1890

RAGHOOBUNS SAHOY *v.* KOKIL SINGH *alias* GOPAL SINGH.

It is contended in showing cause that the order is right, that the Collector acting under the sections referred to is a "Court" within the meaning of section 195 of the Procedure Code, and that sanction for the prosecution is necessary.

The word "Court" is not defined in the Criminal Procedure Code, and it certainly has a wider meaning than a Court of Justice as defined in the Penal Code. Having regard to the obvious purpose for which section 195 was enacted, we think that the widest possible meaning should be given to the word "Court" as therein mentioned, and that it would include a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter in order to enable it to arrive at a determination.

In the sections of the Tenancy Act referred to, the Collector is empowered to do certain things, some of which may involve the determination of the proportion in which the crop is to be divided, and his order is enforceable by a Civil Court as a decree. He is directed to give the parties an opportunity of being heard, and to make such enquiry (if any) as he thinks necessary. One mode of making an enquiry is certainly to take evidence. We think therefore that he is authorised to take evidence and come to a decision on the matters with which he is empowered to deal; that this brings him within the broad definition of a Court; and that sanction for the prosecution was necessary.

The rule is therefore discharged.

H. T. H. *Rule discharged.*

PRIVY COUNCIL.

HEMANTA KUMARI DEBI (PLAINTIFF) *v.* BROJENDRO KISHORE ROY CHOWDHRY (DEFENDANT.)

*P.C.** 1890. *February* 25.

[On appeal from the High Court at Calcutta].

Second appeal—Ground of second appeal—Civil Procedure Code, s. 584—*Substantial error in a First Appellate Court's finding without any evidence to support it.*

The Court of first instance dismissed the suit upon the ground that the right, which it was brought to establish, had been taken away by a

* *Present*: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.

1890

HEMANTA KUMARI DEBI v. BROJENDRO KISHORE ROY CHOWDHRY.

compromise, entered into by a guardian on behalf of an infant party to former proceedings. This was reversed by the first Appellate Court, which decreed the claim, holding it unaffected by the compromise, on the ground that the latter was, in fact, contrary to the interests of the infant. The High Court, on a second appeal, set aside this finding, there having been no proof that the compromise was to the infant's detriment, and affirmed the decree of the first Court.

Held, that the High Court rightly reversed the decree of the first Appellate Court; the above finding, without any evidence to support it, being a substantial error in the proceedings, and good ground of second appeal within the meaning of section 584, sub-section (c), of the Civil Procedure Code.

APPEAL from a decree (6th August 1886), of the High Court, reversing a decree (30th March 1885) of the Subordinate Judge of Mymensingh.

The suit out of which this appeal arose was brought by the appellant's late husband, Rajah Jotendra Narain Roy, who died pending this litigation, through his late mother Maharani Surat Sunderi Debi, who died in 1888. He claimed enhancement of the rent, upon notice duly given, of a taluk within his zemindari, Pukhoria Jainsahi; and the question was whether he was not precluded from enhancing the rent by the effect of a *raffanama* or deed of compromise, entered into in August 1825 between his great-grandmother, Rani Bhubanmoyi Debi, and the defendant's predecessors in estate.

The Court of first instance having held that the compromise barred enhancement, the first Appellate Court held that it did not, inasmuch as it had been entered into, as the Court found, against the interests of the infant in regard to enhancement. But this finding, on a second appeal to the High Court, was not maintained, and the decision of the first Appellate Court was reversed. The question on this appeal was whether this was correct.

The circumstances under which the deed of compromise of 1825 was executed are stated in their Lordships' judgment.

