

1879  
ANOKINATH  
DOORJEE  
v.  
RAMHUNDUN  
CHUCKER-  
BUTTY.

when distinct causes of action are improperly joined, the Court, instead of dismissing the suit, should proceed to separate them, and try them separately. But, as we have already observed, in this case there was no misjoinder of parties, and there was no improper joinder of distinct causes of action, the frame of the suit was entirely in accordance with the provisions of s. 28 of the Procedure Code.

We, therefore, set aside the decrees of the Courts below, and remand the case for trial upon the merits, to the Court of first instance. Costs will abide the result.

*Case remanded.*

*Before Mr. Justice Ainslie and Mr. Justice Broughton.*

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Feb. 24.

DUKHARAM BHARTI v. LUCHMUN BHARTI.\*

*Certificate under Act XXVII of 1860—Personal Estate of a Deceased Mohunt—Spiritual Son—Spiritual Brother.*

The person entitled to collect the outstanding debts due to the private estate of a deceased mohunt, is the spiritual son (the chela) and not the spiritual brother (guru bhai) of the deceased.

*In re Bhyrub Bharuttee Mohunt (1) distinguished.*

THESE were two applications made by Dukharam Bharti and Luchmun Bharti to obtain a certificate to collect the debts due to the estate of one Rambuksh Bharti.

It appeared that Rambuksh and Luchmun were formerly fellow disciples of one Moharuck Bharti, a mohunt of a certain temple, who had died some years ago. Rambuksh died on the 17th Aushran 1284 (1st December 1877), and, on his death, Luchmun the spiritual brother of Rambuksh, and Dukharam, his spiritual son (he having been one of the chelas of Rambuksh), each applied to the Court for a certificate under Act XXVII of 1860. At the time of the decease of Rambuksh there was, amongst other assets due to the deceased, a certain bond for Rs. 51, which was stated in the body of the instrument to have been given to "Rambuksh, mohunt of the Muttya Mut."

\* Appeals from Original Orders, Nos. 284 and 286 of 1878, against the orders of J. B. Worgan, Esq., Judge of Sarun, dated the 22nd July 1878.

The District Judge dismissed both the applications in the following words:—

“It is plain that this is not a case for an order under Act XXVII of 1860. On the parties being brought face to face it is evident that the debts are debts due to the *Muth*, which is not dead.

With reference to the very distinct precedent, *In re Bhyrub Bharuttee Mohunt* (1), there is no doubt that the case cannot go on, being one beyond the powers of the Court in its summary jurisdiction. Dukharam and Luchmun must fight out their dispute about the Muttya Mut in the proper manner. The applications are disallowed.”

Both Luchmun and Dukharam Bharti appealed to the High Court.

Baboo *Doorga Pershad* for Dukharam.

Baboo *Jodoonath Sahai* for Luchmun.

The judgments of the High Court were as follows:—

AINSLIE, J.—One Rambuksh Bharti died on the 17th of Aughran 1284 (1st December 1877). It is stated that he and Luchmun Bharti were fellow disciples of one Moharuck Bharti, who died some time before that, and who is alleged to have left a will.

Luchmun Bharti claims a certificate under Act XXVII of 1860 as being the person entitled to succeed to the guddee of the mut. There is another claimant for a certificate, namely, Dukharam Bharti, who is admitted to have been a chela of Rambuksh.

The question before us has nothing to do with the question of the extent of the estate of the deceased Rambuksh, nor with the right of succession to the mut. The one question which we have to consider is, which of these two persons, the spiritual brother, or the spiritual son, is entitled as representative of the deceased to collect the debts, outstanding due to the personal estate of the deceased Rambuksh, if there are any.

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There is on the record a bond by Girdhari and Bheekum Aheer, of the 5th of Assin 1283 (20th September 1876), for the sum of Rs. 51 bearing interest, given to Rambuksh Mohunt of the Mut Muttya. This expression "Mohunt of the Mut Muttya" may have been used simply for the purpose of identifying the individual to whom the bond was given. There is nothing in the bond from which we can conclude that the money was advanced by Rambuksh out of the funds of the *Mut*, and not out of his own private funds. For the purpose of the present application, we must take it that the bond is on its face a debt due to Rambuksh in person. That being so, the person who is entitled to represent him for the purpose of collecting that debt is his spiritual son Dukharam and not his guru bhai Luchmun.

The Judge has rejected the applications of both parties, and in support of his order he has cited a decision of this Court, *In re Bhyrub Bharuttee Mohunt* (1). But it appears to us that this case is clearly distinguishable from that, because the Judges there say,—“It is not for a moment contended that these debts were due to the mohunt personally; they are due to the endowment, and are not debts of a deceased person at all.” It is not our business now to criticize that decision, though it may be observed in passing that the result of it seems to be, that in a case such as the one which the Court was then dealing with, an estate would be left without anybody capable of realizing outstanding debts, and that while litigation was going on for the purpose of determining the person rightfully entitled to the estate, debts due might become incapable of realization.

In the present case we must take it that there is *prima facie* evidence that the debt was a personal one, and therefore a certificate to collect it should be given to Dukharam Bharti, but under the circumstances we think that he ought to be required to furnish security at the time of taking out the certificate to the extent of the debts scheduled by him, and that such schedule should then be annexed to the certificate issued.

The result is that Luchmun's appeal, No. 284, will be dismissed without costs, and Dukharam's appeal, No. 286, allowed with costs.

(1) 21 W. R., 340.

BROUGHTON, J.—I concur. This case is quite distinguishable from the case of *Bhyrub Bharuttee Mohunt* (1), because there it is distinctly said by the learned Judges that the debt was not a personal one. Here it is a personal debt.

*Order varied.*

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LACHMEN  
BHARTI.

*Before Mr. Justice Jackson and Mr. Justice McDonell.*

RAI KOMUL DOSSEE (PLAINTIFF) v. J. W. LAIDLEY AND OTHERS  
(DEFENDANTS).\*

1879  
Jan. 14.

*Occupancy Rights—How and by whom they can be acquired.*

A firm of capitalists taking a lease of lands from a zemindar, and transmitting their rights to the changing members of the firm, cannot by any length of occupation acquire occupancy rights under s. 6 of Act X of 1859 or Beng. Act VIII of 1869.

\* *Cannan v. Kylash Chunder Roy Chowdhry* (2) approved of and followed.

Baboo *Sreenath Dass* and Baboo *Bluggobutty Churn Ghose* for the plaintiff.

Baboo *Unnoda Prosud Banerjee* and Baboo *Ambica Churn Bose* for the defendants.

The facts of the case sufficiently appear from the judgment of the Court, which was delivered by

JACKSON, J. (MCDONELL, J., concurring).—We are quite unable to agree in the judgment of the Court below in the present case.

The suit was on the part of Rai Komul Dossee, who holds an ijara settlement under the zemindar of a certain turuff, and she seeks to recover possession of a large area of land situated within that turuff—the area is described as being one thousand six hundred and odd bigas—which land is in the occupation of certain persons constituting the firm of Robert, Watson, and Co., who are also owners of an indigo concern, called

\* Regular Appeal, No. 105 of 1877, against the decree of Baboo Amrito Lall Chatterjee, Roy Bahadoor, Subordinate Judge of Moorshedabad, dated the 23rd December 1876.