

[14] *The 22nd January, 1846.*

PRESENT: R. BARLOW, *Temporary Judge.*

CASE NO. 91 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Midnapore.

KISHEN PEREAH DASSEE, MOTHER ON PART OF RADHEKA MOHUN AND KISHORE MOHUN DASS, MINOR SONS OF RAJ NARAIN DASS (*Defendant*),
Appellant v. JUGGUT NARAIN DASS (Plaintiff), Respondent.

[*Appeal—New pleas in appeal not urged in lower Court—Cannot be heard.*]

Where the appellant-defendant refused to plead in answer to the plaint filed by the plaintiff, and brings forward in appeal new matter nowhere alluded to in the original suit, such matter cannot be heard and the appeal must be dismissed.]

Amount of suit Rs. 43,429-14-11-2.

THE plaint in the case was filed on the 23rd November 1842, and is as follows :

Goberdhun Dass had three sons, Raj Narain, Juggut Narain, Hurree Narain. On their father's decease the three sons succeeded to his estate. Hurree Narain died a minor, when disputes arose between the two surviving sons, in consequence of which some delay occurred in the partition between them. At length on the 27th Magh 1232 Umlee, they came to a settlement, and the defendant Kishen Perea's husband, Raj Narain, executed an ikrar, acknowledging plaintiff's rights, and made it over to him, duly signed and sealed. One Kaleenath Ray held a decree against Raj Narain, and, in execution, attached the joint property of plaintiff and the said Raj Narain, calling it the property of the latter; on which plaintiff protested and claimed a half share, which was released by the Judge. Plaintiff's brother, Raj Narain, claimed more than was his share of the estate, and plaintiff at length conceded his right to certain "neej-jote" lands, and on the 21st Jhet 1246, a deed of division was drawn out, in which the shares of both parties were specified. This was duly signed and sealed; two copies of it [15] were made, and one given to each of them, and each put in possession of his share. On the 31st Srabun 1246 Umlee, Raj Narain died, leaving his widow and two minor sons. Plaintiff goes on to say Rajah Panchanun, the widow Kishen Perea's brother, would not carry out the agreement entered into by the deceased, Raj Narain, and objected to my having possession of the property detailed in my plaint, and proceedings were taken in the criminal court. I filed my documents; but the magistrate, on the 18th September 1841, gave the defendant possession, and his order was upheld in appeal. The defendant did not deny the property was hereditary, in the foudjary court. Under the Hindoo law, we are entitled to equal shares of it.

In the case instituted under Act IV of 1840, I only claimed so much of the estate as was declared to belong to me under the deed of division. As however the defendant failed to carry it out, and denies my right altogether, I now claim a half share of the property, of which I was ousted by the magistrate's order above mentioned, and also a half share of the "neej-jote" lands, from the 21st Jhet 1246 Umlee, when the partition deed was executed, with mesne profits and interest thereon, also my share of the value of personals, with interest, and I sue for reversal of the magistrate's order and the deed of partition

A supplementary petition was filed on the 4th April 1843, praying that the amount of mesne profits might be enquired into on the execution of decree. On issue of process for attendance of the defendant, the principal sudder ameen,

in his proceedings of the 2nd March 1843, directed an *ex parte* investigation, as the defendant had failed to appear.

On the 4th April following, he rejected a petition put in by the defendant to be heard, as the case was ready for decision. On the 7th idem, the defendant was admitted to plead; and on the 20th idem, gave in her answer, saying that the plaintiff, on the 31st May 1836, filed a petition, admitting he was not in possession of the lakbiraj lands and tanks in talook Pyag. This fact is also proved by two other petitions presented in 1839 and 1840; in none of which any mention is made of the documents now brought forward, on which the claim is founded, and which, it is alleged, were executed by her husband. The answer further states defendant is in possession of such property only as was left by her husband; that she never ousted plaintiff; that Hurree Narain died in 1232 in the month of Bhadoon, and that half could not therefore have been divided between plaintiff and her husband in Maugh of the last-mentioned year. After refusing to defend the case in its present form, defendant prays that it may be tried on the documents and proof adduced by the plaintiff.

