

[24] The land claimed was the subject of a second *kubaleh* (or deed of sale) corresponding with that which gave rise to the proceedings in the case disposed of under No. 239 (preceding); the parties and circumstances being the same in both suits.

The following is Mr. Reid's assigned ground of admission of the special appeal, being the same as that recorded in the case just noted:—Admitted for the same reason as that given in the preceding case, *viz.*, to try whether the law requires, that the right of pre-emption be demanded from all the sellers (as determined by the sudder ameen) or whether the demand from one of them (as decided by the principal sudder ameen) is sufficient.

For the reasons assigned in case No. 239 of 1846, decreed this day, we affirm the decision of the principal sudder ameen, with costs payable by appellants.

The 19th January, 1848.

PRESENT: W. B. JACKSON, AND J. A. F. HAWKINS, ESQRS.,  
Temporary Judges, E. CURRIE, ESQ., Exercising the powers of a Judge.

CASE NO. 336 OF 1845.

*Regular Appeal from a decree passed by the Principal Sudder Ameen of  
Backerkunge, August 7th, 1845.*

ANUND MYE, WIFE OF NEEL KUNTH SHAH, Appellant (*Defendant with others*)  
v. RAMDOORGA, WIFE OF RAMJYE DUT, deceased (*pauper*), Respondent,  
(*Plaintiff*).

[*Landlord and tenant—Sale of tenant's holding for arrears of rent—Sale in pursuance of decree under Reg. VII of 1799—Omission of one of the sharers in tenant right—Absence of separate possession—Validity of sale—Estoppel by receipt of sale-proceeds.*

The omission by the landlord to include the name of one of the sharers in the tenant-right in the summary suit under Regulation VII of 1799 for rent and in the sale of the holding for the arrears decreed, does not vitiate the sale, where the sharers held the tenant right jointly and the sharer who was omitted had no separate possession. It was also held that the omitted sharer was estopped from questioning the validity of the sale by her petition in accordance with which a portion of the sale-proceeds was applied for her benefit.]

*Wukeels of Appellant—Pursun Komar Thakur, Rampran Raee and Bungsee Buddun Mitr.*

*Wukeels of Respondent.—J. G. Waller and Rampurshad Baee.*

CLAIM for possession of one-third share of a *shikamee talook*, called 8 *annas talook* Shanram-dut, and reversal of a sale in execution of a summary decree under Regulation 7, 1799.

The plaintiff claims her one-third share in this *talook*, by inheritance from her husband, Ramjye Dut; and her title, as heiress, is not contested. She states that Golabee Devi, zemindar of this *talook*, sued for rent of the same under Regulation 7, 1799; and, on the 6th July 1841, obtained a decree from the collector. Under [25] this decree the whole *talook* was sold at auction. The plaintiff adds, that in this decree her name is not to be found: the suit was not brought against her; and it seems that in the notice of sale, and account sale, her name is also wanting. As her right by inheritance is not denied, she contends that the sale of the whole *talook* including her share, was illegal.

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