[20] *The 15th January*, 1852.

PRESENT: J. R. COLVIN AND J. DUNBAR, ESQRS., *Judges*, AND A. J. M. MILLS, ESQ., *Officiating Judge*.

CASE NO. 46 OF 1849.

Regular Appeal from a decision passed by Moulvee Rooknoodeen Khan, Principal Sudder Ameen of Zillah Purneah, dated 29th August 1848.

RAJA RAMKOWUR (*Plaintiff*), *Appellant v.* MAHARAJA ROODER SINGH (*Defendant*), AFTER HIS DEATH, MAHARAJA MUHESHWUR SINGH, *Respondent*.

Vakeel of Appellant—Sumbhoonath Pundit.

Vakeel of Respondent—Mr. J.G Waller.

CASE NO. 47 OF 1849.

MAHARAJA ROODER SINGH BAHADOOR (*Defendant*), AFTER HIS DEATH MAHARAJA MUHESHWUR SINGH, *Appellant v.* RAJA RAMKOWUR, (*Plaintiff*), *Respondent*.

[*Procedure—Appeal by one of several defendants on personal plea—Other co-defendants need not be made respondents—Suit for possession—Particulars of lands, etc., not specified—Non-suit.*]

An appellant is not bound to make his co-defendants, respondents, when his appeal is on a plea personal simply to himself, and raises no question as to the liability of those co-defendants.

Where a plaint is entirely defective in its statement of the particular lands claimed by it, and objection has been taken on this ground in the defendant's answer, but the defect has not been supplied by the plaintiff before the close of the pleadings, the courts must pass an answer of nonsuit, with reference to the precedents Jye Shunkur Das and others *versus* Ram Kunhaee Raee and others, decided 12th March 1850, Reports, p. 43 and Mirza Mohumud Beg decided 27th June 1850, Reports, p. 316 and to the sound rule of law to be applied to such claims. The defect in the plaint is not cured by a deputation of ameens *subsequently to the* close of the *pleadings*, in order to fix the precise locality of the lands to which the dispute shall be held to relate. A plaintiff must clearly specify in his pleadings the particular lands sued for, so that the defendant may be enabled to state defensive pleas in regard to them.

Vakeel of Appellant—Mr. J.G. Waller.

Vakeel of Respondent—Sumbhoonath Pundit.

SUIT for the possession of land, with mesne profits, laid at rupees 26,086-5-8.

The plaintiff sued to be put in possession of 712 beegahs, 15 cottahs, on the ground that they pertained to killah Topra, in mouza Maharajgunge, belonging to a putnee tenure granted to him by Sree Narine Singh, proprietor of Rogobpoor, and had been unjustly taken possession of by the defendants.

The principal defendant, Maharaja Rooder Singh, zemindar, the local superintendent, and the farmers, denied the truth of the claim, and alleged that the lands formed part of mouza Magleah Porindah, in the raja's zemindaree Beernuggur or Goadwara.

The principal sudder ameen, after himself inspecting the lands in order to test the correctness of the local inquiries made by ameens, decreed the claim in part, ordering the plaintiff to be put in possession of about 650 beegahs, 12 cottahs, according to a plan drawn up by an ameen. He directed also that mesne profits for the **[21]** period of dispossession should be paid by the farmers, but that, if these profits could not be recovered from them, then the raja should

be answerable. The costs of the plaintiff, in proportion to the amount of his claim proved, were charged to all the defendants.

The issues in bar of the appeal were first considered by the court. They were substantially to the effect that the appeal as to wasilat ought to be rejected, because the appellant had not included his co-defendants, against whom a decree for mesne profits had also passed, amongst the respondents, inasmuch as the interest of the absent co-defendants might be affected by the result of such an appeal.

After hearing the pleaders on both sides, the court find that the appellant and his co-defendants were not placed by the decree of the lower court under liabilities of such a kind as that his exoneration could in any way be an injury to the co-defendants in question. The decree is passed against them absolutely, and against the appellant only in the event of their failing to pay. The appeal of the appellant is upon special grounds, with reference to the nature of the plaint, that such ultimate or contingent responsibility does not under any circumstances attach to him. This is a plea personal simply to the appellant, and his exemption from liability in ultimate resort raises no question as to the other parties, who are bound in any event under the decree to pay, if they have the means.

