

The 27th April 1874.

*Present :*

The Hon'ble Sir Richard Couch, *Kt.*, *Chief Justice*, and the Hon'ble W. Ainslie, *Judge*.

**Special Appeal.**

Case No. 1620 of 1873.

*Special Appeal from a decision passed by the Judge of Dinagepore, dated the 21st June 1873, reversing a decision of the Moonsiff of Sahibgunge, dated the 31st December 1872.*

Sooraj Kant Acharje (Plaintiff), *Appellant*,

*versus*

Khoodee Narain Manna and others  
(Defendants), *Respondents*.

*Mr. C. Piffard* for Appellant.

*Baboo Sreenath Doss* for Respondents.

A judgment, which shows on the face of it want of due consideration of evidence and the introduction of foreign matters into the case, may be brought up before the High Court in special appeal.

*Couch, C. J.*—We think we cannot allow the decision of the Judge to stand. He says that the evidence was altogether on one side, as in fact it was, it being that for two years rent had been paid at the rate at which it was claimed. Then he says that the plaintiff "fails to show any agreement for enhanced rent, or that actually enhanced rents were paid." We cannot understand his saying that the plaintiff failed to show that enhanced rents were paid, and if they had been paid for three years, it would be evidence of an agreement to pay rent at that rate. But the Judge goes on to state what appears to us to be the key to his judgment, *viz.*, that the enhancement of all ryots in this mehal and their "resistance to the same" is well known, and there could be no enhancement of rent, the parties not agreeing to it, and even if exactions had been forced from the ryots for some years, and they were clearly proved, I cannot consider such payments to be the rents as due subsequently from the ryots. I would rather look upon such excess payment as *abwabs* and cesses." There is nothing in the case to justify the Judge in speaking of these as exactions. It is clear that he unfortunately imported into the case what he had no business to take into account—some knowledge

he had acquired of the state of things in this mehal. A judgment which shows on the face of it a want of due consideration of the evidence in the case, and the introduction of other matters, is one which we think we cannot allow to stand. There is an error in the decision of the case and in the investigation of it which has affected the decision on the merits, and it may be brought before this Court in special appeal. The appellant is entitled to have the unbiased judgment of the Lower Appellate Court on the facts of the case. The decree must be reversed, and the case remanded for re-hearing.

The costs will follow the result.

The 27th April 1874.

*Present :*

The Hon'ble J. B. Phear and G. G. Morris,  
*Judges*.

**Registration in Collectorate—Cause of Action.**

Case No. 1242 of 1873.

*Special Appeal from a decision passed by the Subordinate Judge of Bhaugulpore, dated the 13th March 1873, affirming a decision of the Moonsiff of Monghyr, dated the 20th July 1872.*

Rewat Mahton and another (two of the  
Defendants), *Appellants*,

*versus*

Penum Mundar and others (Plaintiffs),  
*Respondents*.

*Baboo Boodh Sen Singh* for Appellants.

*Baboo Mohinee Mohun Roy* for Respondents.

Where parties relying on their title to certain property apply to have their names put into the Collectorate books, and their application is successfully opposed by other parties claiming the same property on the ground of a conveyance made to themselves, such opposition constitutes a good cause of action to the parties first mentioned if they have the right alleged.

*Phear, J.*—We think that no ground has been furnished to us upon which we ought to interfere with the decision of the Lower Appellate Court upon special appeal.

It was first objected that the plaintiffs had shown no cause of action in this suit. But the purpose of the suit is to have a declaration of title to property; and the plaintiffs distinctly say that, in reliance upon the strength of their title which they want to have declared, they went to the Collectorate to have their names put into the Collectorate

books; but that the defendants successfully opposed this application on the ground that Meherban Mahton, the first defendant, in whose name the property stands, executed in their favour a *shurakutnama*, which gave them the right to the property. This conduct on the part of the defendants constitutes a very good cause of action—exceedingly good ground why the plaintiffs should come into Court to vindicate their right to the property if they have the right.

It was next objected that the property was of a value much beyond the jurisdiction of the Moonsiff who tried the suit in the first instance, and that therefore the decrees of the Courts below were bad for want of jurisdiction. But the valuation which the plaintiffs put upon the plaint was within the limit of the Moonsiff's jurisdiction, and no issue was raised or asked for in either of the Courts below as to the value of the property.

It was pressed upon us that this Court will entertain the question of jurisdiction at any stage of the proceedings; and a case was cited to us from the 14 Weekly Reporter, p. 228, in which this Court had, on special appeal, after as many as five previous hearings, set aside all the decisions of the Courts below upon an objection to the jurisdiction which was made then for the first time. But in that case it seemed to the Judges, who heard the special appeal, upon the facts which the plaintiff himself set out in his plaint, that the value of the property was incontestably beyond the limit of the Moonsiff's jurisdiction. In the present instance, we have nothing of this kind to go upon. It is true that there are statements in the plaint from which we may infer that the property, many years ago, was of a larger value than the present limit of the Moonsiff's jurisdiction, and the statements thus made in the plaint would be exceedingly good evidence bearing upon an issue of jurisdiction, if an issue upon that point had been raised. But it is impossible for us to say, upon these statements alone, that the value of the property must necessarily be taken to be, as against the plaintiffs, of a larger value than that for which a suit could be brought in the Moonsiff's Court. It would be necessary for us, before we could act upon this objection, to direct that an issue as to the value of the property should be framed and sent back to the first Court to be tried. But this is a course which we do not think it necessary or right to take at this stage of the proceedings.

The other objections which have been made on special appeal seem to be all directed to

the value of the evidence, and to question the soundness of the judgment which the Lower Appellate Court has formed upon the evidence with regard to the facts of the case. Without expressing any opinion either way upon the value of these objections, or upon the merits of the case itself, it is enough for us to say that we think that they are not of such a nature as we can entertain on special appeal.

The appeal is, therefore, dismissed with costs.

The 28th April 1874.

*Present:*

The Hon'ble J. B. Phear and G. G. Morris,  
*Judges.*

Revenue Settlement—Enhancement of Rent.

Case No. 484 of 1873.

*Special Appeal from a decision passed by the First Subordinate Judge of Bhaugulpore, dated the 5th February 1873, reversing a decision of the Moonsiff of Begoosurai, dated the 25th November 1872.*

Roopun Roy and another (Defendants),  
*Appellants,*

*versus*

Purdeep Singh and others (Plaintiffs),  
*Respondents.*

*Baboo Gopeenath Mookerjee for Appellants.*

*Baboo Gunesh Chunder Chunder for Respondents.*

If a ryot has a right of occupancy, his rate of rent can only be enhanced in the mode prescribed by law; if he has not, his landlord can only claim arrears of rent on the ground of actual agreement, express or implied. Such claim cannot be made at an enhanced rate, simply because the landlord has settled with Government at a higher rate of revenue.

*Phear, J.*—It seems to us that the Subordinate Judge has committed error in his