

dismissed, but that a declaration must be given in favor of the plaintiff to the effect that the defendant has no *howladari* interest in the lands covered by the suit; and in this respect the decree of the Court below must be altered.

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As regards the costs of the suit, we think that each party, having set up a case which is either false or unproven, they should bear their own costs in both the Courts.

J. V. W.

Decree varied.

Before Mr. Justice Mitter and Mr. Justice Norris.

NAUN SINGH (PLAINTIFF) *v.* RASH BEHARI SINGH AND OTHERS
(DEFENDANTS).*

1886
April 30.

Valuation of Suit—Suit for pre-emption—Jurisdiction—Bengal Civil Courts Act (VI of 1871), s. 20.

In a pre-emption suit, the subject-matter is the right of pre-emption, the value of which, and not that of the property itself, determines the question of jurisdiction under s. 20, Act VI of 1871.

THIS suit was brought for the enforcement of the plaintiff's right of pre-emption. The property in dispute was sold to the defendants for Rs. 700. The plaintiff sought to recover possession of it by the cancellation of the aforesaid sale on payment of Rs. 700 to the defendants (purchasers.) The suit was brought in the Munsiff's Court. The defendants amongst other pleas objected to the jurisdiction of the Court, on the ground that the property sought to be recovered was of the value of more than Rs. 1,000.

The Munsiff overruling this objection dismissed the suit upon the merits. The plaintiff preferred an appeal against the Munsiff's decree. The Subordinate Judge, on the objection of the defendants, re-opened the question of jurisdiction, and finding that the property in dispute was of the value of more than Rs. 1,000 dismissed the suit upon the ground that the Munsiff had no jurisdiction to entertain it.

* Appeal from Appellate Decree No. 1257 of 1885, against the decree of Baboo Abinash Chunder Mitter, Subordinate Judge of Patna, dated the 27th of March 1885, affirming the decree of Rai Baboo Sheo Sarun Lal Bahadur, Munsiff of Patna, dated the 28th of April 1884.

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NAUN SINGH
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SINGH.

The plaintiff appealed to the High Court.

Baboo *Jogindra Chunder Ghose* for the appellant.

Mr. *M. L. Sandel* for the respondents.

The judgment of the Court (MITTER and NORRIS, JJ.) after setting out the facts as above, proceeded as follows:—

In this second appeal it has been urged that the defendants, respondents, are not entitled to re-open the question of jurisdiction in the Appellate Court, they having not preferred any appeal against the Munsiff's decision upon this point. We are of opinion that this contention is not valid. The defendants, respondents, were entitled to answer the plaintiff's appeal upon the ground that the Munsiff had no jurisdiction to entertain the suit. We think therefore that there is no force in this contention.

The second ground that has been urged before us is that the finding of the Subordinate Judge that the value of the property in dispute is more than Rs. 1,000, does not necessarily lead to the conclusion that the Munsiff had no jurisdiction to entertain this suit. It has been contended that the value of the property in dispute in this case is not necessarily the value of the subject-matter in dispute. The plaintiff offered to pay Rs. 700, the consideration money stated in the conveyance to the defendant. That amount at any rate should be deducted from the value of the property in dispute in order to ascertain the value of the subject-matter in dispute.

We are of opinion that the subject-matter in dispute in this case is the right of pre-emption which the plaintiff asserts that he has in respect of the property in suit. The question for decision, in order to ascertain whether the Munsiff had jurisdiction or not, is as laid down in s. 20 of the Bengal Civil Courts Act (VI of 1871)—what is the value of this right? It is not very easy to lay down any general principle for ascertaining the value of a right of pre-emption in any given case. But it is clear to us that it is not the value of the property itself. For example, if a plaintiff seeks to recover possession of a property covered by his *pottah*, and the rent charged upon the property is of considerable amount, the value of the property itself would not be the value of the right which the plaintiff would seek to recover. Therefore

it seems to us that in determining the question whether the value of the subject-matter in dispute in this case is above Rs. 1,000, the lower Appellate Court has proceeded upon an erroneous principle. As already remarked, it is not possible to lay down any hard and fast rule for measuring the value of a right of pre-emption in any particular case. But the lower Appellate Court in this case, for reasons already given, was not right in measuring it by the value of the property itself without taking into consideration the fact that the plaintiff has offered to pay to the defendant Rs. 700, and would be bound to make the payment before he could succeed.

It has not been shown therefore that the Munsiff was in error in holding that he had jurisdiction to entertain the suit. That being so, the Subordinate Judge's judgment cannot stand. We therefore reverse that judgment and send back this case to that Court to decide the appeal on the merits. Costs will abide the result.

K. C. M.

Case remanded.

Before Mr. Justice Prinsep and Mr. Justice Beverley.

SRIHARY MUNDUL (JUDGMENT-DEBTOR) v. MURARI CHOWDHRY AND ANOTHER (DECREE-HOLDERS).*

1886
July 2.

Limitation—Execution of Decree—Jurisdiction of Court where decree was passed—Transfer of decree for execution—Code of Civil Procedure, ss. 223, 239, 248.

On the 4th of March 1884, a decree-holder applied to the Court of the Subordinate Judge of Moorshedabad (where the decree was passed) for transfer of the decree to the District Court of Beerbhoom for execution. The transfer was made, and, on application by the decree-holder, the judgment-debtor's properties in Beerbhoom were attached. Thereupon the judgment-debtor objected to the attachment, and obtained an order under s. 239 of the Code of Civil Procedure staying the execution proceedings. The judgment-debtor then applied to the Court of the Subordinate Judge at Moorshedabad objecting to the execution of the decree, on the ground that it was barred by limitation. The objection was overruled by the Subordinate Judge, and his

* Appeal from Order No. 150 of 1886, against the order of T. D. Beighton, Esq., Judge of Moorshedabad, dated the 19th of January 1886; affirming the order of Baboo Nobin Chunder Ganguli, Subordinate Judge of Moorshedabad, dated the 22nd of September 1885.