The court therefore direct the argument to proceed upon these issues raised, on behalf of the appellant :—

First.—Is not the plaintiff's claim liable to a nonsuit for mixing up several and distinct grounds of action, having their origin at various dates, as specified in the plaint, which prays for distinct redress against the defendants respectively ?

Second.—The suit being for possession of a certain number of *beegahs*, was not the plaintiff bound to set forth the boundaries, and is he not liable to a nonsuit for this defect ?

Upon the first issue, after hearing the argument, the court intimate their opinion that there is no ground for nonsuit, from the nature of the plaint. A question might arise as to the liability of the defendants, other than the appellant, for wasilat in this action, as he is the sole proprietor, and offers pleas of right as to the land being in his estate. The suit regarding the right in the land, however, as against the appellant, is not bad on that account.

On the second issue, Mr. Waller remarks that the plaint discloses no boundaries of the lands claimed ; that they are only referred to as being about 712 *beegahs*, 15 *cottahs*, out of 1,000 *beegahs* in killah Topra, of mouza Maharajgunge, regarding which a former decree had passed. It is fully admitted that, if the plaint had referred to any papers or plans then existing, from which the actual site and boundaries of the lands claimed could be traced, [22] that would have been quite sufficient ; but it is contended that the plaint is wholly without any such reference. This obscurity touches the whole justice of the claim, which is brought, after about eleven years from the date of alleged dispossession, to get possession of lands of which no details whatever are given, so that everything is left in intentional confusion, which would cover fraud.

He calls the attention of the court to the case of Mirza Mohummud Beg *versus* Udeenath Dass, decided 27th June 1850, Sudder Reports, p. 316.

On behalf of the respondent, Baboo Sumbhoonath Pandit admits that the plaint does not distinctly and specifically lay down the boundaries of the lands claimed, nor does it make any reference to any former documents from which it would be ascertained for what particular lands the suit was brought, but he says that allusion is distinctly made to the plan of the ameen, who gave possession of the 1,000 *beegahs* awarded under the former decree, of a *portion* of which dispossession was alleged.

It is admitted that in the plaint there is no more particular reference to the precise situation of the lands; but in the course of this suit several ameens were deputed, and lastly, the principal sudder ameen went himself, and in that way the precise locality of the land in dispute was determined.

The court further intimate an issue of law on their own part, *viz.*,—As on the face of the record this is essentially a question of proprietary right between the proprietors of Rogobpore on the one hand, and Beernuggur or Goadwara on the other, can the question be tried when the proprietor of Rogobpore is not a party to the suit, either as co-plaintiff or as a defendant.

On this point it is observed by the pleader for the respondent, that a putnee tenure gives a right of a very peculiar kind; that it empowers a putneedar to act in all matters regarding the tenure with the full power and authority of the zemindar himself; and that the zemindar must, therefore, be held bound by any decree in a suit to which his putneedar is a party regarding rights in, or connected with, the putnee limits.

JUDGMENT

Messrs. COLVIN and DUNBAR.—We find that, in this case, the plaint was entirely defective in its statement of boundaries of the 712 *beegahs*, 15 *cottahs* for which the suit was laid, and we think that the order of nonsuit is, on the precedents of this court, (see case of Jye Shunkur Das and others *versus* Ram Kunhae Race and others, Reports, page 43, 12th March 1850, and the case of Mirza Mohummud Beg, Reports, page 316, 27th June 1850,)—and on the sound rule of law which should be applied to claims of this kind,—the only one which, on the point being brought forward in appeal, can be passed by the court in regard to plaints so vague, and so likely to lead to confusion and frauds. In the present suit, the objection as **[23]** to the absence of any specification in the plaint of the boundaries of the lands claimed, was distinctly and strongly taken in the answer of the defendant, appellant. It was not met in the reply of the plaintiff, and the principal sudder ameen in no way cleared up, or even took notice of the point in his proceeding for the settlement of issues. Several ameens were successively deputed, at later stages of the suit, to examine and fix boundaries; but the necessity for such a deputation of ameens is in itself a proof to us of the openings for mischief and injustice that would be caused by the admission of plaints wherein the plaintiff himself alleges no boundaries as to which it could be in the power of the opposite party to state defensive pleas.

