

DECISIONS OF THE SUDDER DEWANNY ADAWLUT,
RECORDED IN ENGLISH, IN CONFORMITY WITH
ACT XII, 1843.

VOLUME VIII (1852).

The 12th January, 1852.

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

PETITION NO. 439 OF 1851.

[*Suit for rent—Plaintiff to prove basis of claim, previous payment or engagement to pay or service of notice to pay under Regulation V of 1812—Decree based on mere fact of possession bad—Remand.*]

Remand, upon application for special appeal, the lower appellate court having passed a decree for former rents without proof of any of the legal grounds upon which alone rents can be claimed.

IN THE MATTER OF THE PETITION OF GOPEENATH SHAH, filed in this court on the 19th August 1851, praying for the admission of a special appeal from the decision of Saadut Ali Khan, principal sudder ameen of zillah Sylhet, under date the 23rd May 1851, affirming that of Saroda Pursaud Ghose, moonsiff of Ajmeeregunge, under date 19th September 1850, in the case of Berjokishore Roy, plaintiff, *versus* Gopeenath Shah, defendant,—

It is hereby certified that the said application is granted on the following grounds:—

The claim is for rent. Stripped of its extraneous matters, the substantial ground of the special appeal application is that there is no proof on record of any former rents having been paid to the plaintiff, or to any former party having a right to rent for the land, or of the petitioner having given any engagements for rent, or of his having been served with notice by the plaintiff to pay rent at a particular rate under section 9, Regulation V of 1812, and that, in default of liability to pay rent under one or other of the above circumstances, there can be no claim for *rents of past years*, though [2] legal proceedings might be adopted to assess a rate of rent for the future.

We find, on reference to the decisions of the lower court, that proofs under any of the above heads have not been required, and that the decision has been passed upon local inquiry simply as to the fact of possession, and as to the current rates of rent. The view of the law, as stated in the application above described, is certainly correct, and no decree could be given for rent without proof of some one of the three grounds above stated. We therefore admit the special appeal, and annulling the principal sudder ameen's decree, return the case, with instructions to pass a fresh decision as to the liability of rent for the former years in suit, with reference to the foregoing observations,—proof on the point of such liability being required from the parties in respect of any of the three grounds which the plaintiff may allege to apply to the case.

The 12th January, 1852.

PRESENT ABER. DICK, AND J. DUNBAR, ESQRS., *Judges.*

PETITION NO. 449 OF 1851.

[*Court-fees—Appeal—Whether court-fee should be paid on costs awarded—Construction No. 1190.*]

Remand as above, for a new decision to be passed by the lower appellate court, with reference to the point noted.

IN THE MATTER OF THE PETITION OF GOLUK CHUNDER SEIN, filed in this court on the 25th August 1851, praying for the admission of a special appeal from the decision of Mr. C. Steer, Judge of zillah Hooghly, under date the 22nd May 1851, reversing that of Mr. James Reilly, principal sudder ameen of that district, under date 27th January 1849, in the case of Goluk Chunder Sein, plaintiff, *versus* Sobhane Mullick, defendant,—

It is hereby certified that the said application is granted on the following grounds:—

The petitioner urges that the appellant before the judge estimated his appeal at the amount decreed by the principal sudder ameen, 300 rupees, (out of a claim for 1,500 rupees,) adding the amount of costs, contrary to Construction No. 1190. He by this increased the stamp on which the appeal was preferred, from Company's rupees 16 to Company's rupees 32. The judge, notwithstanding, has passed a decision in appellant's favor, reversing the judgment of the lower court, and making petitioner, respondent, liable to the whole costs incurred in appeal, as well as in the court of first instance.

On perusal of the decision of the judge in the vernacular, we find the above plea is correct and valid. We therefore reverse the decree of the judge, and direct that he decide anew with advertence to the above point.

[3] The 13th January, 1852.

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

PETITION NO. 455 OF 1851.

