

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

VOLUME XIY (1858).

The 4th January, 1858.

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

PETITION NO. 417 OF 1857.

[*Procedure—Act XIX of 1853—Party failing to appear and give evidence when summoned—Right of such party to appeal.*]

Case remanded, parties who fail to give evidence under Act XIX of 1853, can yet appeal.

Vakeel of Petitioner—Baboo Jugdanund Mookerjea.

Vakeel of the Opposite Party—None.

IN THE MATTER OF THE PETITION OF BHEEPNATH OJHA, filed in this court on the 26th March 1857, praying for the admission of a special appeal from the decision of Captain G. N. Oakes, principal assistant commissioner of Manbhoom, under date the 31st December 1856, affirming that of Baboo Nobeenchunder Pal, moonsiff of Laekda, under date the 22nd May 1854, in the case of Bheepnath Ojha, plaintiff, *versus* Oolas Jumadar, defendant.

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

The respondent was summoned in this case but has failed to attend. Petitioner pleads that under a recent ruling of the court, dated 21st October 1857, in the case of Bishennath Deb Roy, appellant, the court have held that section 24, Act XIX of 1853, does not prohibit an appeal on the part of parties to suit who have failed to appear and give evidence when summoned. The precedent quoted is in point; we therefore reverse the decision of the lower appellate court and remand the case that the appeal may be heard in the regular course.

[2] The 5th January, 1858.

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

PETITION NO. 1164 OF 1857.

[*Evidence—Claim against legal representative—Question whether defendant succeeded to effects of deceased person—Statements in case under Act IV of 1840—Statements not conclusive on point—Remand*]

Certain admissions as to succession said to have been made in an Act IV case, not conclusive on the point. Case returned for more enquiry.

Vakeels of Petitioner—Mr. R. T. Allan and Moulvee Murhamut Hossein.

Vakeels of the Opposite Party—Baboos Ashootosh Chatterjea and Onnoo-koolchunder Mookerjea.

IN THE MATTER OF THE PETITION OF MUSST. TARASOONDEREE DEBEA, filed in this court on the 4th August 1857, praying for the admission of a special appeal from the decision of Mr. F. A. Glover, officiating judge of Rungpore, under date the 10th June 1857, reversing that of Baboo Muddunmohur Dutt, moonsiff of Buddsakhallee, under date the 27th December 1856, in the case of Goprahunder Burma Roy, plaintiff, *versus* Musst. Tarasoonderree Debea, defendant.

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

Petitioner pleads that the judge has decided on petitioner's liability for debts contracted by her step-mother, on the ground that in certain Act IV proceedings, her admissions show her to have succeeded to the personal effects of her step-mother, whereas petitioner pleads that no such admissions were made by her or her agent on the statements filed by them in the Act IV case, and that the judge before passing judgment on such grounds, should have referred to the statements made by them and should not have been guided solely by the general terms on which these statements are alluded to in the judgment in the case under Act IV of 1840.

In support of this plea, petitioner has filed copies of the original statements filed by Chunder Dass, in the Act IV case, in which we find no admission is made on the part of petitioner of succession to Kunuckmunnee's personal effects. We consider, therefore, that before taking these admissions to be conclusive on the point, the judge should have considered the statements actually made in the petition of Chunder Dass, as to whether they really shewed that petitioner succeeded to any personalty belonging to Kunuckmunnee; and as the respondent is present, we remand the case that the judge may with reference to the evidence on record and the opinion he may form of the nature of the statements made on the part of petitioner in the Act IV case, pass a fresh decision in the case on its merits.

[3] *The 7th January 1858.*

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

PETITION NO. 1315 OF 1857.

[*Benami transaction—Purchase at Government sale—Benamie purchase—Such purchase not invalid—Validity of claim founded on such purchase—Claim to be tried on facts.*]

Case remanded. Benamie purchase is not in itself a ground for rejecting claim to property.

Vakeels of Petitioners—Baboos Sumbhoonath Pundit and Dwarkanath Mitter.

Vakeels of the Opposite Party—None.

IN THE MATTER OF THE PETITION OF CHOWDREE MADHO SINGH AND OTHERS, filed in this court on the 20th August 1857, praying for the admission of a special appeal from the decision of Mr. E. Jenkins, officiating additional judge of Tirhoot, dated 6th May 1857, amending that of Mr. J. Weston, second principal sudder ameen of that district, dated 17th April 1855, in the case of petitioners, plaintiffs, *versus* Gobind Singh and others, defendants.

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

Petitioner urges that his claim to a portion of the property in dispute was founded on a *benamie* purchase on the part of his father at a Government sale,

which the judge, holding to be a contravention of the law, has reversed the decision of the lower court for this portion of the property.

The ground of special appeal is that a *benamée* purchase is not in itself invalid, and that the judge should therefore have tried whether the *benamée* purchase as pleaded by petitioner was proved, or not.

We agree with the petitioner that there is no law forbidding purchases in the name of other parties. The transaction is regarded simply as would be the purchase by an agent, where the principal was not disclosed. The judge should therefore have tried and determined whether the purchase, as pleaded, was proved or not. We remand the case that the point may be tried and determined by the lower court on its merits.

[4] The 8th January, 1858.

PRESENT: C. B. TREVOR, G. LOCH, AND H. V. BAYLEY, ESQRS.
Officiating Judges.

CASE NO. 100 OF 1855.

Regular Appeal from the decision of Mr. C. McDonald, Principal Sudder Ameen of Bangalore, dated 24th January 1855.

DEGUMBER PUNDA (*Defendant*), *Appellant* v. RAJA LEEANUND SINGH AND OTHERS (*Plaintiffs*), *Respondents*.

[Lakhiraj—Suit by zamindar for possession—Land in possession of lakhirajdar—Burden of proof—Zamindar to give prima facie proof that land did at one time form part of his malgoozree estate—Excess land not covered by sunnud—Burden still on Zamindar to give prima facie proof of his right to possession.]

A zamindar suing for the possession of lands which he claims as appertaining to his permanently settled estate and which are in the possession of a lakhirajdar, who claims them as part of his rent-free tenure, must give *prima facie* proof that the identical lands did at one time form part of his malgoozree estate. Where the suit is for possession and not for resumption, the fact of the area of the lands in the possession of the lakhirajdar being greater than that covered by the sunnud is not sufficient to throw the burden of proof on the lakhirajdar, nor to establish the zamindar's right to such excess. He must give *prima facie* proof that such excess did appertain to his estate.

Vakeel of Appellant—Baboo Ramapersaud Roy.

Vakeels of Respondents—Moonshée Ameer Ali and Baboo Kishenkishore Ghose.

SUIT valued at rupees 6,897-5-5, to recover possession with mesne profits.

Plaintiff purchased the zamindari of Khurruckpore at a revenue sale in January 1840. Owing to the opposition of the former proprietor, he was unable to get immediate possession, and other parties taking advantage of the confusion, acquired possession of lands appertaining to the zamindari and have forcibly retained the possession so acquired. The defendants have a grant for 100 beegas in mouza Burhutta, pergunnah Godah, within the limits of the said zamindari and have taken possession of 60 beegas of the malgoozree lands of that village in excess of the area comprised in the sunnud. Plaintiff being a Hindoo does not wish to question the validity of the defendant's sunnud as the lands were granted for religious purposes, though he has every right to do so, as the tenure is comprised in his zamindari, but he seeks to recover possession of that portion of the malgoozree lands of which the defendant has acquired and retained possession in excess of the area covered by the sunnud.