

that plaintiff not having appeared in the resumption suit, or in appeal after the date of attachment of the lands in 1834, he cannot maintain his having held any real or constructive possession even from that [521] date so far from his being able to do so. It appears to us, that there was a constructive possession held during the period intervening the attachment by the collector, and the release ordered by the special commissioner, by respondent, who had appeared as the party in the resumption suit, the collector holding the possession during the interval for the party who eventually gained the suit, and who must be considered to have appeared in it alone, and so defended it, after what was in fact a relinquishment made by non-appearance of the (plaintiff) appellant. We confirm the orders of the lower court as dismissing the claim, but do so without going into the merits, as on the above ground we find the case barred under the statute; appellant liable to costs.

The 11th June, 1856.

PRESENT: A. SCONCE, ESQ., *Officiating Judge* AND C. B. TREVOR, ESQR.,
Extra Judge.

PETITION NO. 1782 OF 1855.

[*Practice, parties—Dispute between ryots of same zamindar regarding title to land as appurtenant to this or that village of zamindar—Zamindar, if necessary party.*]

Held that in a matter of litigation between two ryots as to whether the land in dispute belongs to this or that village of the same zamindar, it is not necessary to make the zamindar a formal defendant, his right being in no way affected; nonsuit consequently reversed, and suit remanded for investigation on the merits.

Vakeels of Petitioners—Moonshee Ameer Alee and Moulvee Aftabooddeen.

Vakeel of the Opposite Party—Baboo Gobindchunder Mookerjee.

IN THE MATTER OF THE PETITION OF RUGOONATH ROY AND OTHERS, filed in this court on the 18th December 1855, praying for the admission of a special appeal from the decision of Maulvee Mohomed Rooknooddeen Khan Bahadoor, principal sudder ameen of Shahabad, under date the 5th September 1855, reversing that of Syed Akbar Alee, moonsiff of Buxar, under date the 23rd April 1855, in the case of Rughoonath Roy and others, plaintiffs *versus* Bahadoor Sha Khan, defendant.

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

Rughoonath Roy and others, petitioners, sued defendant for 22 beegas as belonging to mouza Chilhurree; the defendant pleaded that the land was his, and appertained to the village of Khosalpore; Raja Mohessurbuksh Singh, who is the zamindar of both the above mentioned villages, presented a petition before the lower court, stating that the land in dispute was within the village of Khosalpore.

The moonsiff gave plaintiffs a decree; on appeal, however, they were non-suited by the principal sudder ameen, because they had not formally made Rajah Mahessurbuksh Singh a defendant in the case.

[522] Plaintiffs now appeal specially and urge that in the dispute between the defendants and themselves, as to whether the land belonged to this village or the other of the Rajah, it was not necessary to make the Rajah a formal defendant, and consequently that the order of nonsuit, passed by the principal sudder ameen, is incorrect.

We are of opinion that it was not necessary that the Rajah should be a formal defendant in the present case, the present litigation between the two ryots cannot affect the Rajah's rights in any way. We therefore reverse the principal sudder ameen's decision, nonsuited the plaintiffs, and remand the case to him with instructions that he will investigate the case on its merits.

The 16th June 1856.

PRESENT: H. T. RAIKES, ESQ., *Judge* AND A. SCOROE, ESQ., *Officiating Judge*.

PETITION NO. 1803 OF 1855.

[*Mortgage, redemption—Mortgagee, in possession must file verified accounts regarding usufruct of property—Regulation XV of 1793, section 11 and Regulation I of 1798, section 3—Such accounts not filed—Remand.*]

Case remanded, the investigation of the lower court being incomplete as to whether the mortgagee had realized his loan or not from the usufruct of the mortgage.

Vakeel of Petitioner—Baboo Kishensukha Mookerjee.

Vakeel of the Opposite Party—Moulvee Aftabooddeen.

IN THE MATTER OF THE PETITION OF BEHAREE DOYA, filed in this court on the 18th December 1855, praying for the admission of a special appeal from the decision of Mahomed Haneef Khan, principal sudder ameen of Patna, under date the 7th September, 1855, affirming that of Jelalooddeen Hossein Khan, moonsiff of the Western Division, under date the 11th July 1854, in the case of Beharee Doya, plaintiff, *versus* Chooneelal and others, defendants.

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

This suit was instituted by plaintiff, mortgagor of Ruggoonathpore Bulloah, to challenge the foreclosure of the same village, done on the part of defendant, upon the ground that the money lent had been repaid to the mortgagee, out of the rents of the village, and that a surplus over and above, was payable to plaintiff. The principal sudder ameen, from whose decision this petition is presented, as did the moonsiff, in the first instance, held plaintiff's statement of completed payment not to be proved, but it is urged by the petitioner that the lower court have not followed the strict requisition of the law in determining this matter. The lower courts have gone only on documents procured from the collectorship, *i.e.*, a jumma bundee for the entire year filed by the mortgagee, defendant, and on a goshwara for the whole estate, and from these have [523] estimated the annual rent of the village, but section 11, Regulation XV of 1793, confirmed by section 3, Regulation I of 1798, requires the mortgagee to deliver in the accounts of his gross receipts from the property mortgaged and also of his expenditure. The mortgagee is also bound to verify these accounts by a solemn declaration. None of these steps have been taken in this case, and as the proceedings of the lower court are incomplete, we set aside both decrees and remand the case to the moonsiff to be guided by these remarks.

The 19th June, 1856.

PRESENT: J. S. TORRENS AND C. B. TREVOR, ESQRS., *Extra Judges.*

PETITION NO. 928 OF 1854.

