

Raja Nurayn Khan and other brothers of the defendant intervened and prayed to be allowed to defend the suit as co-partners with him.

The principal sudder ameen of Dacca, stationed at Furreedpore, Syad Abas Ali Khan, was of opinion that the khut, or letter, signed for the zumeendar by Chundee Pershad Singb, his mokhtear, bearing date 32nd Assar 1224 B.S., whereby it was conditioned that the defendant's rent of 2,401 rupees shall not be enhanced, was proved by the evidence of the witnesses, who also prove that the mokhtear had full authority to grant such a deed; and that the deed had been acted upon for upwards of twelve years, and had not been impeached by the zumeendar, Raja Sri Narain Sing, when it was filed in the Sudder Court. As, therefore, the dur-jarehdar had failed in the provincial court to enhance the defendant's rent of 2,401 rupees, and as the zumeendar, whose right to sue to enhance the said rent had been decreed by that court, had not availed himself of that right, for a period exceeding twelve years, the principal sudder ameen, on these grounds and others mentioned in the decree, dismissed the claim, with costs, on the 8th September 1843, as barred by the rule of limitation.

The plaintiff, having appealed from this decision, the case was taken up by Mr. Gordon, and by him referred to a full bench.

On the case coming before a full bench, the vakeel of appellant, Gholam Sufdur, stated that he had several documents of importance to the case of his client, which he wished to file; adding that his client was unable to file them in the zillah court, as he was before [30] ignorant of their existence. On looking over these documents, it appears to the Court that they are material to the issue of the case.

Ordered, therefore, that the papers now filed by the appellant be placed with the nuthee, and the case be returned to the principal sudder ameen, with directions to restore the case to its number in the file, and to give due notice to the defendant, and allow him to file any documents, or witnesses, which he may wish to produce to meet the exhibits now filed by plaintiff. He will then decide the case afresh in the usual course. The costs of this appeal to be paid by the appellant.

[31] *The 3rd February, 1846.*

PRESENT: W. B. JACKSON, *Officiating Temporary Judge.*

CASE NO. 72 OF 1837.

Regular Appeal from the decision of the Additional Judge of Jessore.

JYDOORGA AND OTHERS, *Appellants, (Defendants) v. REIMUNEE AND AULUGMUNEE, WIDOWS OF PREM CHUNDER; KALEEPERSHAD, CHUNDER MOHUN AND UMBEKA, Respondents, (Plaintiffs).*

[*Mesne profits—Co-sharers—Disputes between plaintiffs inter se—No necessity to decide such disputes.*

Where the plaint for mesne profits as instituted contained the names of several plaintiffs, and later it was contended that some of them had no right and that their names had been fraudulently inserted, and again the plaintiffs subsequently stated that they had arranged their disputes and fixed their shares by arrangement, held that, whatever the disputes between them *inter se*, the decree might be in favour of all of them without regard to such disputes, the settlement of which by suit or otherwise would be unaffected by this decree.]

THIS is a claim for wasilat, or mesne proceeds, of the mouza Digulgaon, which was decreed to Prem Chund, the husband of Aulugmunee and

Reimunee, by the provincial court, under date the 22nd August 1827. The present claim therefore rests on that decision ; the plaintiffs claiming as heirs of Prem Chund, or his successors.

On the 31st August, 1836, the additional Judge of Jessore decreed in favour of plaintiffs for 17,817 rupees, at the rate of 655 rupees per annum for 21 years, from 1213 to 1234.

The defendant Jydoorgá appealed to this Court.

On the 7th September 1841, the case was heard before Mr. Lee Warner, who recorded his opinion that the mesne proceeds should be decreed at the rate of 495 rupees for 21 years, with interest from the date of the petition of plaint for possession of the disputed estate.

On the 22nd January 1842, two of the plaintiffs, Reimunee and Aulugmunee, gave in a petition, stating that the plaint in this case was drawn out contrary to their wishes and intention, that they never intended to admit that Kaleepersad and others had shares in the claim, which was their own exclusive right as heirs of their husband, Prem Chund.

On the 17th May 1842, Mr. R. Barlow recorded his opinion in the case, to the effect that the plaintiffs, Reimunee and Aulugmunee alone were entitled to the award, not the other plaintiffs, whose names appeared to have been inserted in the plaint as sharers, fraudulently. Mr. Barlow decreed wasilat for 21 years, 9 months, at 495 rupees a year, and interest from the date of the present plaint, after deducting the Government revenue.

[32] After this, the case came before Mr. J.F.M. Reid, who, on the 17th December 1842, delivered his opinion, fully agreeing in the award of Mr. Barlow, with the exception that he would decree in favor of the whole of the plaintiffs, whose disputes among themselves, the Court might leave them to settle hereafter by suit or otherwise. He directed the case to be re-submitted to Mr. Barlow, for consideration.

