

Provincial Court of Patna, dated the 7th of March 1821, and dismissed the claim of the respondent to the moiety in question. As the respondent had obtained possession thereof in execution of the decision of the Provincial Court, it was ordered that possession should be immediately restored to the appellants; that the respondent should account to them for the mesne profits for the time she had possession, that she should receive the sum deposited in the Zillah Court; that the appellants should pay to her the balance due for interest up to the 19th of September 1815, and that the respondent should pay the costs of suit.

ABEH NUNDEE MUSTOFEE, *Appellant v.* DOORGA DOSS AND KASHI
GUTTEE (HEIRS OF JUGMOHUN SING, DECEASED), *Respondents.*

(1825. Jan. 15th.)

The respondent repaired an embankment whereby the land of the appellant was laid under water. On the suit of the latter, it appearing that the embankment was not in existence when the parties purchased their estates, the Sudder Dewanny Adawlut decreed that the embankment should be broken down, and awarded damages to the appellant.

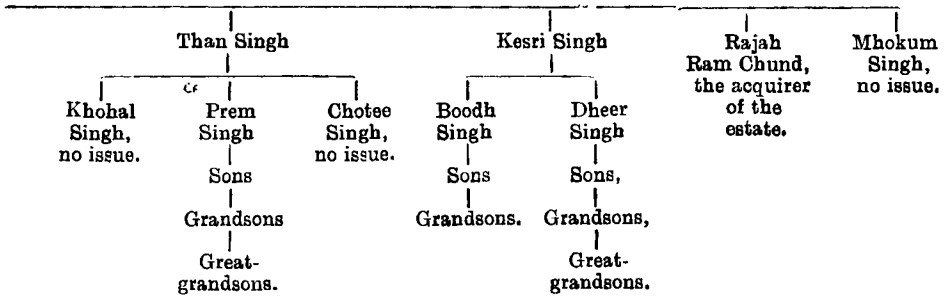
THIS suit was instituted by Abeh Nundee Mustofee, in the Zillah Court of Beerbhoom, to compel Jugmohan Sing, Zemindar of pergunna Aleenugur, to cut a *bund*. or embankment which, by confining the water, inundated 12 beegas, 9 cottas of land belonging to mouza Suthurea, his estate, thereby depriving him of the produce of the said land, and to recover the sum of 25 rupees, 6 anas, 15 gundas the produce of the said land for the year 1222, B. S. He pleaded that the former Zemindar [11] had allowed the *bund* to fall to decay about 50 or 55 years before, and that the defendant had no right to repair it to his prejudice. The defendant stated that he had built up the *bund* on the site of an old embankment: and contended that his right to build it, though dormant, was not extinct: and that as he had done so with a view to his own profit, and not to injure the plaintiff's property, his right to do so was unquestionable.

The Zillah Registrar being of opinion that the defendant had a right to restore the embankment, dismissed the claim of the plaintiff with costs.

The plaintiff appealed from this decision, but as the Registrar had been appointed Judge of the district, the appeal was removed to the Provincial Court of Moorshedabad, under the provisions of section 14, regulation 2, 1805. In addition to his former pleas, the appellant stated that the respondent had so far acknowledged his right to demand the demolition of the bund, as to offer him a portion of land equivalent to that which had been inundated: and that this offer had induced him to delay the institution of the suit: but on the respondent retracting his offer, he had instituted the present action. This was positively denied by the respondent.

The Provincial Court of Moorshedabad seeing no reason to alter the decision of the Registrar of the Zillah Court, confirmed it; and dismissed the appeal with costs.

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tatement of Keerut Singh was not proved.

The Court of Sudder Dewanny Adawlut (present C. Smith, Second Judge, and S. T. Goad, Third Judge) admitted a special appeal, on the motion of the original plaintiff, for the purpose of taking further evidence as to the length of time during which the embankment had been allowed to lie neglected, and other points which appeared to call for further investigation.

The respondent died at this stage of the proceeding, and Doorga Das his brother, and Kashi Guttee his nephew, appeared to defend the suit as his heirs. His widow did not appear.

It appearing from the evidence taken by the Zillah Judge under the orders of the Court, that the estates of the parties in this suit had formerly composed parts of one and the same estate, which being divided into lots, had been sold by public auction by the Collector many years before, in satisfaction of arrears of public revenue; that when the parties purchased their estate, the embankment having fallen to decay, was not in existence: and that the land of the plaintiff, which was inundated by the recon- [12] struction of the embankment, had been distinctly assessed by the Collector, when the *jumma* of the several lots was fixed, the Court (present C. Smith, Second Judge, and W. B. Martin, Fifth Judge), was of opinion that the respondent was not authorized to repair the *bund* to the prejudice of the appellant; a final judgment was accordingly passed on the 15th of January 1825, in favour of the appellant reversing the decisions of the Lower Courts; providing that the respondent should cut the embankment and pay to the appellant the sum of 25 rupees, 6 anas and 15 gundas, being the produce of the inundated land for the year 1222, B.S. The costs of the suit in the three Courts were charged to the respondents.

BABOO GIRWURDHAREE SINGH, *Appellant v.* KULAHUL SINGH AND OTHERS, *Respondents*; AND KEERUT SINGH, *Appellant v.* BABOO GIRWURDHAREE SINGH, *Respondent.* (1825. Jan. 19th.)

Partition of an ancestral estate among the heirs decreed in opposition to the claim of one heir to hold the same as an indivisible estate.

THE original suit whence sprung these two appeals, was instituted in the Provincial Court of Patna on the 31st of December 1821, by Baboo Girwurdharee Singh, to recover from Keerut Singh possession of the landed estate of the late Raja Jeswunt Sing, consisting of certain *Nizamut* villages, situate in pergunna Musodeh, and certain resumed *jageer mehals*, and other villages in pergunna Arwul, Zillah Behar. Suit laid at three years produce, 1,04,476 rupees, 11 anas, 1 gunda.

He pleaded that Raja Ram Chund, son of Chowdry Kunuk Sing, was the first acquirer of the estate; that being childless he adopted two sons, *viz.*, Goolal Chund, his nephew, son of his brother Ajaib Sing, and Gundurp Sing, his great nephew, son of Doolar Sing and grandson of the said Ajaib Sing; that on the demise of Raja Ram Chund while in attendance on the imperial court at Delhi, he was succeeded in his offices at Court by Goolal Chund, and in [13] his landed estate in Behar by Gundurp Sing; that