

The defendants object, that the zemindar's claim for rent was against the entire estate. They admit that he did not make the plaintiff one of the defendants in the suit for rent; but assign as a reason, that, in a former similar suit for rent, he had included her among the defendants, but her name was struck out by the collector; he therefore omitted her name in this, as in other subsequent suits. They further add, that a portion of the surplus proceeds of the sale was, by consent of the plaintiff, paid for her benefit by order of the principal sudder ameen, in liquidation of a claim under a decree.

On the 7th August 1845, the principal sudder ameen gave a decree in favor of the plaintiff; reversing the entire sale as illegal, and awarding possession to her of the share claimed.

There is no doubt that the whole *talook*, Shamram-Dut, was liable for the balance of rent due from it. The omission of the plaintiff's name among the defendants, is sufficiently accounted for by the circumstance that the collector had himself struck her name out in a former case, for want of proof that she was in possession. It is doubtful, whether she ever obtained possession, though her right is unquestioned. It is certain that she never had separate possession; and, in fact, that she had no further possession than consisted in receiving part of the proceeds. The estate was held jointly by all the sharers, and was managed by the male sharers. We do not, therefore, think the omission of the plaintiff's name, in the summary suit, sufficient to vitiate the sale.

Again, it appears to us, that the payment of a portion of the sale-proceeds, by order of the principal sudder ameen, took place with the tacit consent of plaintiff. Her petition requesting that the payment may be made to herself, is produced: it purports to have been filed by a person named Sada Sheo Sein, but the *mookhtarnameh* is not produced. The plaintiff denies she gave any such *mookhtarnameh*; but it seems clear that such a document was filed, and was sent by the collector to the *mofussil ameen*, with orders to ascertain the genuineness of it; the person executing it being a *purdeh-nusheen*. The genuineness of the application was thus ascertained at the time; and we have nothing to impugn it now, but the absence of the document from the collector's office. The money was paid afterwards, by order of court, in satisfaction of a decree against plaintiff. On the whole, we see no reason to doubt the validity of the sale. We therefore reverse the principal sudder ameen's order, and reject the claim of the *plaintiff*; costs against plaintiff.

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[26] *The 22nd January, 1848.*

PRESENT: C. TUCKER, ESQ., AND SIR R. BARLOW, BART., *Judges*,  
J. A. F. HAWKINS, ESQ., *Temporary Judge*.

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CASE NO. 234<sup>t</sup> OF 1846.

*Special Appeal from a decision passed by G. C. Cheap, Esq., Judge of Zillah Rajshahye, February 27th 1845; altering a decree passed by Moulvee Abdool Ali, Principal Sudder Ameen, May 30th, 1844.*

GOOROO GOVIND CHOWDHREE, *Appellant (Defendant)* v. BHOWANNY  
SUNKER SIRCAR, *Respondent (Plaintiff)*.

**[Limitation—Regulation II of 1805, section 3—Violent and fraudulent dispossession—Subsequent possession under just and honest title for 12 years—Delay in bringing suit.**

Where, although the plaintiff had been dispossessed of a *mowraee ijara* by the defendant's father, it had still not been shown that there was sufficient and good cause which

prevented the plaintiff from bringing his suit within 12 years after the death of defendant's father, held that a suit instituted more than 12 years after the death of defendant's father against defendant who had been in possession under an honest title by inheritance, was not saved from the bar of limitation by section 3, Regulation II of 1805].

*Wukeel of Appellant*—*Gholam Sufdur.*

*Wukeel of Respondent*—*J. G. Waller.*

THIS case was admitted to special appeal, on the 25th August 1846, under the following certificate recorded by Mr. Charles Tucker:—

'In this case the plaintiff sued on 15th September 1841, corresponding with 31st *Bhadoon* 1248, to recover possession of a *mowroosee ijara*, of which he said he had been dispossessed by the defendant's father, Gunga Govind Chowdhree, in the month of *Assar* 1210 B.S. The judge, considering he had been dispossessed by violence and fraud, decreed for the plaintiff under the 1st clause of section 3, Regulation 2, 1805. But the judge has overlooked that part of the clause and section quoted by him, which provides that the law shall not be pleaded, if the property shall have been subsequently held under a just and honest title (such as inheritance, purchase, &c., &c.) during a period of 12 years antecedent to the preferring a claim of right thereto in a competent court.

'It appears, that the defendant's father, the alleged dispossessor, died in 1232 B.S., and this suit was not instituted till *Bhadoon* 1248 B.S.; so that the defendant had been in possession, under a just and honest title, for at least 15 years before the suit was instituted. I admit the special appeal, on this point.'