[*Stamp law—Suit on bond insufficiently stamped—Dismissal—Judgment to state correct stamp—Regulation X of 1829, sch. A, art. 7.*]

Remand as above, the judgment of the lower appellate court, rejecting a bond as written on an insufficient stamp, being defective, and apparently also erroneous with reference to the stamp law.

IN THE MATTER OF THE PETITION OF RUGHONATH PAL, filed in this court on the 26th August 1851, praying for the admission of a special appeal from the decision of Mr. A. Davidson, principal sudder ameen of zillah Midnapore, under date the 26th May 1851, reversing that of Syud Imzad Ali, moonsiff of Kulmeejole, under date 23rd March 1850, in the case of Rughoonath Pal, plaintiff, *versus* Goburdhun Ghose and others, defendants,—

It is hereby certified that the said application is granted on the following grounds:—

This suit was for the amount of a bond, *viz.*, rupees 151, with interest, altogether amounting to rupees 243-8-4.

The moonsiff decreed the claim on the facts. The principal sudder ameen, without going into the merits of the case, declared that the bond was written on an insufficient stamp, and therefore could not be made a ground of suit.

He has not, however, stated what, in his opinion, the stamp ought in law to be. This omission, is in itself sufficient, to require a remand of the case. We further, however, observe that it is found in the recital of the moonsiff's decree that the bond is stated by the witnesses to bear a stamp of 1 rupee, which, for a principal sum of 151 rupees, appears sufficient under art. 7, sch. A., Regulation X of 1829. We therefore admit the special appeal, and annulling the decision of the principal sudder ameen, remand the case for a fresh investigation and decision, with reference to the foregoing observations.

The 13th January, 1852.

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

PETITION NO. 538 OF 1851.

See preceding case. [8 S.D.A.R. 3, *supra*.]

IN THE MATTER OF THE PETITION OF RAJA ANUND LALL ROY CHOWDREE, filed in this court on the 16th September 1851, praying for the admission of a special appeal from the decision of Mr. Alexander Davidson, principal sudder ameen of zillah Midnapore, under date the 18th June 1851, reversing that of Syud Waris Ali, moonsiff of Tumlook, under date 31st December 1850, in the case of Raja [4] Anund Lall Roy Chowdree, plaintiff, *versus* Abhoy Churn Dass and others, defendants,—

The order recorded on the preceding petition, No. 455, is also applicable to this case.

The 13th January, 1852.

PRESENT: J. R. COLVIN, ESQ., *Judge*, AND A. J. M. MILLS, ESQ., *Offg. Judge*.

PETITION NO. 478 OF 1851.

[*Levy of chanda cess—Illegal—Regulation V of 1812, section 3—Suit for recovery of such cess collected by defendant from ryots—Not encouraged by courts.*]

Remand as above, the lower appellate court having given a decree to the plaintiffs, claiming an assignment from the zemindar, against a farmer, defendant, for the amount of an illegal cess under the denomination of *chanda* collected by him. The fact that the farmer had collected the *chanda* might give a good ground of action against him to the ryots from whom it was levied, but it could not justify the award of a demand, admitted to be illegal, in favour of any party by a decree of court.

IN THE MATTER OF THE PETITION OF MR. THOMAS MELISS, filed in this court on the 2nd September 1851, praying for the admission of a special appeal from the decision of Mr. D. Pringle, judge of zillah Purneah, under date the 19th June 1851, affirming that of Moulvee Mahomed Rooknooddeen Khan, principal sudder ameen of that district, under date the 22nd January 1850, in the case of Meghnath Thakoor and others, plaintiffs, *versus* Mr. Thomas Meliss, defendant,—

It is hereby certified that the said application is granted on the following grounds:—

The particulars of this case will be found at page 22 of the Purneah Zillah Decisions for the month of June, 1851.

The action was brought to recover rupees 1,595-3-11, on account of *chanda*, which, it was alleged, the zemindars had assigned to the ancestors of the

plaintiffs, and which the defendant, as farmer of the mehal, had collected from the ryots, and appropriated.

