

the defendant. We therefore reverse the decision of the Lower Appellate Court with costs, and the decision of the Moonsiff, so far as it goes, must stand.

One gold mohur is allowed for pleader's fees in this Court.

The 8th December 1873.

Present:

The Hon'ble J. B. Phear and W. Ainslie,
Judges.

Alternative Titles.

Case No. 287 of 1873.

Special Appeal from a decision passed by the Judge of Shahabad, dated the 27th September 1872, reversing a decision of the Additional Moonsiff of Arrah, dated the 22nd April 1872.

Woodit Singh and another (Plaintiffs),
Appellants,

versus

Buldeo Singh and another (Defendants),
Respondents.

Mr. M. L. Sandel for Appellants.

Baboos Kalee Kishen Sen and Grish Chunder Ghose for Respondents.

Where the title upon which a plaintiff sues is put forward in the alternative, and the two parts of the alternative are not inconsistent with each other, he ought to obtain a decree if he makes out either branch of his alternatives.

Phear, J.—In this suit the plaintiff alleged that he was entitled to possession of a certain small piece of land, 4 beeghas 5 cottahs, by hereditary gomashita right; or in the alternative, by the right of having occupied for a period exceeding 12 years. He complained that he had been wrongfully turned out of this land as the result of the Deputy Collector's order, and he asked to recover possession after determination of right.

The cause of action manifestly is the wrongful turning out. And inasmuch as the title upon which the plaintiff sues has been put forward by the plaintiff in the alternative, an alternative that is by no means inconsistent one part with the other, he ought to succeed in obtaining a decree for possession if he makes out either branch of his alternatives.

The Judge of the Lower Appellate Court formed the opinion that, under the term

“gomashita,” the plaintiff was claiming a right to hold the land at fixed rates of rent. And inasmuch as he came to the conclusion on the evidence that the plaintiff had failed to establish these fixed rates of rent, he dismissed the suit. But the Lower Appellate Court abstained from finding, or appears to have abstained from finding, whether the plaintiff had made out the right to occupation, if not at fixed rates, at rates liable to be varied. For these reasons, it seems to us that the judgment of the Lower Appellate Court is defective. It is not perfectly clear on the face of the plaint whether the plaintiff asked for a further remedy beyond the recovery of possession. It is possible that he claimed to have a determination of the rates of rent at which he was entitled to hold. But, even if that be so, the failure to prove his right to a portion of the remedy for which he asked did not disentitle him to the remainder of the remedy. If, therefore, the Lower Appellate Court is of opinion that, although the plaintiff has failed to make out the right to possession at any specified fixed rates of rent, yet he has made out a right to possession of the land at rates which may be varied, it ought to give him a decree for possession merely. We therefore reverse the decision of the Lower Appellate Court, and remand the case to that Court for re-trial. Costs will abide the event.

The 8th December 1873.

Present:

The Hon'ble J. B. Phear and W. Ainslie,
Judges.

Ancestral Property—Alienations—Acquiescence

Case No. 289 of 1873.

Special Appeal from a decision passed by the Judge of Sarun, dated the 30th September 1872, reversing a decision of the Officiating Subordinate Judge of that District, dated the 18th July 1871.

Ram Kishore Narain Singh (Plaintiff),
Appellant,

versus

Anund Misser (Defendant), *Respondent.*

Baboo Mohesh Chunder Chowdhry for Appellant.

Moonshee Mahomed Yusuf for Respondent.

In a suit to avoid alienations effected by plaintiff's father at a time when plaintiff was living in commensality with his father as a member of a joint family,