

he sets up his own title, we hold that his suit must be dismissed.

We, therefore, set aside the judgments of the lower Courts, and direct that the plaintiff's suit be dismissed with costs in all the Courts.

1878

KHUGGENDR
NARAIN
CHOWDHRY
v.
SHARUPGIE
OGHORENATH.

Appeal allowed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

KUMOOD NARAIN BHOOP (PLAINTIFF) v. PURNA CHUNDER
ROY (DEFENDANT).*

1878

July 25.

Jurisdiction of Civil Court—Revenue Courts—Act X of 1859, ss. 23, 24.

In districts where Act X of 1859 is still in force, the jurisdiction of the Civil Courts cannot be ousted, except in cases where the parties concerned and the matters in dispute come wholly and exclusively within the category of persons and subjects in respect of which express jurisdiction is given to the Revenue Courts. Where, therefore, a suit which contained some items of charges cognizable by the Civil Court was instituted in such Court,—*Held*, reversing the decisions of the Courts below, that such suit was properly so brought.

THIS was a suit to recover certain moneys alleged to have been misappropriated and improperly and unnecessarily spent by the defendant. The plaintiff, who is the Raja of Bijni, in the district of Assam, where Act X of 1859 is still in force, sued the defendant who held the post of dewan in his service, in the Civil Court at Goalparah in Assam, to recover Rs. 4,714-5-1, alleged to have been misappropriated and spent improperly on the strength of an illegal and fraudulent contract. The plaint stated that the plaintiff, on attaining his majority, had himself advanced the defendant, his dewan, Rs. 1,000; that the defendant, on the false allegation that he had engaged some of his own relatives and dependants as servants of the plaintiff, had attempted to account for the expenditure of this money; that he had unjustly debited the

* Special Appeal, No. 1514 of 1877, against the decree of W. E. Ward, Esq., Judge of the Assam Valley District, dated the 13th of April 1877, affirming the decree of A. C. Campbell, Esq., Officiating Deputy Commissioner of Gowalparah, dated the 8th of August 1876.

1878
 KUMOOD
 NARAIN
 BHOOP
 v.
 PURNA
 CHUNDER
 ROY.

plaintiff with other sums of money; that, in excess of his authority as dewan, he had given ijara pottas (some to his own relatives) of the plaintiff's property; and, finally on his dismissal, had absconded, taking away with him Rs. 794-2-7, the amount of ready-money then in his hands. The plaint also, *inter alia*, charged the defendant with having misappropriated to his own use the sum of Rs. 2,000 entrusted to him for payment into the Oriental Bank.

The defendant in his written statement raised the defence, that he, being the agent of the plaintiff in respect of the collections on the estate, could, under s. 24 of Act X of 1859, only be liable to a suit brought in the Revenue Courts, that Act being still in force in Assam. The Court of first instance, on an examination of the accounts filed by the plaintiff, found that the sums alleged to have been misused were received by the defendant as rents of the plaintiff's estate, the former being at the time the plaintiff's only constituted land agent; and, in the concluding part of its judgment, said:—"The suit is brought for recovery of a portion of the money so received by the defendant, on the grounds that the expenditure incurred by him under certain heads were wasteful, extravagant, and improper. I do not think that the manner in which the defendant may have misappropriated the money can give this Court jurisdiction in a matter which, under s. 24 of Act X of 1859, is cognizable only by a Revenue Court. For this reason the Court dismissed the plaintiff's suit. The lower Appellate Court, coinciding in this opinion, upheld the judgment of the Court below.

The plaintiff thereupon appealed to the High Court.

Baboo *Hem Chunder Banerjee* for the appellant.

Baboo *Obinash Chunder Banerjee* for the respondent.

