

The 5th January, 1848.

PRESENT: A. DICK, ESQ., *Judge*, AND W. B. JACKSON AND
J. A. F. HAWKINS, ESQRS., *Temporary Judges*.

CASE NO. 20, OF 1846.

*Regular Appeals from a decision of the Principal Sudder Ameen of
Rajshahye, Moulvee Abdool Ali.*

USDUN-O-NISSA BIBI, *Appellant (Plaintiff)* v. FUKHROODEEN
MOHUMMUD AND HOSEIN CHOWDHREE, *Respondents (Defendants)*.

Wukeel of Appellant—Abas Ali.

Wukeel of Respondent—Gholam Sufdur.

CASE NO. 21 OF 1846.

FUKHROODEEN MOHUMMUD AND HOSEIN CHOWDHREE, *Appellants
(Defendants)* v. USDUN-O-NISSA BIBI, *Respondent (Plaintiff)*.

[*Splitting up claims on inheritance—Joinder of causes of action—Suij for plaintiff's share of
mother's property—Subsequent suit for mesne profits due to her mother—Circular Order of
11th January 1839.*

Where, before the issue of the Circular Order of the 11th January 1839, a suit by the plaintiff for the recovery by right of inheritance of her mother's property had been instituted and pending, a subsequent suit to recover the mesne profits due to her mother is not barred as the plaintiff could not have joined her claim to the mesne profits with her claim for the other property of her mother in such previous suit.]

SUIT laid at Rs. 14,944-5-10, for mesne profits: amount of appeal 10,003-12-10, portion of claim dismissed.

The mesne profits sued for were due by respondents to appellant's mother; and she was told she might sue for them, in the decree she obtained for possession of the property from which they accrued. Under that decree, the mother obtained possession in *Poos* 1235 B.Æ., or December 1827 A.D. The mother died in *Assar* 1238 B.Æ.

[4] In June 7th, (1839) plaintiff sued for this claim, being mesne profits from 1225 to *Ughun* 1235 B.Æ. On the 25th January 1841 A.D., she was non-suited, although she had sued for the property in 1840 A.D., and had got a decree, because she was not possessed of the property from which she claimed the mesne profits. On the 12th July 1841, she got a decree for the property, which was reversed in appeal on 4th September 1844, and the case remanded for re-trial. She subsequently obtained a decree on 17th July 1845, confirmed in appeal on 28th April 1847. She instituted this suit on the 27th March 1843.

The pleas of defendants were, that the suit must be dismissed under the statute of limitation; and denied that such heavy, or, indeed, any mesne profits were due by them to plaintiff's mother.

The principal sudder ameen, deeming only the years 1225 B.Æ. and 1226 B.Æ., to have passed beyond the statute of limitation, decreed mesne profits for the rest of the period, at the rate at which the mother had settled with the co-partners of defendants.

Dissatisfied with that decision, as it gave her scarcely more than one third of her claim, she preferred this appeal. The defendants too, dissatisfied, likewise appealed.

In appeal, besides the plea of bar under the statute of limitation, it was urged, on the part of the defendants, that the claim should be dismissed on the principle set forth in the Circular Order of January 11th, 1839, that claims on inheritance must not be split up and sued for separately; because plaintiff

had sued for her share of the property in one case, and now for the mesne profits due to her mother, both on right of inheritance.

The court are of opinion, that plaintiff (appellant) could not conjoin her claim to these mesne profits with her claim for the other property of her mother ; because a suit for them was then pending in court, instituted previous to the issue of the Circular Order, 11th January 1839.

With respect to the other point,—lapse of time,—we find that the appellant's mother obtained her decree, authorizing her to sue for these mesne profits on the 3d July 1827, and she was put into possession in December 1827. Appellant instituted this suit on the 27th March 1843 : thus 15 years, 8 months, and several days have elapsed since the decree authorizing her mother to sue, and the date of her suit. From this must be deducted the period that elapsed from the date of her first suit for these profits, (7th June 1839) to 12th July 1841, date of appellant's obtaining a decree for the property, which removed the bar to her suing under the non-suit on the 25th January 1841. After such deduction, there still remains upwards of 13 years and a half. We therefore dismiss the appeal of plaintiff (appellant) ; and, reversing the decision of the principal sudder ameen, dismiss altogether the claim of plaintiff, with costs of both appeals and of the lower court.

4 S.D.A.R. 5=7 Sel. Rep. 498.

[5] *The 6th January, 1848.*

PRESENT : J. A. F. HAWKINS, ESQ., *Temporary Judge.*

PETITION NO. 710 OF 1846.

BIRJMOHUN CHOWDHREE (*Plaintiff*) v. CHUNDER MUNNEE SHAH AND OTHERS (*Defendants*).

[*Evidence—Account books.*]

See same at p. 377, Vol. VIII, I.D.O.S.

4 S.D.A.R. 5=7 Sel. Rep. 498.

The 6th January, 1848.

PRESENT : C. TUCKER, ESQ., *Judge.*

PETITION NO. 667 OF 1846.

JOBAN CHOWDHREE (*Plaintiff*) v. PARTAB NURAIN SINGH (*Defendant*).

[*Burden of proof—Illegal attachment of property—Disposal of such property—Onus of proof on wrong-doer.*]

See same at p. 378, Vol. VIII, I.D.O.S.