Before this Court, the respondent, without denying the statement set forth in the above certificate, pleaded that he had not been guilty of any *laches*. He stated, that after having been dispossessed of his *mowroosee ijara*, called *turuff* Himrajpoor, by Gunga Govind, the appellant's father, a suit was instituted by Rajah Mohun Chunder Deb, against the said Gunga Govind, in the provincial court at [27] Moorshedabad, for *turuff* Soorjanuggur which, originally, included the village appertaining to *turuff* Himrajpoor; but which villages, when the *moorroosee ijara* was granted to his family, were constituted into separate and distinct *turuffs*. That, whilst this case was pending in appeal before the *Sudder Dewanny Adawlut*, he put in a petition for the protection of his rights in *turuff* Himrajpoor, and praying to be heard on the point. That the order recorded on the said petition was to the purport, that proper orders would be passed on the subject of it, when the case came up for judgment; but that the case was disposed of without any further order having been recorded regarding his claim. That, in consequence, he put in another petition after the decision, and was required to apply for a review of judgment, which he did do: the result of which was, that he was referred to a regular suit; and that it was entirely owing to the omission of the Court of *Sudder Dewanny Adawlut*, in not passing a definite order on his first application, that (through the delay which followed) the appellant had been so long in possession since the demise of his father. Hence he pleaded, that the indulgence which it was competent to the court to extend to suitors under section 14, Regulation 3, 1793, might be extended to him.

We find, that the dispossession of respondent is stated to have taken place in the year 1210 B.S., 1803-4, A.D.; that the suit, referred to by the respondent, was instituted in the provincial court at Moorshedabad, on 30th July 1811, A. D.—disposed of on 31st August 1812,—and on appeal admitted in this Court under special circumstances, on 19th September 1821; and that the first petition of the respondent was filed in this Court, on 8th March 1828, that is, 24 years after the alleged dispossession, and 10 after the litigation had commenced.

We find, that the case in this Court was disposed of on 20th January 1829; and that the second petition of the respondent, reminding the Court of the

omission complained of, was not filed till 1st June 1835, or nearly 6½ years after the decision of this Court.

We find, that that petition was finally disposed of by this Court on 5th July 1837; and that the present suit was not instituted till 15th September 1841, upwards of 4 years afterwards.

We find, that the appellant's father died in *Assin* 1232 B.S., (date not stated); and that the 5th July 1837, corresponds with 23d *Assar* 1244 B.S.; consequently the appellant had not been 12 years in possession after his father's demise, when the respondent's application to this Court was disposed of; so that it is not true to say, that the proceedings of this Court prevented the respondent bringing his action within the prescribed time.

We therefore reverse the decision of the lower court; and, decreeing for the appellant, dismiss the claim preferred by the respondent on the grounds mentioned in the certificate above recorded. Costs in all the courts to be charged to the respondent.

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[28] *The 22d January, 1848.*

PRESENT: C. TUCKER, ESQ., AND SIR R. BARLOW, BART., *Judges*,  
J. A. F. HAWKINS, ESQ., *Temporary Judge*.

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CASES NOS. 52 AND 53 OF 1847.

*Special Appeals from a decision passed by the Principal Sudder Ameen of Furreedpore, December 5th, 1844; affirming a decree passed by the Moonsiff of Bhanga, July 9th, 1844.*

MUSST. KASSEE ISSOREE DIBBEAH, AND RAMKISHORE ACHARJE, *Appellants (Defendants)* v. GOLUCK CHUNDER GUNGOLEE, AND OTHERS, *Respondents (Plaintiffs)*.

[*Hindu Law—Succession—Preferential right of son of maternal uncle over descendant from common ancestor beyond third degree in ascent—Regulation V of 1831, section 6, clause 4—Failure to investigate rights of rival claimants.*

The Courts below had failed to investigate the question as to the preferential right to inherit as between one who was the son of a maternal uncle of the deceased and others who were lineal descendants from a common ancestor beyond the third degree in ascent, and had also failed to proceed under clause 4, section 6, Regulation V of 1831, deeming themselves bound by a previous decision between the father of the plaintiffs and one of the defendants, which was not conclusive on the point, but left the question open. *Held* that the judgments could not be supported.]

*Wukeel of Appellants—Ramapurshad Raee.*

*Wukeels of Respondents—Gholam Sufdur, E. Colebrooke, and Taroke Chunder Raee.*

THESE cases were admitted to special appeal, on the 28th November 1846, under the following certificate recorded by Messrs. C. Tucker, J.F.M. Reid and Sir R. Barlow:—

'Plaintiffs sued the defendants for their share of the estate of Kalee Das Gungolee. Ram Gunga Gungolee, father of the plaintiffs, sued Kassee Issoree in the Bhanga moonsiff's court for the above estate; his plaint was dismissed. It was appealed to the additional principal sudder ameen, Ram Mohun Raee, who affirmed the moonsiff's decision, on the 6th September 1837; providing that, if Kassee Issoree died childless, the estate of Kalee Das should then go to Ram Gunga. Kassee Issoree's husband, Soorj Nurain Mujmoadar, died on the 1st *Bhadoon* 1250, or 16th August 1843; and Goluck Chundur and others [their