We think, therefore, that the decree of the lower court must be reversed as regards the defendant, appellant, and that as respects him, the plaint must be nonsuited. We do not go into the further point, raised by the issue above recorded as having been suggested by the court, as an order on it is not necessary to the decision of this appeal, and as the peculiar relation of a putneedar to the zemindar from whom his tenure is derived, in controversies with other parties regarding the right to land included in the putnee, has not been clearly determined by any previous course of decisions in this court.

We observe that the decree of the principal sudder ameen must, as it appears, have been necessarily reversed on another ground, as it awards possession of 650 *beegahs* and 12 *cottahs* of land, agreeably only to a plan in which the site and area of these particular *beegahs* and *cottahs* are not separately marked off. But as we nonsuit the case in so far as it is brought against the appellant, on the ground of defect of the plaint, the question of remanding the suit for want of distinctness in the terms of its decretal order does not arise.

The order on the appeal is that the plaint, brought by the respondent, (plaintiff,) as against the appellants, (defendants) be nonsuited with costs.

The appeal of the plaintiff, respondent, Raja Ramkowur is dismissed, with costs.

Mr. A. J. M. MILLS.—The plaintiff sued to recover possession of 712 *beegahs*, 15 *cottahs* of land, alleging that they formed a portion of 1,000 *beegahs*, which had been the subject of a suit between his zemindar and the defendants; that they had been decreed to the former, and had been mapped, defined, and measured by the ameen of the court who had been deputed to give possession.

The defendants took exception to the plaint, as not containing a specific statement of the boundaries of the lands sued for, which the plaintiff met by affirming that he claimed the land under a decree of court, and referring to the map and measurement papers as showing the limits of the lands so decreed. The principal sudder [24] ameen deputed ameens, and lastly his serishtadar, to examine and fix the boundaries, and then proceeded himself to the spot, and after comparing the plans and satisfying himself that "the lands which are the subject matter of the case were decreed by the civil court as the lands of zillah Topra," awarded possession of 650 *beegahs*, 12 *cottahs*, of which he found the plaintiff had been dispossessed by the defendant, remarking that the remainder of the 1,000 *beegahs* was in the plaintiff's soisin.

The plaintiff should have stated the boundaries distinctly in the plaint, instead of referring to the map and measurement papers relating to the 1,000 *beegahs* for such specification; but as this defect was cured by the survey made by order of the principal sudder ameen, and there can be no difficulty in executing the decree, I am of opinion that the grounds for nonsuiting the case no longer exist. I would remand the case with a view to make the decretal order more precise in its terms, if on going into its merits I should see reason to uphold the judgment of the lower court.

The 17th January, 1852.

PRESENT: J. R. COLVIN AND J. DUNBAR, ESQRS., *Judges* AND A. J. M. MILLS, ESQ., *Officiating Judge*.

CASE NO. 249 OF 1850.

Regular Appeal from the decision of Sreenath Bidyabayish, Second Principal Sudder Ameen of Zillah Chittagong, dated 12th December 1849.

MAHOMED AYAS AND OTHERS, PAUPERS (*Plaintiffs*), *Appellants v.* RAMSOONDER NUNDEE AND OTHERS (*Defendants*), *Respondents*.

[*Landlord and tenant—Dispossession of landlord—Fresh engagements entered into by tenants with succeeding landlord—Terms of engagement not binding on original landlord when restored to his estate.*]

A held an under-tenure from B, the proprietor of a mookurree talook within a zemindaree estate. On sales of the zemindaree estate for arrears of revenue, B was ousted by the purchasers from his mookurree talook A then entered into new engagements for his under tenure with two successive purchasers of the estate. B established his right to his mookrurree talook, and was restored to the possession of it by the special commissioner's court. A upon this brought a suit against B, for the purpose of compelling B to maintain A in his under-tenure, on the terms which A had settled with the sale purchasers by whom B had been ousted; —A's suit to the above effect dismissed.

A had also failed to file original pottah for the under-tenure, alleged by him to have been granted to him by B before the auction sales.

Vakeel of Appellants—Moulvee Aftabuddeen.

Vakeels of Respondents—Moonshee Ameer Alee and Sumbhoonath Pundit.