

THE
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PRIVY COUNCIL.

RAJAB ALI (PLAINTIFF) v. AMIR HOSSEIN AND OTHERS (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

Security for costs—Discretion of Court to refuse security—Civil Procedure Code (Act XIV of 1882), s. 549.

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An original Court rejected, as insufficient, security offered for the purpose of conforming to an order of the High Court under s. 549 Civil Procedure Code; and refused to receive other security offered, in lieu, after the time fixed by the order had expired. This was affirmed by the High Court: *Held*, that as the High Court had a discretion to enlarge the time allowed for finding security, and to accept other security in lieu of that rejected, or to refuse to do either, it had, under the circumstances, judicially exercised that discretion in refusing.

APPEAL from a decree (29th June 1885) of the High Court affirming a decree (30th August 1884) of the Subordinate Judge of the Patna District.

The suit, out of which this appeal arose, was brought by the present appellant for land left by Sayed Enayat Hossein, deceased, valued at Rs. 4,000; and having been dismissed with costs by the Subordinate Judge on 30th August 1884, an appeal was preferred. The High Court ordered, on 11th March 1885, that Rajab Ali the plaintiff should within one month furnish security, under s. 549 of the Code of Civil Procedure, to the satisfaction of the Judge "for costs of the appeal and in the original suit."

Rajab Ali accordingly, on 2nd April 1885, filed a security-bond executed by one Bande Ali for Rs. 4,000, hypothecating

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mouza Abdulpore Pipla, perganna Balia, zila Patna, alleged to be worth Rs. 15,000. The respondents, Syed Amir Hossein and others, objected to the security, alleging that the mouza was not the property of Bande Ali.

On the 17th June 1885, the Subordinate Judge found that the security, in reference to title, was insufficient, and rejected it. The Court also refused to allow other security to be given in lieu, as the time fixed by the Appellate Court for filing security had then expired.

On an appeal from this order, urging that the grounds of the rejection were not made out, and that the security tendered in lieu immediately on the passing of the order of rejection, should have been accepted, the High Court said: "As regards the first point, we have no means of ascertaining or forming any opinion regarding the grounds of the Subordinate Judge's order. No objection was taken until the actual hearing of this matter; and consequently the requisite record has not been forwarded to us. As regards the second objection, we think that the terms of the judgment in the case of *Haidri Bai v. East Indian Railway Company* (1), which has been followed by a Division Bench of this Court, *Budri Narain v. Sheo Koer* (2), is conclusive. The appellant took the risk of furnishing security which was found to be insufficient, and he therefore cannot be allowed the opportunity, after the expiry of the prescribed period, of furnishing a fresh security." The appeal in the suit was rejected.

On the 13th January 1886, the appellant obtained leave to appeal to Her Majesty.

Mr. *James Tatlock*, for the appellant, argued that there was no default within the meaning and intent of s. 549 of the Code of Civil Procedure, such as would call for the extreme measure of rejecting the appeal; and the High Court was in error in supposing that it had no discretion in the matter to allow the appeal to proceed. That discretion it had. And the High Court was wrong in not sending for the record of the enquiry as to the security made by the Subordinate Judge. He referred to *Balwant Singh v. Dow-*

(1) I. L. R., 1 All., 687.

(2) I. L. R., 11 Calc., 716.

lut Singh (1), where the High Court having apparently treated an appeal as though, after rejection of it under s. 549, a petition tendering security and asking restoration could not be entertained, it was held by this Committee that to restore it was within the Court's discretion. *Huidri Bai v. East Indian Railway Company* (2) was also cited.

The respondents did not appear.

Their Lordships' judgment was delivered by

LORD WATSON.—Their Lordships have come to the conclusion that this appeal ought not to be allowed. They are not disposed to agree with the view taken by the learned Judges of the High Court, to the effect that the Court had no discretion to enlarge the time allowed for finding security, or to accept another security in lieu of the bond which had been filed by the appellant upon the 2nd April 1885. At the same time they are very clearly of opinion, in the circumstances of the case, that if the Court had assumed the discretionary power, which their Lordships think they possess, they would not have exercised it rightly if they had acceded to the motion which is said to have been made on behalf of the appellant.

Their Lordships will humbly report to Her Majesty that this appeal ought to be dismissed.

Appeal dismissed.

Solicitor for the appellant: Mr. Geo. Thatcher.

C. B.

GOSSAMI SRI GRIDHARIJI (PLAINTIFF) v. ROMANLALJI GOSSAMI
SON AND REPRESENTATIVE OF PURUSHOTTAM GOSSAMI

AND OTHERS (DEFENDANTS).

AND A CROSS-APPEAL OF ROMANLALJI GOSSAMI.

[On appeal from the High Court at Calcutta.]

Hindu Law—Endowment—Hereditary right to be shebait and to have possession of property dedicated to religious purposes.

According to Hindu law, when the worship of a Thakur has been founded, the office of a shebait is held to be vested in the heir or heirs of the founder, in default of evidence that he has disposed of it otherwise, provided that there has not been some usage, course of dealing, or circumstance,

* Present: LORD HOBHOUSE, LORD MACNAGHTEN, and SIR R. COOCH.

(1) I. L. R., 8 All., 315; L. R., 13 I. A., 57.

(2) I. L. R., 1 All., 687.

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