The principal sudder ameen, on the 24th April 1843, passed judgment in favour of the plaintiff. He was of opinion that it was [16] fully proved that the property was hereditary that plaintiff and defendant's husband were brothers, and as the defendant made no objections to the amount at which the action was brought, but only urged that the plaintiff was never in possession of the contested property, her pleas, could not affect plaintiff's claims. He considered that the deed of division, dated the 21st Jhet 1246 Umlee, was established by the evidence of Mokteram Maytee, by whom it was written, and by the evidence of four other subscribing witnesses, and that it shewed the property was in the charge of the defendant's husband on account of the plaintiff up to the date of the division. The claim to a half share of the neej-jote lands he rejected, as by the partition plaintiff had relinquished his right to them. He disallowed the value of the ornaments, as plaintiff's witnesses were unable to state what was their weight. After deducting 500 beegahs of neej-jote lands from 1,950 beegahs, detailed in the plaint, he decreed a half of the remaining 1,426 beegahs, *viz.*, 713 beegahs to plaintiff, with half of the residence of Jye Kishenpore, half of talook Pyag, half of the produce of the lands assigned for the worship of the thakoor, half of a remuneration called * *nimuk birtee* and *nuggud birtee*, with costs rateably and interest thereon, and mesne profits from the date of the magistrate's order above-mentioned, to be declared in execution of decree, as well as 582 rupees value of personals with interest thereon. Should any of the parties, who have protested in this case, be dissatisfied, they can sue regularly to establish their claims.

An appeal was preferred to this Court by the defendant, urging that she was engaged in the prosecution of other suits and could not look after her interests in the present case. That Goberdhun Dass, her father-in-law, during his lifetime divided his property between his sons, who held accordingly. Goberdhun died in 1231, and Hurree Narain in Bhadoon 1232. That her husband enjoyed his defined share till 1241, when he died. That she succeeded to him and has enjoyed her share of the property. That the plaintiff (respondent), in connivance with Rajah Lukhee Narain, after the division made by

* *Nimuk Birtee*. The special grant of certain quantities of salt by a number of molungees, salt manufacturers of a division, to certain individuals, who receive the same either in kind or money.

Nuggud Birtee. This is a donation from the proceeds of the collective quantity of salt allotted by each molungee at the commencement of the weighing of their manufacture of the season, for religious and charitable purposes, in order to secure a good omen.

Goberdhun Dass, and in opposition to the terms of it, has instituted this suit to deprive her of her late husband's estate.

The Court see no reason for interference with the decision of the lower. The appellant, (defendant), before the principal sudder ameen, refused to plead in answer to the plaint filed by the [17] respondent. In her petition of appeal, she brings forward new matter nowhere alluded to in the original suit; such matter cannot be heard; the Court therefore dismiss the appeal, with costs.

The 24th January, 1846.

PRESENT: J. F. M. REID, *Judge.*

PETITION NO. 893 OF 1844.

[Limitation—Suit dismissed as barred by limitation—Order to specify how limitation applies.

A Court dismissing a claim as barred by limitation must shew distinctly in what manner the rule of limitation applies to the case. Unless this is done, it is impossible for the appellate Court to determine whether the decision is just or not.]

IN THE MATTER OF THE PETITION OF MUSST. PUNCHUMEE DOSSEE, filed in this Court, on the 7th October 1844, praying for the admission of a special appeal from the decision of C. T. Davidson, Esq., acting Judge of Mymensingh, under date the 30th August 1844, confirming that of Mr. C. Mackay, principal sudder ameen of that district, under date 24th February 1844, in the case of *Petitioner, Plaintiff v. Anund Chunder Chowdry, and others, defendants.* It is hereby certified that the said application is granted on the following grounds:

The plaintiff having sued to obtain possession of certain lands in talook Bejoy Ram Doss, in pergunnah Sheerpoor, zillah Mymensingh, the principal sudder ameen dismissed the claim as barred by the rule of limitation, without shewing in what manner that rule bears upon the case. The Judge confirmed the decision. The principal sudder ameen ought to have shewn distinctly in what manner he considered the claim to be barred; as, until he does so, it is impossible for this Court to determine whether the decision is just or not. This decision is therefore considered incomplete, and a special appeal having been admitted, it is

ORDERED

That the case be sent back to the principal sudder ameen, with instructions to detail at length, in his decree, the grounds on which he considers the rule of limitations applicable, and then pass a final order. The value of the stamp, on which the petitions of appeal and special appeal are written, will, as usual, be returned to the petitioner.