

[17] *The 11th January, 1855.*

PRESENT: SIR R. BARLOW, BART., AND H. T. RAIKES AND
B. J. COLVIN, ESQRS., *Judges.*

CASE, NO. 12 OF 1854.

Special Appeal from the decision of Syed Ahmed Buksh Khan, Principal Sudder Ameen of Rungpore, dated 6th June 1853, affirming a decree of Moulvee Mutiur Rahman, Moonsiff of Bhawaneeungung, dated 21st February 1853.

BABOO PROSONOKOOMAR TAGORE (*Defendant*), *Appellant v. RAMMOHUN DOSS (Plaintiff), Respondent.*

As above. [11 S.D.A.R. 14, *supra.*]

Vakeels of Appellant—Baboos Ramapersaud Roy and Kishen Kishore Ghose.

Vakeels of Respondent—Moonshee Ameer Alee and Baboo Bungseebudun Mitter.

THIS case was admitted to special appeal, on the 11th January 1854, on the same grounds as in case No. 11, recorded by Sir R. Barlow and Mr. H. T. Raikes.

JUDGMENT.

The decision given in the case No. 11 of 1854, disposes of this case also, in which the orders of both the lower courts are consequently reversed

The 13th January, 1855.

PRESENT: SIR R. BARLOW, BART. AND B. J. COLVIN, ESQ., *Judges.*

PETITION NO. 657 OF 1854.

[*Ejectment—Ascertainment of mesne profits—Omission to determine date of dispossession—Defective judgment—Remand.*]

Order of remand, for date of dispossession to be fixed.

Vakeels of Petitioner—Baboos Kishen Kishore Ghose and Ramapersaud Roy.

Vakeel of the Opposite Party—Mr. J. G. Waller.

IN THE MATTER OF THE PETITION OF JOGUMAYAH DEBEE, filed in this court on the 17th June 1854, praying for the admission of a special appeal from the decision of Mr. C. Steer, judge of Backergunge, under date the 9th March 1854, altering that of Moulvee Mahomed Kuleem Khan, principal sudder ameen of that district, under date [18] 16th December 1851, in the case of Nubkishen Roy and others, plaintiffs, *versus* Jogumayah Debee and others, defendants.

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

Petitioner grounds the application—

First.—On short valuation of the suit by plaintiff.

Secondly.—On incomplete investigation of her case, and the documents put in, in support of it.

Thirdly.—On the omission by both courts to determine the date of dispossession, which she states to be Cheyt 1254.

The first plea is rejected, as the judge decides that the plaintiff has come into court on a stamp sufficient to cover the value of the whole matter.

The second is also rejected. An ameen was sent to make a correct map; the result, the judge states, has been a very clear and undisputed map of the spot, and the judge's reasons for assigning the lands in litigation to the plaintiff are fully recorded in a very detailed judgment.

The ground of admission raised in the third plea is good. An issue was raised before the judge in appeal by the petitioner as to the date of dispossession. Upon this, the courts below have not touched.

The date must be determined in order to fix the amount of mesne profits due to the plaintiff, under the decree passed in his favor. We remand the case to the judge, who will, after hearing both parties on *this* point only, dispose of the case.

The 13th January, 1855.

PRESENT: SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges*

PETITION NO. 671 OF 1854.

[*Nonsuit—Erroneous order—Remand for disposal of appeal on merits.*]

Order of nonsuit reversed, case remanded for disposal on its merits.

[19] *Vakeel of Petitioner*—Moonshee Ameer Alee.

Vakeel of the Opposite Party—None.

IN THE MATTER OF THE PETITION OF MAHADEO ROY, filed in this court on the 20th June 1854, praying for the admission of a special appeal from the decision of Mr. G. D. Wilkins, officiating additional judge of Tirhoot, under date the 1st April 1854, reversing that of Mr. E. DaCosta, principal sudder ameen of that district, under date 28th June 1852, in the case of Mahadeo Roy, plaintiff, *versus* Raghoonauth Dutt and others, defendants.

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

See Tirhoot Zillah Decisions for April 1854, page 106.

It is objected that the judge has wrongly nonsuited this case, and that after having nonsuited it, he should not have entered, as he has done, upon the merits.

We may observe that the few remarks he has made upon the merits do not amount to a dismissal of the claim upon them, which we have refrained from considering. We therefore confine our judgment to his order of nonsuit. We find it to be wrong. The precedent cited does not apply, for in it the plaintiffs admitted their sale of a portion sued for to a third party, whereas in this, he denied it, and although the judge holds the sale proved for reasons assigned by him, the plaintiff has not only denied it, but filed the *kubala* alleged to have been executed to Wajid, as proof of non-completion of the sale. Wajid has not in this case preferred any claims. We therefore reverse the order of nonsuit and remand the case for the judge to dispose of the appeal on its merits.

The 16th January, 1855.

PRESENT: SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

PETITION NO. 742 OF 1854.

[*Procedure—Appeal—Withdrawal by some of the appellants—Continuance of appeal by others.*]

Case remanded as per certificate.

Vakeel of Petitioner.—Moonshee Ameer Alee.

Vakeel of the Opposite Party.—None.

IN THE MATTER OF THE PETITION OF MUSST. ASHOORUN, filed in this court of the 6th July 1854, praying for the admission of a special appeal from the decision of Mr. W. Travers, judge of Patna, under date the 6th April 1854, reversing that of Moulvee Mahomed Nazim Khan, principal sudder ameer of that district, under date 20th August 1852, in the case of Musst. Ashoorun, plaintiff, *versus* Sheikh Sababuddeen and others, defendants.

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

The special appeal is that the lower court had struck off the appeal on the withdrawal of certain of the appellants on the precedent of 16th June 1851. As that decision had been overruled by the decision of 27th January 1853, we remand this case for the principal sudder ameer to follow that precedent.

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[20] The 17th January, 1855.

PRESENT: SIR R. BARLOW, BART., AND H. T. RAIKES
AND B. J. COLVIN, ESQRS., *Judges.*

CASE NO. 308 OF 1853.

Special Appeal from the decision of Mirza Mahomed Sadiq Khan, Principal Sudder Ameer of Sarun, dated 19th January 1853, affirming a decree of Moulvee Syud Mahomed Wazzed, moonsiff of Sewan, dated 29th December 1851.

MUSST. HYAT BEBEE (*Defendant*), *Appellant v.* SHEIKH AKBAR ALEE AND OTHERS (*Plaintiffs*), *Respondents.*

[*Limitation—Suit for possession—Alleged acknowledgment of plaintiff's title—Admission in suit to which plaintiff was not party and in reference to other property though claimed on same title—Admission not in answer to any specific demand by plaintiff—Such acknowledgment ineffective to save bar of limitation.*]

The admission by the ancestor of defendants not having been made consequent upon a demand by the present plaintiffs, this suit was held to be barred by the law of limitation.

Vakeels of Appellant—Moonshee Ameer Alee and Mr. J. G. Waller.

Vakeels of Respondents—Baboos Kishen Kishore Ghose and Ramapersaud Roy.

THIS case was admitted to special appeal on the 18th July 1853, under the following certificate recorded by Sir R. Barlow and Mr. J. Dunbar:

"Plaintiffs sued as heir of Shumsool-Huk, for possession and wasilat upon his estate, from which they had been ousted by order, under Act IV of 1840,