

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.