

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Goshain Tota Ram vs. Rajah Rickmunee Bullab, from the late Sudder Dewanny Adawlut, North-Western Province at Agra ; delivered the 28th June, 1869.*

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Present :

SIR JAMES W. COLVILLE.

LORD JUSTICE SELWYN.

LORD JUSTICE GIFFARD.

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SIR LAWRENCE PHELPS.

THIS is an Appeal against the concurrent decision of the two Courts below, which have found that the Respondent, the Plaintiff in the action, is entitled to be restored rather to an office in the nature of the headship of a Temple, than to the possession of lands in the ordinary sense in which lands are sued for in ejectment, and that the title set up by the Appellant cannot prevail against him.

Their Lordships have so constantly, that it is hardly necessary to repeat it, said that in such circumstances they will never disturb the concurrent decision of both Courts below upon a question of fact, unless it very clearly appears that there has been some miscarriage of justice, some mistrial, or that the conclusion is very plainly erroneous.

In the present case it is contended that the documentary evidence which has been put in by the Plaintiff in the suit—by the Respondent on this Appeal—was improperly admitted. It does not seem to their Lordships that that is the case, or, at least, that there has been such an admission of evidence as would be fatal to the decision of the Courts below. No doubt the evidence was not, in accordance with the new code of procedure, brought in at the time of filing the plaint. It was brought in at two subsequent periods. There

seems therefore to have been an irregularity in that respect, which is adverted to in the Judgment of the Sudder Court.

Their Lordships, however, do not find that the 39th clause of Act VIII. of 1859 makes the admission of any documentary evidence that is not so brought in, so improper as to be a ground of appeal against the ultimate determination of the cause by the Court which has admitted it. On the contrary, what that clause at the end of it says is:—"Any document not produced in Court by the Plaintiff when the plaint is presented, shall not be received in evidence on his behalf at the hearing of the suit, without the sanction of the Court."

In the present case there seems to their Lordships to be abundant proof that the evidence was received with the sanction of the Court. A great part of it (some of the documents and accounts being in the Bengalee language) seem to have been referred to a subordinate officer, an Ameen, for inspection and verification, and it was ultimately acted on by the Court. It is perfectly clear, therefore, that if the sanction of the Court can purge the original defect, it has been so purged.

Their Lordships sitting here, have not been in the habit of determining appeals upon the mere fact that certain evidence may have been improperly admitted. It has always been a rule of this Committee to do substantial justice between the parties, to take the Record as it is sent over, and to see whether there is sufficient evidence on the whole record to justify the conclusion to which the Court below have come. The Sudder Court, although in these cases they adverted to the irregularity in the proceedings of the principal Sudder Ameen, have expressed their opinion that the Defendant was not ultimately prejudiced by the course which had been pursued.

The contention on the side of the Appellant is that this is in the nature of an action of ejectment, and that there is really no evidence whatever of the title of the Respondent, who, being Plaintiff in the cause, was bound to make out the title. It appears, however, to their Lordships that there was ample evidence to go to the Jury that the persons who actually resided in the Temple were the mere agents of the Rajah Gourbullab, and that

there was also ample evidence to go to the Jury that Rajah Gourbullub was the adopted son of the person whom he claimed to represent. In that state of things their Lordships think that the burthen of proof was properly treated as shifted upon the Defendant, and the transaction upon which he relies seems to their Lordships, as it seemed to the Courts below, to be one of a suspicious character. Both those Courts have found that it was not a true transaction, and that even if the instrument had been really executed by the woman with a knowledge of its contents, no title to the Temple would have passed thereunder. Their Lordships are not prepared to say that either of those conclusions is wrong.

Under these circumstances their Lordships see no grounds for disturbing the decision of the Courts below, and must humbly recommend Her Majesty to dismiss this appeal with costs.

1. The first thing I noticed when I stepped out of the car was the cold. It was a sharp contrast to the warm blanket I had been sitting under. I looked up at the sky, which was a pale, overcast grey. The air was thick with a damp, wintry mist. I shivered slightly, pulling my coat tighter around me. The ground beneath my feet was a mix of wet pavement and patches of snow, reflecting the light in a way that made the scene look almost surreal. I took a deep breath, the cold air filling my lungs. In the distance, the faint outlines of buildings and trees could be seen through the haze. The overall atmosphere was one of quiet solitude and a sense of being in a new, unfamiliar world.

As I walked further down the street, the cold became more pronounced. My breath came out in small, white clouds that disappeared almost as quickly as they were formed. The sound of my footsteps on the wet pavement was a rhythmic accompaniment to the silence. I noticed a few other people in the distance, all bundled up in heavy winter gear, moving quickly to escape the chill. The streetlights cast a soft, yellow glow, which seemed to cut through the mist. I felt a small pang of loneliness, but it was quickly replaced by a sense of adventure. This was my first experience of a winter day in this city, and it was everything I needed. The cold was a wake-up call, reminding me of the beauty of the season and the importance of staying warm. I continued to walk, enjoying the crisp air and the quiet streets.

The walk continued, and the cold remained a constant presence. I noticed that my hands were getting numb, a common complaint on days like this. I tucked them into my coat pockets, where they were slightly warmer. The mist seemed to be thickening, and the buildings in the distance were becoming less distinct. I looked down at my feet, which were now covered in a thin layer of snow. The contrast between the dark shoes and the white snow was striking. I felt a small smile on my face, knowing that I was embracing the challenge. The cold was not just a physical sensation; it was a feeling that permeated the entire scene. It was a reminder of the resilience of the human spirit and the beauty of the natural world. I continued to walk, feeling a sense of peace and contentment. The cold was my friend, and I was grateful for the experience.

As I walked, I noticed a few more details about the environment. The trees were bare, their branches reaching out like skeletal fingers against the grey sky. The ground was a mix of snow and slush, with some areas being more icy than others. I was careful to watch my step, not wanting to slip. The overall scene was one of quiet beauty and a sense of being in a new, unfamiliar world. The cold was a wake-up call, reminding me of the beauty of the season and the importance of staying warm. I continued to walk, enjoying the crisp air and the quiet streets. The cold was my friend, and I was grateful for the experience.

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