

RAJAH RUGHOONUNDUN SINGH, JUDDONUNDUN SINGH AND DOEKEENUNDUN SINGH, *Appellants v. MUSST. NOORUT PAUREE AND OTHERS, Respondents.* (1841. January 19th.)

A claim to mesne profits of certain lands which had been adjudged to the plaintiffs under a decree founded on an arbitration award, preferred nearly 12 years after the date of the decree, dismissed on the presumption that the arbitrators had adjusted all differences between the parties respecting the disputed lands.

THIS was an action instituted by the respondents on the 30th of May, 1829, in the Zillah Court of Sarun, to recover from the appellants the sum of 4,950 rupees, as mesne profits (with interest) of certain lands, concerning which there had previously been disputes between the parties, which had been carried into Court, and finally adjusted by arbitration, by a distribution of the disputed lands, under which 550 beegahs were assigned to the respondents. Of this land the plaintiffs now claim the mesne profits for the period of dispossession previous to the arbitration.

The defendants pleaded that the former suit respecting the land was decided on the 1st September, 1817, and that neither in the arbitration award, nor in the decree of Court founded upon it, was there any mention made of mesne profits, and that it was not now open to the plaintiffs to bring an action for them, after the expiration of nearly 12 years from the date of the decree.

The Principal Sudder Ameen, Syud Sooja-ood-een Alee Khan, gave judgment on the 4th January, 1833, in favour of the plaintiffs. An appeal preferred to the Zillah Judge by the defendants was struck off on default. A summary appeal having been rejected by the Sudder Dewanny Adawlut, the defendants applied for, and obtained, permission to file a special appeal.

[4] Mr. DICK:—The arbitration award, which evidently settled all differences between the parties respecting the lands in dispute, contains no mention of mesne profits; and the fact of the plaintiffs' having urged no claim to the profits for period of a nearly 12 years, would lead to the inference that they themselves considered the arbitration as a final adjustment of their claims against the defendants.

I would give judgment in favour of the defendants.

Mr. Lee Warner differed as to the right of the plaintiffs to the mesne profits, but being of opinion that the investigation to ascertain the amount received was not complete, proposed to return the case for re-investigation on that point.

Mr. D. C. Symth concurred with Mr. Dick, and pronounced final judgment accordingly.

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SUTRUNJEEB PAL AND OTHERS, *Appellants v. HURREE DOSS BABOO AND OTHERS, Respondents.* (1841. January 21st.)

The defendants in an action having advanced a plea which, if correct, would have barred the jurisdiction of the Court trying the suit, but which that Court neglected to enquire into, the Sudder Dewanny Adawlut returned the case as incomplete, for investigation on that point.

**T**HIS was an action instituted by the respondents in the Zillah Court of 24-Pergunnahs, against the appellants, to recover a sum of 1,720 rupees, 7 annas, on account of a loan advanced to the appellants, on deposit of an opium lot. The defendants pleaded that, as the transaction did not take place in the 24-Pergunnahs, the jurisdiction of that Court was barred. The Principal Sudder Ameen and Zillah Judge gave judgment in favor of the plaintiffs on the merits of the case without entering into the plea advanced by the defendants in regard to the jurisdiction of the Court.

A special appeal was admitted by the Sudder Dewanny Adawlut.

Mr. D. C. Smyth:—The plaintiff says that the transaction occurred within the jurisdiction of the 24-Pergunnahs. On the other hand the defendants plead that it occurred within the town of Calcutta. There is strong presumption that the statement of the defendants is the correct one. The defendants moreover reside in the Hooghly district. It is therefore of importance that evidence should be taken specially as to the place where the debt was contracted. If it should appear that the transaction did not [5] take place within the 24-Pergunnahs, the Courts of that district have no jurisdiction. The case must be returned for that purpose.

Order accordingly.

MCHUNT SHEO SUHYE DOSS, *Appellant* v. MCHUNT SOOKH DEO DOSS,  
*Respondent.* (1841. January 25th.)

Claim preferred by the respondent, to set aside an assignment executed by himself of certain religiously endowed property of which he had the management, on the alleged ground of failure on the part of the assignee to abide by the conditions of the assignment, dismissed for want of proof of the alleged conditions.

**T**HIS was an action instituted by the respondent *in forma pauperis*, in the Zillah Court of Behar, against the appellant, to set aside a *tumleeknameh*, or deed of assignment, executed by the respondent, and to recover the property forming the subject of assignment. The suit was laid at 20,000 rupees, the alleged value of the property.

The plaint set forth that in consequence of sickness and inability to attend to his affairs, the plaintiff, at the suggestion of the defendant, assigned to him certain property (to wit, some buildings attached to a religious establishment called Katra Rajah Khyalee Ram, trees of various kinds, a garden in Sahibgunge, 25 beegahs of lands in a village called Sumroorputtee, certain villages held in farm and mortgage, and all his personal property consisting of cash, jewels, bonds, deeds of various kinds, &c.) under a deed of assignment dated 25th November, 1832, corresponding with the 17th *Aghun* 1240 F. S. The assignment was made under the assurance that, in the event of the plaintiff's recovery, the property should still be considered as his and entirely at his disposal, and with the verbal condition that the defendant should pay to the plaintiff annually the sum of 300 rupees, by monthly instalments of 25 rupees, for his support, and that he should maintain the necessary servants for the entertainment of travellers, and provide for the repairs of the buildings of the religious establishment to which the lands appertained.