The principal sudder ameen decreed the claim, and the judge dismissed the appeal. He held that the fact of the realization of the chanda by the defendant negatived the plea brought forward by him in regard to the illegality of the cess. He added,—“for granting that the cess was illegal, the appellant could not benefit by his own wrong.” We remark that this is an insufficient ground for awarding a demand, admitted to be illegal, in favor of any party by a process of court. The illegality of the cess might be ground of action on the part of the ryots from whom it was levied, on suit laid to resist the execution and to obtain damages on account of it, but not on the part of the plaintiffs to recover, by aid of the courts, the amount improperly taken by the defendant. As the imposition of arbitrary or indefinite cesses, whether under the denomination of abwab, mahtoot, or any other denomination, is, with reference to section 3, Regulation V of 1812, clearly illegal,—and *chanda* is a cess of this description,—the liability of the defendant might be [5] considered in an action of the above nature by the ryots, but not in this case. We admit the special appeal, and annulling the judge's decision, remand the case to that officer, in order that he may pass a fresh decision, in accordance with the law as above explained.

The 13th January, 1852.

PRESENT: J. R. COLVIN, ESQ., *Judge*, A. J. M. MILLS, ESQ., *Officiating Judge*.

PETITION NO. 486 OF 1851.

[*Procedure—Decree against two persons—Appeal by one only—Decree cannot be reversed as against the other.*]

Remand as above, the lower appellate court having reversed a decision as regards a party who had not appealed from it.

IN THE MATTER OF THE PETITION OF MOULVEE KUREEMDAD KHAN AND OTHERS, filed in this court on the 4th September 1851, praying for the admission of a special appeal from the decision of Mr. James Reily, additional principal sudder ameen of zillah Chittagong, under date the 11th June 1851, reversing that of Moulvee Mahomed Afzul, moonsiff of Satkonnee, under date 10th July 1849, in the case of Moulvee Kureemdad Khan and others, plaintiffs, *versus* Bakur Ali Chowdree and others, defendants,—

It is hereby certified that the said application is granted on the following grounds:—

This was an action on a bond for rupees 299, the value of 500 arees of mustard seed.

The moonsiff decreed the claim against the two defendants who executed the bond. One defendant appealed, and on his single appeal, the principal sudder ameen reversed the decision against both defendants. This is illegal, as recently determined in the case of Neel Madhub Palit, decided on the 9th September 1851 (*vide* page 578 of the Decisions for that month). We therefore admit the special appeal, and annulling the principal sudder ameen's decision, remand the case for a fresh decision, which shall affect only the party who did appeal

The 13th January, 1852.

PRESENT: ABER. DICK, ESQ., J. DUNBAR, ESQ., Judges.

PETITION NO. 489 OF 1851.

[Suit for possession—Defence that defendant is in possession of only portion of property claimed—Issue to be framed.]

Remand as above, the lower appellate court having neglected to lay down a particular issue.

IN THE MATTER OF THE PETITION OF Mr. R. W. SCOTT, MANAGER OF ARMAN ALI KHAN, deceased, filed in this court on the 4th September 1851, praying for the admission of a special appeal from the decision of Mahomed Kulleem Khan, principal sudder ameen of [6] zillah Backergunge, under date the 5th June, 1851, reversing that of Jugbündhoo Banerjea, moonsiff of Bowfau, under date the 27th December 1850, in the case of Oomar Khan and Shah Rubeemooddeen, plaintiffs, *versus* Mr. R. W. Scott, manager of Arman Ali Khan, deceased, defendant,—

It is hereby certified that the said application is granted on the following grounds:—

The plaintiff sued, for possession of the whole of a talook, the petitioner, on the allegation that he, for the heirs of Arman Ali Khan, held possession of the whole of it. Petitioner in his answer admitted possession of one-half, and declared a third party to be in possession of the other half, and that party appeared and confirmed petitioner's statement, objecting to the plaintiff's suit. The moonsiff dismissed the claim as not proved, and plaintiff appealed without making the third party a respondent.

