

[806] *The 3rd June, 1856.*PRESENT: J. S. TORRENS,
C. B. TREVOR AND H. C. METCALFE, ESQRS., *Extra Judges.*

CASE NO. 342 OF 1853.

Regular Appeal from the decision of Moulvee Mahomed Nazim Khan, Principal Sudder Ameen of the City of Patna, dated 22nd June 1853.

DENDYAL BUGGAT AND OTHERS (*Plaintiffs*), *Appellants v.*
AHMUTOOLLAH AND MUSST. ZUHURUN (*Defendants*), *Respondents.*[*Costs, award of, general rule regarding—Successful party entitled to costs—Special reasons for not allowing such costs to be distinctly stated.*]

Judgment of the lower court, which had disallowed costs to plaintiffs on insufficient grounds, reversed.

Vakeel of Appellants—Baboo Kishen Kishore Ghose.*Vakeel of Respondents*—Moonthee Ameer Alee.**S**UIT for costs of suit; laid at rupees 1,583-0-8.

The question involved in this appeal is one simply of costs.

The appellants sued to obtain possession of 1,350 beegas of land as constituting a 12-annas share of mouza Mugra Buzoorg, one of six intermingled villages, of which the judgment-debtor, Musst. Masoo and the respondents, were in joint possession.

He obtained a decree, the purport of which directed an apportionment of all the altumgha lands among the six villages, and possession to be given to him of the proportion which, as being in mouza Mugra Buzoorg, would appertain to Musst. Masoo's 12-annas share.

This decree, however, extended to Musst. Masoo alone, the respondents being exempted from its effects on the general ground that "they were not considered liable to the claim," and the appellants being saddled with their costs.

He appeals on the ground that the respondents were included as defendants, because the husband, Sheikh Ahmutoollah, was a partner in the joint and undivided property sued for, and the wife was in possession thereof under a farming lease, and that to decree the suit in his favor, and yet fix him with the defendants' costs, is opposed to the true merits of the case.

JUDGMENT.

It is incumbent on a judicial officer, when deviating from a general rule of practice, to state clearly and explicitly the grounds on which he considers the particular case before him to be exceptional. [807] A decree unaccompanied by costs is such a departure from a general rule, occurring, of course, occasionally, properly, but in every instance of the kind a reason why the plaintiff is considered to be entitled to a decree of the thing sued for, but is saddled with the costs of one or more of the defendants sued must be clearly given.

In the case before us, we are left to conjecture, as we best may, why the principal sudder ameen thought that the respondents were needlessly sued, and why therefore, their costs should be borne by the appellant; we do not, however, deem it necessary to remand the case, in order that this patent defect may be rectified, because we find on the record that the respondent made these particular defendants parties to his suit for good and sufficient reasons.

He knew them to be in joint and undivided coparcenary with his principal antagonist, the judgment-debtor, and he had, or supposed he had, reason for the conclusion that they were leagued with her in an attempt to alienate a large

portion of land from the village he had purchased, with the object of annexing it to the villages still in their possession. It seems to us even probable with reference to the joint possession, that had he omitted to make the appellants parties to his suit, that very omission might, and probably would, have been pleaded as a ground, for nonsuit.

Adopting this view of the question before us, we amend so much of the judgment of the lower court as directs that the respondent shall receive their costs from the appellant, and declare them liable for their own costs in the court below, and for the costs subsequently incurred in consequence of this appeal.

[508] *The 4th June, 1856.*

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

CASE NO. 126 OF 1855.

Regular Appeal from the decision of Mr. J. Weston, Principal Sudder Ameen of Tirhoot, dated 22nd October 1854.

BABOO GUNESH DUTT (*Plaintiff*), *Appellant v. MAHARAJAH MOHESHUR SINGH (Defendant), Respondent.*

[*Boundary dispute—Suit for possession of land—Appreciation of evidence—Plaintiff's title not proved—Suit dismissed—Confirmed in appeal.*]

Appeal dismissed on the grounds that appellant as plaintiff had not afforded proof, his having held possession of the lands sued for along with the village to which he asserted them to belong.

Vakeel of Appellant—Baboo Kishenkishore Ghose.

Vakeels of Respondent—Baboo Ramapersaud Roy, Moonshree Ameer Alee, and Mr. R. T. Allan.

SUIT laid at rupees 14,756-10.

This suit is brought for possession of 421 beegas, 12 cottas, 7 dhoons of land, on the allegation that it belongs to plaintiff's village of Burhumpore, from which lands he has been dispossessed by the proceedings of the survey officers, who have attached them to the estate of the defendant.

The lower court dismissed the plaintiff's claim, on the ground that he had been unable to establish his right to the lands by any credible evidence.

Baboo Kishenkishore Ghose, for appellant.—Plaintiff claims the lands in suit as belonging to his village of Burhumpore, and defendant defends his possession of them as appertaining to his village of Buhlia Begumpore. The dispute arose at the survey; the plaintiff's claim was disallowed by those officers; the deputy collector's order is dated 7th April 1847. On appeal, the superintendent of survey went himself to the spot and summoned the putwaree on my side; Bursheedun, the putwaree in collusion with the Rajah, on promise of service, pointed out wrong boundaries and thus procured dismissal of plaintiff's appeal. The revenue commissioner refused to interfere on 25th October 1849. This action is brought to recover possession by reversing these orders.

By order of the judge, the principal sudder ameen deputed a moonsiff to make local enquiry, the moonsiff prepared a map, and drew up a report on the 16th September 1854.

The whole dispute involves a question as to the boundaries of these villages belonging to defendant, but the present suit is confined to one of