimed. In fact, by the terms of the judgment, the Court expressly reserves the ascertainment of these particulars by directing that an Ameen shall be sent after the rainy season to measure and ascertain the boundaries of the land. Therefore the decree, although it appears final, is not so, and Mr. C.

Gregory, who appears for the respondent, is unable to give any explanation of how the decree and the judgment do not conform.

There must have been some error on the part of the officer who drew up the decree, because it is not in accordance with the judgment. We cannot allow a decree to stand which gives to the plaintiff something unascertained, and which might after all not be ascertainable. This is not like a case where an account is ordered to be taken, or where wassilat has to be calculated; but it is a suit for a certain specified parcel of land, and the decree must define the boundaries.

This case (No. 1288) in which Lalljee Singh is concerned must therefore go back to the first Court, the decree of the Lower Courts being set aside, with direction that the necessary enquiries may be completed and a final decree drawn up.

In the other case No. 1287, in which Nuthoo Singh is defendant, the ground on which the plea of limitation ought not to prevail in the other case does not exist. Nuthoo Singh and the others deny that they ever held a share in the plaintiff's land, and therefore the decision in Lalljee's case cannot apply to this case. The case must go back to the Lower Appellate Court in order that it may determine the plea of limitation on its merits. If the determination be in favor of the defendants, then there is an end of the suit; but if it be determined in favour of the plaintiff, then the case will go to the first Court with the like directions as in the other cases.

*Markby, J.*—I concur in the order of remand.

The 2nd May 1872.

*Present:*

The Hon'ble F. B. Kemp and F. A. Glover,  
*Judges.*

Jurisdiction (Plea of want of)—Conflicting Claims to Land—Appeal to Judge—Special Appeal—Benamtee and Equitable liability.

Cases Nos. 1310 and 1313 of 1871 under Act X. of 1859.

*Special Appeal from a decision passed by the Judge of Beerbhoom, dated the 22nd June 1871, reversing a decision of the Deputy Collector of that district, dated the 28th September 1870.*