The judgment of the Court was delivered by

JACKSON, J. (who, after stating the facts of the case, proceeded as follows):—Now I apprehend that, where the state of jurisdiction established by Act X of 1859 is still in force, nothing can be clearer than this, that the jurisdiction of the

Civil Courts can only be ousted in cases where the subject of dispute and the parties are exclusively such as are annexed to the jurisdiction of the Revenue Courts under that Act.

Therefore, in order to make the suit cognizable under s. 24 of Act X of 1859, it would have to be shown that the suit was one by a zemindar, or other person in the receipt of rent, against an agent employed by him in the management of land or collection of rents, for money received in the course of such employment, or for papers in his possession, and the course of action must include nothing else, or, at least, not any other subject not cognizable by the Revenue Courts.

By s. 23 of the same Act, cl. 6, it is provided, that all suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, shall be cognizable by the Collectors of land-revenue and shall be instituted and tried under the provisions of this Act, and not otherwise. But, notwithstanding that, any suit in which a plaintiff impleaded another person besides the person entitled to receive rent for the same, was always held to be cognizable by the Civil Courts, and not the Revenue Courts.

Therefore, when the suit in this case includes money received by the defendant, not as collections, but received directly from the hands of his employer, there is no doubt that the suit does not come within the provisions of s. 24; nor is the defendant a person exclusively employed in the management of land or collection of rents. He was admitted no doubt, to have been employed in collecting rents, making settlements, and doing other duties; and these duties very likely were part, and perhaps an important part, of the duties which he had to perform. But the dewan of a large landlord, such as the Raja of Bijni, has many other duties to perform; and, if he performs duties of the kind mentioned, he does so in the way of general superintendence.

The allegation in this case was clear that the plaintiff had advanced Rs. 1,000 to the defendant. That clearly was not collections. It was money which had got into the hands of the master, and was by him entrusted to the defendant to be

1878

KUMOOD
NARAIN
BHOOP
v.
PURNA
CHUNDER
ROY.

1878

KUMOOD
NARAIN
BHOOP
v.
PURNA
CHANDER
ROY.

disbursed to his servants. In like manner, the money in the Oriental Bank, whatever its origin may have been, was so much cash at the disposal of the master.

Clearly, therefore, this was a suit of which certainly not the whole, and possibly not any part, was cognizable by the Revenue Court. It appears quite clear that it was properly brought in the Civil Court, and improperly dismissed for want of jurisdiction.

The judgments of the Courts below must be set aside, and the suit must be tried upon its merits.

Case remanded.

Before Mr. Justice Mitter and Mr. Justice Maclean.

1878
Aug. 14.

RAMNATH TOLAPATTRO AND ANOTHER (PLAINTIFFS) v. DURGA
SUNDARI DEBI AND ANOTHER (DEFENDANTS).*

Hindu Law—Mother—Unchastity—Inheritance to Property of Son.

A mother, guilty of unchastity before the death of her son, is, by Hindu law, precluded from inheriting his property.

THIS was a suit to establish the plaintiff's title to, and obtain possession of, certain property, left by one Prosonno Narain Thakur, to whom the plaintiff claimed to be next heir by Hindu law. The property in question originally belonged to one Rajendro Narain Thakur, the maternal grandfather of the plaintiff. Rajendro Narain left two sons, Durga Narain and Shib Narain. Durga Narain, the maternal uncle of the plaintiff, died in 1255 (1848), leaving a widow, the defendant Durga Sundari Debi, and a son, Prosonno Narain. Shib Narain died without issue in 1263 (1856), leaving a widow, who died in 1264 (1857): and Prosonno Narain thereupon succeeded to the ownership and possession of the entire property in dispute. Prosonno Narain died in 1274 (1867), and his mother, the defend-

* Special Appeal, No. 148 of 1877, against the decree of J. B. Worgan, Esq., Officiating Judge of Zilla Rajshahye, dated the 7th of September 1876, affirming the decree of Baboo Jodo Nath Mullick, Roy Bahadur, First Subordinate Judge of that District, dated the 24th of March 1874.