[Act IX of 1854—Admission of inadmissible evidence—Admission of document not properly stamped—No ground for reversing decree passed.]

Held that a defect in the stamping of a document, which has been overlooked by the court of first instance, cannot, under the provisions of Act IX of 1854, be taken up by the appellate court as a ground for dismissing a case.

Vakeel of Petitioner—Mr. R. T. Allan.

Vakeel of the Opposite Party—Baboo Ramapersaud Roy.

IN THE MATTER OF THE PETITION OF RAMMONEE GOORTEEA, filed in this court on the 12th August 1854, praying for the admission of a special appeal from the decision of Mr. A. Sconce, judge of zillah Nuddea, under date the 30th May 1854, nonsuiting the case decided by Ramlochan Ghose, principal, sudder ameen of that district, under date the 21st June 1852, in the case of petitioner, plaintiff *versus* Oomeshchunder Pal and others, defendants.

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

Plaintiff petitioner sued as putnee talookdar of mouza Rughoonathpore, certain parties, with a view to set aside the professed *lakhiraj* tenure under which the defendants held 66-13 of land in that village. The principal sudder ameen in his decision, dated 20th June 1852, dismissed the petitioner's claim on the ground of the validity of the tenure of the defendants *lakhirajdars*. The judge on an appeal being preferred by the plaintiff's petitioner, non-suited him on the ground that his putnee lease was engrossed on paper of insufficient value; the decision of the judge was passed on the 31st May 1854, subsequently, that is, to the passing of Act IX of 1854, accordingly then to the ruling of the court in the case of Junnadhun Senaputtee *versus* Rughoonath Senaputtee and others, the decision of the judge is erroneous. We therefore admit the special appeal and remand the case to the judge in order that he may investigate the appeal on its merits. The value of stamp paper to be returned to the appellant.

[524] The 19th June, 1856.

PRESENT: J. S. TORRENS AND C. B. TREVOR ESQRS., *Extra Judges.*

PETITION NO. 942 OF 1854.

[Special appeal, remand—Defendant's admission in pleading not noticed by lower court—Remand.]

Case remanded on ground that the lower appellate court had given a decision, overlooking the material admission made by one of the defendants in the court below.

Vakeels of Petitioners—Baboo Kishenkishore Ghose and Moulvee Murhamut Hossein.

Vakeels of the Opposite Party—Baboo Ramapersaud Roy and Moonshree Ameer Alee.

IN THE MATTER OF THE PETITION OF NUNDOO LAL AND OTHERS, filed in this court on the 14th August 1854, praying for the admission of a special appeal from the decision of Mr. W. Trevors, judge of City Patna, under date the 22nd May 1854, reversing that of Roy Shunkerlal Bahadoor, principal

sudder ameen of that district, under date the 6th October 1852, in the case of petitioners, plaintiffs *versus* Jeolal Chowdree and others, defendants.

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

Petitioners instituted this suit against Jeolal and Casseelal, for recovery of rupees 1,882-10-4-6, principal and interest due to them, according to an arbitration award given in adjustment of their family accounts.

The principal sudder ameen recognizing the force of the arbitration award, gave plaintiffs a decree against the defendants jointly. On an appeal by Jeolal only, the judge reversed these orders, as he held that the arbitration award was valueless for the purposes of the suit, as it was shown that no application had been preferred for execution of it within six months from its date, as prescribed by law, and that it was in other respects suspicious. Petitioners, plaintiffs, before the principal sudder ameen, object to the judge's decision, as the lower court's decree had been partly given on ground of a written application made by the defendant Casseelal; that he would abide by whatever deposition one of the plaintiffs Nundoolal might make, and that if Nundoolal would depose on oath before the court to the arbitration award having passed as alleged in the plaint, he, Nundoolal, would consider that statement binding as to the debt. The judge's decision, we observe, does not take into consideration the effect of this agreement of the defendant Casseelal, and has reversed the decree of the principal sudder ameen so as to prevent execution even against Casseelal, not an appellant before him, and whose position as regarded the claim incontestably became altered from that of the other (defendant) appellant, by the admission or agreement made in court. Having admitted [525] the special appeal with advertence to the error in the decision of the judge above noticed, we remand it for re-trial in respect to the effect of Casseelal's acknowledgment before the lower court.

The 19th June, 1856.

PRESENT: H. T. RAIKES, B. J. COLVIN AND J. H. PATTON, ESQRS., *Judges.*

CASE NO. 174 OF 1855.

Regular Appeal from the decision of Baboo Peareemohun Banerjee, Principal Sudder Ameen of Sarun, dated 14th April 1855.

PURBHOO ROY AND OTHERS (*Defendants*), *Appellants v.* DEOKEEKOOMAR SINGH AND OTHERS (*Plaintiffs*), *Respondents.*

[*Practice, procedure—Hindu Law, alienation—Sale by limited owner—Suit to set aside sale as invalid—Validity of prior mortgage on property created by last full owner—If could be gone into.*]

Held that in the action, as brought, to set aside an absolute sale by plaintiffs' mother the validity of a previous mortgage by their father could not be inquired into.

Vakeels of Appellants—Baboo Kishenkishore Ghose and Sumboonath Pundit.

Vakeel of Respondents—Moonshee Ameer Alee.

SUIT laid at rupees 8,394-2-4-16 krants.

This suit was instituted by plaintiffs on 26th May 1854, under the following circumstances :—

It is unnecessary to detail previous transactions between the parties. It is sufficient to say that plaintiff's father, Bissessur, on a settlement of accounts