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HEM CHUNDER
CHUNDER
v.
FRANKRISTO
CHUNDER.

to attach and sell the property in the mofussil, because it is in the hands of the Receiver of this Court.

I will make an order that Bissonath's interest in the property in the hands of the Receiver must be considered as attached, and that the Receiver proceed to sell that interest, and for the purpose of carrying out the sale I will order Bissonath's representatives to join in any conveyance which may be necessary; the sale proceeds to be paid into Court in this suit to await the further orders of the Court.

Application granted.

Attorney for the applicant: Baboo Shamaldhone Dutt.

Attorney for Hem Chunder and Roymoney: Mr. Remfry.

APPELLATE CIVIL.

Before Mr. Justice Kemp and Mr. Justice Pontifex.

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Feb. 22.

LALLAH RAMESSHUR DOYAL SINGH (PLAINTIFF) v. LALLAH
BISSEN DOYAL AND ANOTHER (DEFENDANTS)*.

*Damages, Suit for—Joint Undivided Proprietors—Revenue Sale—
Act XI of 1859.*

No suit for damages as between joint owners on undivided estates will lie, in consequence of the sale of the whole estate through the default of one or more of such owners in paying their shares of the Government revenue.

THIS suit was for damages, amounting to Rs. 10,478. The plaintiff alleged that he was the proprietor of a 4-anna share in a mokurruree right in certain mouzahs, appertaining to lot Mehal Hakimpore, Pergunna Chowssa, Zilla Shahabad. He alleged that the parent estate Hakimpore was sold for arrears of Government revenue, owing to the neglect of his co-sharers in the mokurruree in paying up their quota of Government revenue. He further alleged that the entire 16 annas of the mouzah, which comprised the mokurruree, were let out in perpetual mokurruree by the Rajah of Buxar to Lallah Mewa Lal, the common

* Regular Appeal, No. 258 of 1874, against a decree of the Subordinate Judge of Zilla Shahabad, dated the 26th of June 1874.

ancestor of the parties to this suit, at a fixed annual jumma of Rs. 401; that after the death of the ancestor, both parties to this suit in right of inheritance were in possession of the mokurruree, and that the practice amongst the co-sharers was to pay their respective quotas of Government revenue to the Collector direct under an agreement with the superior landlord to that effect; that under this alleged arrangement between the co-sharers, the plaintiff had to pay a 4-anna share of the Government revenue,—the defendant No. 1 a 4-anna share,—and the defendant No. 2 an 8-anna share; that on the 28th of March 1872, being the last safe day for the payment of Government revenue, the plaintiff paid in his quota; but the defendants having neglected to pay their respective shares of the Government revenue, the parent estate, Mehal Hakimpore, was sold at auction for arrears of revenue, and the price paid was Rs. 50,000; and that the whole of the surplus sale proceeds, after deducting the Government revenue due up to the 28th of March 1872, had been taken out of Court by the superior malik, the zemindar. The plaintiff valued his suit and assessed his damages at the proper selling price of his 4-anna share in the mokurruree as prevalent in the Pêrgunnah in which the mokurruree was situated.

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The Subordinate Judge dismissed the suit, and the plaintiff appealed to the High Court.

Mr. *R. E. Twidale* and Baboo *Tarruck Nath Dutt* for the appellant.

Mr. *H. E. Mendes* and Baboos *Rashbehary Ghose*, *Taruck Nath Palit*, and *Kashy Kant Sen* for the respondents.

On the appeal coming on a preliminary objection was taken on behalf of the respondents, that no suit would lie between joint owners on undivided estates for damages sustained by the estate in consequence of the default of one or more of the co-proprietors in paying their share of the Government revenue, and the cases of *Odoit Roy v. Radha Pandey* (1) and *Gungapersaud Sahee v. Madhopersaud Sahee* (2) were referred to.

(1) 7 W. R., 72.

(2) 13 S. D. A., 1244.

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Mr. *Twidale* for the appellant contended, that the words of the proviso added to s. 33 of Act XI of 1859 were large enough to justify the bringing of this suit.

The judgment of the Court was delivered by

KEMP, J. (who, after stating the facts as above, continued:)—
In the case alluded to of *Odoit Roy v. Radha Pandey* (1) Norman and Seton-Karr, JJ. held that a suit would not lie between joint owners on undivided estates for damages sustained by the whole estate in consequence of the default of one or more of the co-proprietors in paying their shares of the Government revenue. As already observed, this case followed a decision of the Sudder Court of 1857 in the case of *Gungapersaud Sahee v. Madhopersaud Sahee* (2). We think that the rule laid down in those decisions is a proper one; and further we find that, under the provisions of Act XI of 1859, s. 40, the plaintiff could have protected his interests by having his mokurruree right registered. He, also under the said Act, could have paid in the Government revenue due on account of the shares of his co-proprietors in the mokurruree, and thus saved the estate from sale. We find, on turning to the kyefeut of the collectorate amlah, which was called for by the Collector at the time when Bissen Doyal Singh, the defendant No. 1, petitioned to be allowed to save the property from sale by paying the revenue due on the 28th March 1872, that the balance then due was a very small one, under Rs. 100. There was, therefore, no difficulty whatever in the plaintiff avoiding the sale by paying the sum then due on account of Government revenue. Following, therefore, the ruling in *Odoit Roy v. Radha Pandey* (1) and that of the Sudder Dewany Adawlut of 1857 alluded to above, we dismiss the plaintiff's suit.

Then there is a further question for consideration, namely, whether the defendants are not entitled to their costs in this suit. A cross-appeal has been made to this Court on that point, and we think that the defendants ought to get their separate costs in this litigation.

(1) 7 W. R., 72.

(2) 13 S. D. A., 1244.

We dismiss the appeal of the plaintiff with costs, and modify the decree of the Court below to this extent that we decree costs to each of the two defendants in this case.

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Appeal dismissed.

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Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Mitter.

MANESSUR DASS AND ANOTHER (PLAINTIFFS) v. THE COLLECTOR AND MUNICIPAL COMMISSIONERS OF CHAPRA (DEFENDANTS).*

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June 28.

Beng. Act III of 1864, s. 33—Municipal Commissioners—Appeal against Assessment—Jurisdiction of Civil Court.

A suit to set aside an order made on an appeal under s. 33 of Bengal Act III of 1864 to the Municipal Commissioners against a rate assessment, and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way, and have exceeded their powers and acted contrary to the provisions of the Act, cannot be maintained in the Civil Courts. The decision of the Commissioners in such an appeal is absolutely final.

THIS suit was brought to reduce the chowkidari tax levied under Beng. Act III of 1864 on certain houses belonging to the plaintiffs, situated in Mohulla Doulutgunj, No. 27, in Perguna Manghi, which had been, in 1871, assessed at Rs. 144 a year, and had so continued until 1873, in which year the tax was raised to Rs. 216. The value of the houses had not, in the interval, increased, nor had any change of form been made. The plaintiffs preferred an appeal to the Municipal Commissioners against the enhancement, which was rejected by them on the 7th of July 1873, whereupon the plaintiffs brought this suit for the reduction of the tax, praying that necessary enquiries should be instituted, the state and value of the houses enquired into, and a decree passed in their favor by setting aside the orders of the Municipal Commissioners.

The contention of the defendant was, that the Civil Courts had not the power to set aside the orders of the Municipal

* Special Appeal, No. 360 of 1865, against a decree of the Judge of Zilla Sarun, dated the 6th January 1875, reversing the decree of the Munsif of Chapra, dated the 5th January 1874.