The Divisional Bench of the High Court (MITTER and GRANT, JJ.) reversed the decree of the District Judge, and dismissed the plaintiff's suit, holding that it had been finally decided by the Sudder Court in 1856 in previous litigation between the plaintiff's grandfather, Harendra Narain Roy, who sued after the

death of his adoptive mother, Rani Bhubanmoyi, to set aside the *raffanama* in question, and the present respondent's predecessors, that Rani Bhubanmoyi had executed it as his guardian, and that the District Judge should not have allowed that question to be re-opened. They concluded as follows :—"We are of opinion that although the dismissal of the suit of Harendra Narain Roy, under section 1, Act XXIX of 1841, did not preclude a fresh suit, still if any such suit be brought, the parties would be bound by the decision of the Sudder Dewani Adawlut so far as it decided any material issue. It was decided by that Court that this *raffanama* was executed by Rani Bhubanmoyi as the guardian of Harendra Narain Roy. That decision is final. The District Judge in this case is in error in re-opening that question. We must, therefore, take it that the *raffanama* was executed by Rani Bhubanmoyi as the guardian of Harendra Narain Roy. We find, also, that the same rent fixed by the *raffanama* has been received by successive owners of the zemindari for about fifty-seven years. We further find that since the last suit for enhancement was dismissed in 1858, no attempt was made to repudiate the *raffanama* till 1882. Under these circumstances, following the principle laid down in the case of *Hunooman Pershad Pandey* v. *Munraj Koonweree* (1), we think that, having regard to the circumstances set forth above, a very heavy onus lies upon the plaintiff to establish that the *raffanama* in the language of the Sudder Dewani Adawlut used in their judgment of the year 1856, was "clearly and unmistakably" to the detriment of Harendra Narain Roy. But this onus has not been discharged by the plaintiff. The District Judge upon this point refers only to the decree of 1851, passed in favour of the owner of the 4-annas share of the zemindari. But that decree, which was passed in 1851, has no bearing upon the question whether the *raffanama* executed in the year 1825 was clearly and unmistakably to the detriment of Harendra Narain Roy. Being, therefore, of opinion that the *raffanama* is binding upon the plaintiff, we reverse the decrees of the Lower Appellate Court in all these cases, and dismiss the plaintiff's suit with costs in all the Courts."

(1) 6 Moore's I. A., 393.

1890

HEMANTA KUMARI DEBI v. BROJENDRO KISHORE ROY CHOWDHRY.

Mr. *R. V. Doyne* and Mr. *J. D. Mayne*, for the appellant, argued that the *raffanama*, as converting into a permanent lease with rent never to be raised, a tenure which was till then subject to an enhanceable rent, was on the face of it contrary to the interests of the infant Harendra Narain Roy. It deprived him of his statutory right to enhance, and was not binding upon him or upon his successor the present plaintiff. The District Judge's judgment to this effect had regard to the evidence generally. As to the guardian's power they referred to—*Hunooman Pershad Pandey* v. *Munraj Koonweree* (1), *Lalla Bunseedhur* v. *Bindesseree Dutt Sing* (2). As to the right of enhancement, reference was made to *Bamasoonderee Dossee* v. *Radhika Chowdhrain* (3).

Mr. *J. H. A. Branson* and Mr. *W. A. Hunter*, for the respondent, supported the judgment of the High Court. It had not been shown to be beyond the powers of Bhubaneswari as guardian, or to be detrimental to the minor's interests, in the then existing circumstances, for her to have compromised the litigation in 1825. Also the predecessors in title of the appellant, by receiving rent in accordance with the compromise from the time when it was executed down to 1882, showed that they acquiesced in it. That the plaintiff had not discharged the onus upon him had been rightly found.

In regard to the widow's powers as guardian, they referred to *Watson & Co.* v. *Shamlal Mitter* (4), *Hari Saran Moitra* v. *Bhubaneswari Debi* (5). On the right to enhance—*Hurronath Roy* v. *Gobind Chunder Dutt* (6).

Mr. *R. V. Doyne* replied.

Their Lordships' judgment was delivered by :—

SIR R. COUCH.—This is an appeal from a decree of the High Court at Calcutta in a suit for enhancement of the rent of a taluk which was instituted in July 1882. The plaintiff is entitled to a 10-annas share of the zemindari on which the taluk was dependent; and another person is entitled to a 4-annas share.