On the 23rd January 1843, Mr. Barlow, after re-consideration, adhered to the opinion first recorded by him.

On the 29th January 1846, four petitions were given in by the plaintiffs in this case, stating that they had arranged the disputes among themselves, and fixing the shares in the wasilat arbitrarily among themselves.

OPINION.

The award should be in favor of the plaintiffs, Aulugmunee and Reimunee, who are the heirs of Prem Chund, in favor of whom the decree was given. Their admission of the shares of the other plaintiffs contained in the plaint is set aside by the denial conveyed in their subsequent petition, and by the remark of the zillah judge in the mokhtarnameh at the time of attesting it. But the subsequent petition given in by these very plaintiffs, stating the new arrangement which has been made among the plaintiffs, seems to contradict their former denial, and admits that the other plaintiffs are entitled to a portion of the wasilat. However, I agree with Mr. Reid that the exact amount of the share of the plaintiffs is not to be decided in this case. I would, therefore, decree in favor of the plaintiffs generally, for the wasilat in question.

Ordered, therefore, that the decree of the zillah judge be modified ; and taking the mesne proceeds of mouzah Digulgaon at the rate of 495 rupees a year, for 21 years, 9 months, (*viz.* 10, 766 4,) from which is to be deducted the Government revenue for that period, (*viz.*, rupees 5,344-6 2-2,) the remainder (*viz.* 5,421-13-17-2) be awarded to the plaintiffs generally against all the defendants,—also interest upon the sum decreed from the date of filing the plaint in this case, and interest on the whole amount from to-morrow to the date of payment, and that costs, in proportion to the amount awarded to

the plaintiffs, be given against the defendants, and that this decree issue in the joint names of Mr. J. F. M. Reid and Mr. Welby Jackson, who have concurred in the award.

If the plaintiffs have any dispute regarding their shares in the wasilat among themselves, they may arrange it either privately or by suit in court, to which this decision shall be no impediment.

[33] *The 4th February, 1846.*

PRESENT: J. F. M. REID AND A. DICK, Judges; AND W. B. JACKSON,
Officiating Temporary Judge.

CASE NO. 31 OF 1843.

Regular Appeal from the Principal Sudder Ameen of Tipperah.

RAM TUNOO SHA (Defendant), Appellant v. MR. HENRY ROE (Plaintiff),
Respondent.

[*Suit for cancellation of lease—Purchaser—Agreement by lessee to give security—Breach—Whether genuine—Possession given unreservedly—Adopted son not joining in lease—Subsequent admission—Validity.*]

Where a purchaser of property sued to cancel a lease given by the vendor before sale on the ground that the lessee had agreed to give a security and had failed to do so, the fact that possession was unreservedly given without any security was held to show that such agreement was unworthy of credit. Where the lease as well as the sale had been executed only by the mother and not by the adopted son, but the adopted son had subsequently admitted it in the Magistrate's Court, the lease was held valid and that his subsequent denial of it was of no avail.]

Pleaders—Neel Mune and Ghoolam Sufder for Appellant, and Mr. Skinner and Pursuv Koomar for Respondent.

THE respondent sued to cancel a lease of twenty years, possessed by appellant, of a property, which he, respondent, afterwards purchased. The ground on which he places his right to cancel the lease, is that the appellant gave a deed of agreement at the time of obtaining the lease, that he would give sufficient security for the fulfilment of the conditions of lease within three months, which he failed to do. He also advanced incidentally that the lease was not valid, as it was not given by Gunga Narain, the adopted son and co-partner and heir of the Chowdrain Rooknee, who alone gave the lease.

The appellant answered that he had never given the deed of agreement alleged by plaintiff; that he had been put in possession, had paid the Government revenue and the rent due to Rooknee, and was in peaceable possession until disturbed by plaintiff. And as to Gunga Narain, his right and interference in the property were merely nominal; that Rooknee had subscribed his name in the deed with her own, as he was registered in the Collector's office jointly with her as proprietor; that he had never objected, but moreover had admitted his lease in the foudaree Court, and denied any participation in the sale to plaintiff, therefore his admission now could not avail.

The principal sudder ameen gave a decree in favor of plaintiff; cancelling the pottah, on the ground of its being invalid,—Rooknee having no authority to sign for Gunga Narain: and the pottah being otherwise informal and irregular.

[34] The appellant appealed from that decision on the pleas that if their pottah was invalid from not having been signed by Gunga Narain, so was the plaintiff's deed of sale; and that the irregularities advanced by the