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have not been taken in the memorandum; but where a decree comes before it which upon its very face is illegal,—a decree which goes beyond the power of the Court which passed it under circumstances of this sort,—I take it that this Court is bound to take up the point itself and rectify the mistake, and not allow itself to become an instrument to the commission of further mistakes.

Appeal allowed.

Before Mr. Justice Kemp and Mr. Justice Morris.

1878
 July, 24.

KOONJ BEHARY CHOWDHRY AND OTHERS (OBJECTORS) v. GOCPOOL CHUNDER CHOWDHRY AND ANOTHER (PETITIONERS).*

Certificate to collect debts—Questions of validity of alleged adoption—Title—Act XXVII of 1860.

The Court will refuse to grant an application for a certificate to collect the debts of an intestate who has been dead forty years at the time of making the application, the presumption being that, owing to the operation of the law of limitation, there could be now no debts due to him which could be recovered.

A question of title cannot be judicially determined between parties, in an application under Act XXVII of 1860. Therefore, where the object of such an application was to obtain a judicial determination as to the validity of an alleged adoption. *Held* that such a question could only be decided in a Civil Court.

THE appellants in this case, representing themselves as the *gyantees* (cognates) of one Gournath Chowdhry, deceased, applied, on the 26th of February 1875, for a certificate under Act XXVII of 1860, empowering them to collect the debts due to the estate of the intestate. At the time of making this application Gournath Chowdhry had been dead forty years. On the 30th March 1875 a cross-application for a similar certificate was made by Tripura Sundari and Kheema Sundari, being the widows of one Gobind Chunder Chowdhry, the alleged adopted son of the widow of the intestate. The two widows, on the 3rd May 1875, also presented a formal petition of objection to the

* Miscellaneous Regular Appeals, Nos. 36 and 37 of 1877, against the order of J. B. Worgan, Esq., Judge of Zilla Rajshahye, dated the 30th June 1876.

application made by the appellants. The District Judge, after a protracted hearing, refused to grant the appellants' application on the ground that a *primâ facie* case had been made out to show that Gobind Chunder Chowdhry had been adopted by Kalee Sundari Chowdrain, the widow of the intestate.

In the application made by the two widows, Tripura Sundari and Kheema Sundari, the Court made an order granting them certificates under Act XXVII of 1860. The *gyantee* applicants appealed both cases to the High Court.

Baboo *Grija Sunker Mookerjee* for the appellants.—The lower Court should have finally determined the question of adoption raised on this case and not rested content with finding that only a *primâ facie* case had been made out; see *Mussamut Anundee Kooer v. Bachoo Singh* (1).

Baboo *Sasibhooson Dutt* for the respondents.—The appellants' application was really meant to raise the question of the validity of the adoption, and this could not be entered into in the present matter.

The judgment of the Court was delivered by

KEMP, J.—This is an application, not as the Judge states for a certificate to collect debts due to the estate of Kalee Sundari Chowdrain, who had no interest beyond a life-interest, but it is an application for a certificate under Act XXVII of 1860, to collect debts due to the estate of the late Gournath Chowdhry. Now it is admitted that Gournath Chowdhry died in Aughran 1245, or some forty years ago. The application for a certificate on the part of the appellants before us is on the footing that they are the *gyantees* of Gournath Chowdhry, and there was a counter-application by two ladies, Tripura Sundari and Kheema Sundari, who allege that they are the widows of Gobind Chunder Chowdhry, the adopted son of Gournath Chowdhry, and that they represent the interest of his two minor sons as their guardians. The Judge has examined a large

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number of witnesses in this case. Their examination appears to have lasted over twelve days; it was then postponed for a considerable period and resumed again. The examination of the witnesses extends over no less than 114 pages of foolscap paper. Upwards of a 100 exhibits were filed, and the Judge, after entering into considerable argument as to whether certain sections of the Evidence Act applied, as regards the admissibility or otherwise of certain documents, has come to the conclusion that a *primâ facie* case has been made out in this case as to the alleged adoption of Gobind Chunder Chowdhry under an onoomutee puttro granted by Gournath Chowdhry to his widow, the late Kalee Sundari Chowdrain. The application for a certificate on the part of the *gyantees* was therefore rejected.

We think that this application might have been rejected on a very simple ground and without entering into this protracted investigation. It is an application made for the purpose of representing the estate and collecting the debts of Gournath Chowdhry, who died more than forty years prior to this application, and therefore on this ground alone we think that this application should not have been entertained.

In a case of this description under Act XXVII of 1860, although under the ruling in *Mussamut Anunda Kooer v. Bachoo Singh* (1), referred to by the pleader for the appellant in the course of the argument, the Judge was bound to inquire which title was made out *for the purposes of the legal requirements of the Act* those learned Judges also observe that no title can be judicially determined between the parties as the result of the inquiry made under Act XXVII of 1860. Now it appears to us clear that the object of the application in this case was to obtain a judicial determination of the question whether Gobind Chunder Chowdhry was the adopted son of the late Gournath Chowdhry or not, a question which can only be decided in a civil suit.

We therefore dismiss this appeal.

Appeal dismissed.

In appeal No. 37 we are of opinion that the application of the two ladies, Tripura Sundari Chowdhraïn and Kheema Sundari Chowdrain, must also be dismissed. Gournath Chowdhry died forty years ago, and they now ask for a certificate under the provisions of Act XXVII of 1860 to collect the debts due to him which they assess at Rs. 1,000, without however setting out in their application from whom these debts are due. Looking to the time which has elapsed since the death of Gournath Chowdhry, we think that there could be now no debts due to him which could be recovered owing to the operation of the law of limitation, and these ladies are therefore not entitled to a certificate under Act XXVII of 1860.

This appeal will be decreed, but under the circumstances we will give no costs in either appeal.

Appeal decreed.

Before Mr. Justice L. S. Jackson and Mr. Justice Cunningham.

KOYLASHI CHUNDER DASS (PLAINTIFF) v. BOYKOONTO NATH CHUNDRA AND OTHERS (DEFENDANTS).*

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April 4.

Limitation—Oral Agreement—Debt payable by Instalments—Act XV of 1877, Sched. II, art. 75.

A entered into a verbal agreement with B to pay a debt due in monthly instalments, B reserving to himself the right to claim payment of the whole sum due on default of three successive instalments. A failed to pay any instalment. Four years after the first instalment was due, B sued A to recover the sum due on the various instalments not barred by limitation. *Held*, that B was not bound to sue for the whole amount due directly on A's failure to pay the three successive instalments.

Semble.—Art. 75, Sched. II of Act XV of 1877, does not apply according to its strict terms to a suit brought upon a verbal contract.

CASE referred for the opinion of the High Court by the Judge of the Small Cause Court of Bishenpore, under s. 617 of Act X of 1877.

The plaintiff's case is, that, in execution of a decree, the defendant adjusted the decretal debt, and verbally contracted to pay Rs. 68, by instalments at Rs. 3 per mensem, from Pous 1280 (December

* Small Cause Court Reference, No. 412 of 1878, from an order of Baboo Ram Doyal Ghose, Munsif and Judge of Small Cause Court of Bishenpore, dated the 26th January 1878.