(1) 6 Moore's I. A., 393.
(2) 10 Moore's I. A., 454 at p. 459.
(3) 13 Moore's I. A., 248; 4 B. L. R., P. C., 8.
(4) L. R., 14 I. A., 178; I. L. R., 15 Calc., 8.
(5) L. R., 15 I. A., 195; I. L. R., 16 Calc., 40.
(6) L. R., 2 I. A., 193; 15 B. L. R., 120.

1890

HEMANTA KUMARI DEBI v. BROJENDRO KISHORE ROY CHOWDHRY.

The only ground of defence which it is necessary now to notice is that a deed of compromise was executed in August 1825, by virtue of which the defendants allege that the rent of the taluk was permanently settled. That deed was executed by Rani Bhubanmoyi Debi, who was the widow of Raja Juggut Narain, to whom the property had belonged, and who had adopted, before the execution of the deed, Harendra Narain Roy, the grandfather of the plaintiff.

The circumstances under which this deed of compromise was executed are these. Some time before March 1823, a suit was brought by Rani Bhubanmoyi Debi and Krishen Indra Narain Rai, the owner of the other 4-annas of the zemindari, for enhancement of the rent of the taluk; and the defence set up to that suit by the ancestors of the present defendants was that the mouzahs had been granted to them in permanent mokurrari, and that the rent was not liable to be enhanced. The suit was brought in the zillah court, and a decree was made in favour of the plaintiffs, deciding that the rent was liable to be enhanced, and that if the defendants did not pay the rent demanded, the mehals in dispute should be measured according to the *hastbud jarib* stated by the plaintiffs, and the jumma be assessed thereon. An appeal from this decree to the Civil Appellate Court was dismissed on the 11th May 1824. In that state of things the deed of compromise was made in August 1825. It was addressed to Joygobind Mozumdar, the ancestor of the defendants, and was executed by Rani Bhubanmoyi; it states that the defendants were paying the annual *istimrari* rent of Rs. 399 odd, with progressive increase added; that, on appeal to the court of the zillah, and the Provincial Court at Jehangirnuggur, a decree was passed for measurement and ascertainment of gross rents, and that for amicably settling with the defendants for an increase in the rent, the rent was fixed at sicca Rs. 600 including the old rent. The balance payable by the defendants after certain named deductions on account of their share was fixed in perpetuity. The defendants also presented a petition to the Court, saying that they assented to that compromise.

Nothing more appears to have taken place, except that the rent was regularly paid according to the compromise, until about 1854,

1890

HEMANTA KUMARI DEBI v. BROJENDRO KISHORE ROY CHOWDHRY.

and then a suit was again brought for enhancement of rent. That passed through various stages of appeal until it reached the Sudder Court. In the judgment of two of the Judges of the Sudder Court (three being present) it is stated that Rani Bhubanmoyi executed a deed of compromise, and from that time up to the period of the adopted son Harendra Narain Roy attaining his majority, the rent was collected according to the deed of compromise, and after that time until the institution of that suit in 1853. They then say:—"Under these circumstances we are of opinion that the Rajah is bound by the act of his mother done in 1232 as his guardian, and acquiesced in by him since he reached his majority, unless he can show that it was done in contravention of her duty to him as his guardian: in other words until he can show with reference to the circumstances under which, and to the then capabilities of the tenure regarding which, the compromise was made, that such compromise was clearly and unmistakably to his detriment." There is a clear finding by the Sudder Court upon the question whether Rani Bhubanmoyi was acting as guardian when she signed this deed of compromise that she was so acting. It must therefore now be taken that she did it as guardian.

