

Before Mr. Justice Morris and Mr. Justice Prinsep.

1880
June 10.

PEARY LALL MOZOOMDAR (PLAINTIFF) *v.* KOMAL KISHORE
DASSIA (DEFENDANT).*

*Order of Transfer—Powers of High Court—Code of Civil Procedure
(Act X of 1877), s. 25.*

The High Court cannot make an order of transfer of a case under s. 25 of the Code of Civil Procedure, unless the Court from which the transfer is sought to be made has jurisdiction to try it.

IN this case a rule had been obtained calling upon the defendant to show cause why an order should not be made authorizing the District Judge of Rungpore to try an appeal from a decision of the Subordinate Judge of Rungpore. It appeared that, after the hearing in the lower Court and before the appeal was filed, the land in respect of which the suit was brought was transferred to the district of Pubna, but the appeal was filed in the Court of the District Judge of Rungpore, who, owing to the transfer, had no jurisdiction to hear the appeal.

Baboo *Grija Sunkur Mozumdar* in support of the rule.

Baboo *Okil Chunder Sen* showed cause.

The judgment of the Court (MORRIS and PRINSEP, JJ.) was delivered by

MORRIS, J.—We cannot pass the order asked for, authorizing the District Judge of Rungpore to try the appeal.

It appears that the suit was tried by the Subordinate Judge of Rungpore. Before the appeal was made, the land which formed the subject-matter of the suit was transferred to the district of Pubna, and the District Court of Pubna, consequently, alone had jurisdiction to hear the appeal. The appeal,

* Rule No. 370 of 1880, issued to show cause why Appeal No. 10 of 1879 in the Court of the Judge of Rungpore should not be heard and determined by that Court.

however, was inadvertently filed in the District Court of Rungpore, where, no doubt, it can more conveniently be tried. But we can, under s. 25 of the Code of Civil Procedure, direct the transfer of an appeal only from a Court having jurisdiction to receive and try it. We have no power to authorize any Court to assume jurisdiction to receive and hear an appeal contrary to the usual course prescribed by the Code. We, therefore, leave the appellant to take the necessary steps to place his appeal in the Pubna Court, and he can then renew his application to us, which is otherwise unobjectionable.

1880
PEARY LALL
MOZOOMDAR
v.
KUMAL
KISHORE
DASSIA.

Rule discharged.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

HAZIR GAZI (ONE OF THE DEFENDANTS)* v. SONAMONEE DASSEE AND OTHERS (PLAINTIFFS).*

1880
May 28

Res Judicata—Judgment against one Co-Sharer, effect of, on Interest of other Co-Sharers—Code of Civil Procedure (Act X of 1877), s. 13, expl. 5—Repeal, Effect of.

Explanation 5 to s. 13 of the Code of Civil Procedure would not make a judgment obtained in a suit against one co-sharer binding on another co-sharer no party to such suit, in respect of the rights enjoyed in common by such co-sharers in their common property. Nor could such explanation be applied to a case instituted, or the judgment delivered in such case, during the time when the old Code of Civil Procedure was in force.

THIS was a suit to declare the plaintiffs' jamai rights to certain lands.

The plaint stated, *inter alia*, that one Dwarkanath Sirkar, son of the plaintiff Sonamonee Dassee, obtained a maurasi lease, dated the 6th May 1859, of twelve and-a-half bigas of land, from one Jarip Gazi and his brother Bonomali Gazi; that the right, title, and interest of these brothers in their lands, together

* Appeal from Appellate Decree, No. 1944 of 1879, against the decree of Alex. T. Maclean, Esq., Judge of the 24-Pargannas, dated the 29th May 1879, reversing the decree of Baboo Romesh Chunder Lahiri, First Munsif of Busirhaut, dated the 12th February 1879.