The principal sudder ameen, rejecting the grounds on which petitioner claimed, and also those on which the third party claimed half of the talook, decreed the whole of plaintiff's claim, observing that petitioner had admitted possession of the whole talook in his answer.

The pleas on which the special appeal is preferred are, *first*, that as defendant has declared a third party to be in possession as purchaser of one-half of the talook, and that party had appeared and asserted his right to one-half, and plaintiff had not made him a defendant, the first issue in the case was, whether the case should not be nonsuited for defect of parties; *secondly*, that the principal sudder ameen has, contrary to fact, declared in his decision that petitioner had admitted possession on the whole talook in his answer.

On the first plea we observe that the principal sudder ameen has rejected the documents on which the petitioner claimed to hold possession of one-half, and also the documents on which the third party claimed to hold possession of the other half. In his opinion, therefore, there was no defect of parties to the suit.

The second plea we find to be valid, so far at least that the principal sudder ameen has rendered the petitioner conjointly liable for the whole, with the mortgagors, to plaintiff, the mortgagee.

As the petitioner in his answer claimed to have only a right to one-half of the talook, and declared he held possession of one-half of it only, the principal sudder ameen was bound to lay down as an issue whether petitioner was in possession of one-half only, as stated by himself, or of the whole, so as to make him liable for the whole conjointly with the mortgagors.

We therefore reverse the decision of the principal sudder ameen, and remand the case to be tried as above indicated.

[7] *The 13th January, 1852.*

PRESENT: J. R. COLVIN, ESQ., *Judge*, A. J. M. MILLS, ESQ.,
Officiating Judge.

PETITION No. 509 OF 1851.

[*Suit for possession—Limitation, starting point for—Date of actual dispossession—Not date of any foudjaree order.*]

Remand as above, the lower appellate court, in calculating the period of limitation, having erroneously held that the plaintiff's dispossession should be reckoned from the date of the magistrate's order under Act IV of 1840, upholding possession in the adverse party, and not from the date of the plaintiff's actual dispossession. See case of Bhyrob Chunder Chowdhree, *Sudder Dewanny Adawlut Reports of 1847*, p. 424.

IN THE MATTER OF THE PETITION OF PETUMBER ROY, filed in this court on the 10th September 1851, praying for the admission of a special appeal from the decision of Ramlochun Ghose, principal sudder ameen of zillah Nuddea, under date the 12th August 1851, affirming that of Gopeenath Bose, moonsiff of Santeepore, under date 13th January 1851, in the case of Hurreeram Sein, plaintiff, *versus* Petumber Roy, defendant,—

It is hereby certified that the said application is granted on the following grounds:—

This action was brought for the possession of 1½ kottahs of land. The claim was decreed by both the lower courts.

The ground for special appeal is that it has been erroneously held below, with reference to the principle laid down in the decision passed on the 12th of May 1847, in the case of Roodurmul Surmah Chowdhree against Juggernath Surmah, that the date of dispossession should be calculated from the date of the magistrate's order, under Regulation XV of 1824 or Act IV of 1840, which in this case is 3 days within the 12 years, whereas the principle that dispossession should be calculated from its actual date (which the plaintiff is bound to prove), and not from the date of an order of a magistrate upholding possession in the other party, has been declared by subsequent decisions and the established practice of this court.—See order by Mr. Hawkins, in these words,—
“ Now it has been recently held by this court at large, as a general principle, that the period of limitation in such cases is to be calculated from the date of dispossession and not from that of the foudjaree order, and that the exception to this rule must be on special grounds ;” (page 424, *Decisions of Sudder Dewanny Adawlut for 1847*, case of Bhyrob Chunder Chowdhree). We are of opinion that the objection is good, and that the rule explained in the order of Mr. Hawkins above cited is the correct one. We therefore admit the special appeal, and annulling the decision of both the lower courts, remand the case to the moonsiff, in order that he may call upon the plaintiff to prove his actual dispossession upon some fixed date, and to reject the claim, or to proceed upon the investigation as to the details of the case, according as that proof may or may not be furnished.