The circumstances existing at the time of the compromise must next be considered. The parties were litigating not merely as to whether the rent was of the proper amount, or ought to be enhanced, but the defendants were contending that they had a perpetual tenure at a then fixed rent, and this was a settlement which was to put an end to the litigation, and which would also prevent the expense and delay, and the uncertainty of the result which was dependent upon the investigation that the Court had ordered to decide what the amount of rent, if it were to be enhanced, should be. Apparently it is a compromise which it cannot be said would not be beneficial to the infant, the adopted son, but is one which might fairly and naturally become to as putting an end to the litigation and deciding once for all the matter which was in dispute between the parties; because it must not be forgotten that although there had been a decree affirmed on appeal that the rent was liable to be enhanced, that was subject to a further appeal, and the case might have been

carried further by the defendants if this compromise had not been entered into.

The first Court before which the present suit came held that the compromise was binding and dismissed the suit. It then went by appeal to the District Judge, who reversed that decree and held that the compromise was not binding; it then came before the High Court by what is called a second appeal, or an appeal from an appellate decree, and as the High Court in its judgment states what the judgment of the District Judge was it will be convenient to refer to the judgment of the High Court. They say, "We are of opinion that although the dismissal of the suit of Harendra Narain Roy, under section 1, Act XXIX of 1841" (meaning the dismissal of the suit which was brought in 1854, and which was finally dismissed, after being remanded to the Lower Courts for further hearing, on account of the non-appearance of both of the parties) "did not preclude a fresh suit, still if any such suit be brought, the parties would be bound by the decision of the Sudder Dewani Adawlut so far as it decided any material issue. The District Judge in this case is in error in re-opening that question. We must therefore take it that the *raffanama* (deed of compromise) was executed by Rani Bhubanmoyi as the guardian of Harendra Narain Roy. We find also that the same rent fixed by the *raffanama* has been received by successive owners of the zemindari for about 57 years. We further find that since the last suit for enhancement was dismissed in 1858, no attempt was made to repudiate the *raffanama* till 1882." Then they speak of the principle laid down in the case of *Hunooman Pershad Pandey* v. *Munraj Koonweree* (1); and go on to say that the District Judge upon the question whether the compromise was beneficial or not to the adopted son "refers only to the decree of 1851 passed in favour of the owner of the 4-annas share of the zemindari. But that decree which was passed in 1851 has no bearing upon the question whether the *raffanama* executed in the year 1825 was clearly and unmistakably to the detriment of Harendra Narain Roy." Now the decree in 1851 was obtained by the Government, after there had been a purchase at a sale for

(1) 6 Moore's I. A., 393.

1890

HEMANTA KUMARI DEBI v. BROJENDRO KISHORE ROY CHOWDHRY.

arrears of revenue not paid by the owner of the 4-annas share, and the District Judge appears to have been in error in treating that as a decree passed in favour of the owner of the 4-annas share. The Government was in a different position from that in which the owner of the 4-annas share would be, and there is no evidence in the case upon which the District Judge could found his judgment reversing the decree of the first Court, and deciding that this compromise was not beneficial to the adopted son, an infant at the time it was made. When the judgments come to be looked at, it appears that he has reversed the decree of the first Court in the absence of any evidence—certainly in the absence of any evidence upon which he might reasonably come to the conclusion that the deed of compromise was not for the benefit of the adopted son. This appears to be a case in which under the provision of the law that there is a second appeal where there has been a substantial error or defect in the procedure of the Lower Court, the High Court was right in reversing the decree of the District Judge and leaving, as it did, the decree of the first Court—which held that the deed of compromise was a binding one, and therefore the suit for the enhancement of rent ought to be dismissed—to stand.

Their Lordships will therefore humbly advise Her Majesty to dismiss this appeal, and to affirm the decree of the High Court. The appellant will pay the costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*
Solicitors for the respondent: Messrs. *Neish & Howell.*

C. B.

---

*P.C.** 1890. *March* 12 *and* 13.

RAM LAL (PLAINTIFF) *v.* MEHDI HUSAIN AND OTHERS (DEFENDANTS).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Privy Council, practice of—Findings of fact—Concurrent findings by two Courts.

The usual course of not disturbing concurrent findings of fact may be followed, notwithstanding that a part of the evidence in the suit has not

Present: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.