

Before Mr. Justice Pontifex and Mr. Justice McDonell.

1880  
Dec. 10.

ANUNDA SHAHA BISWAS, *alias* NYOMUDDIN SHA BISWAS,  
AND OTHERS (JUDGMENT-DEBTORS) *v.* KEMA BEBEE AND OTHERS  
(DECREE-HOLDERS).\*

*Appeal, Ex parte—Application for Rehearing—Civil Procedure Code  
(Act X of 1877), s. 560.*

An applicant, presenting a petition for the rehearing of an appeal decided *ex parte*, must, at the time of making such application, be prepared to satisfy the Court, that the notice of appeal was not duly served upon him, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing.

IN this case the plaintiff having obtained a decree, the defendants appealed, the appeal was heard *ex parte*, and the decree of the Court of first instance modified to some extent. Subsequently the plaintiff presented a petition, applying for the rehearing of the appeal, under s. 560 of the Code of Civil Procedure. This application was rejected summarily. Thereupon the plaintiff appealed to the High Court, on the ground that his application for a rehearing should not have been summarily rejected, but that an opportunity should have been afforded him to prove the allegations contained in his petition.

Baboo *Shoshee Bhoosun Dutt* for the appellants.

Baboo *Mohiny Mohun Roy* and Baboo *Lal Mohun Das* for the respondents.

The judgment of the Court (PONTIFEX and McDONELL, JJ.) was delivered by

PONTIFEX, J.—We think that, under s. 560 of the Code of Civil Procedure, when a petition is presented for rehearing of an appeal heard *ex parte* in the absence of the respondent, the applicant is bound to satisfy the Court that the notice was not duly served, or that he was prevented by sufficient cause from

\* Appeal from order, No. 196 of 1880, against the decree of P. Dickens, Esq., Judge of Nuddea, dated the 1st April 1880.

attending when the appeal was called on for hearing. If he is not prepared at the time to satisfy the Court in these particulars, his application is properly rejected. That is what seems to have happened in this case. The appeal is dismissed with costs.

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ANUNDA  
SHAHA  
BISWAS  
v.  
KEMA  
BEBEE.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

RAM DUTT SINGH (DEFENDANT) v. HORAKH NARAIN SINGH  
(PLAINTIFF).\*

1880

*Dec. 18.*

*Limitation Act (XV of 1877), sched. ii, arts. 99, 132—Suit for Share of Government Revenue, and for Declaration that Estate is charged with amount.*

A suit for recovery of Government revenue, which the defendant was bound to pay, but which has been paid by the plaintiff to save the whole estate from sale, where the plaintiff asks to have the amount so paid made a charge on the portion for which he paid it, is governed by art. 132, and not by art. 99 of Act XV of 1877.

THE plaintiff in this case sued for Rs. 439-6, being the Government revenue paid by him for a mouza called Mouza Tulsipore, from 13th September 1866 to 8th August 1878, on account of the defendant. Mouza Tulsipore was a portion of the talook of Beharpore Agarsanda, which was held by the defendant, the remaining portion being held under a ticca lease and a conditional deed of sale by the plaintiff. The portion of the Government revenue due for Mouza Tulsipore for the above period not having been paid by the defendant, the plaintiff was compelled to pay it in order to save his own portion from sale for the arrears.

The plaintiff prayed for a decree for the above sum with interest, and that it might be recovered by the sale of Mouza Tulsipore, and for a declaration that the said sum was a charge

\* Appeal from Appellate Decree, No. 1028 of 1879, against the decree of A. V. Palmer, Esq., Judge of Shahabad, dated the 25th February 1879, affirming the decree of Baboo Lal Gopal Sen, Second Munsif of Arra, dated the 24th September 1878.