

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Lala
Sham Soondur Lal v. Sooraj Lal and
others, from the High Court of Judicature
at Fort William, in Bengal; delivered
20th May 1876.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

IN this case their Lordships think that upon the merits of the Appeal the judgment of the High Court must be affirmed. The question upon the merits turns entirely upon the findings on certain issues in fact, which were directed by the High Court upon remand. Those issues were found in favour of the Plaintiff by the Judge of Gya, and the High Court have affirmed his decree. Mr. Doyne, who appeared for the Plaintiff, admitted at the bar that there are no exceptional circumstances in this case to take the appeal out of the general rule acted upon by this board, that where there are concurrent judgments of two Courts below on a question of fact, their Lordships without such circumstances will not go into the evidence upon which the Courts have decided.

But Mr. Doyne has raised a question upon the proper form of the decree. In the first place their Lordships desire to say they think that question ought to have been raised in the High Court. Parties appealing upon the merits ought not to take the general decree which the High Court may have given, without

asking the High Court to condescend upon the details of it, if they mean to object that the general judgment is not sufficient to found the proper execution. But the point having been raised, it will be necessary to call attention shortly to the proceedings.

The suit is brought by the mortgagor of some property held on a mokurruree lease against the mortgagee and against the representative of the zemindar who had granted the mokurruree. The suit is brought for recovery of the possession of the property and also for the redemption of the property. It charges that the Defendants, in collusion with one another, are not willing to give up possession or to pay the surplus which shall appear to be due after taking the mortgage accounts. The questions in the suit arise in this way: The mortgagee remained in possession for some time and the zemindar then brought a suit against him and against the present Plaintiff, the mortgagor, to cancel the mokurruree lease, on the ground that the rent had not been paid. It has been found that notice in this suit was not served upon the Plaintiff, and that the Defendant, the mortgagee, instead of giving notice to the mortgagor, or really defending that suit, colluded with the zemindar, and allowed a decree to pass, not for the sale of the mokurruree, but for its cancellation. It has been found by the two Courts that the zemindar and the mortgagee acted in collusion, and concurred in a collusive suit for the purpose of destroying the mokurruree grant, and depriving the Plaintiff of his property. It seems that there was some arrangement made between the zemindar and the mortgagee that the mortgagee should remain in possession; and there can be no doubt that the two were acting together to dispossess the Plaintiff of this property. The Principal

Sudder Ameen dismissed the present suit, thinking that the decree which the zemindar had obtained bound him. That judgment was appealed from; and the Judge of Gya, to whom the appeal went, reversed the decree. The present Appellant appealed from that judgment to the High Court; and the High Court, thinking that the case of collusion was not sufficiently raised nor a sufficient case of collusion made to set aside the decree, remanded the case, settling five issues, upon which they directed that evidence should be taken, and a report made to them of the findings of the Judge upon them. Those issues raised the questions whether there was collusion between the zemindar and the mortgagee, and whether the decree had been fraudulently obtained by means of such collusion. Those are the issues which it has been already stated were found in favour of the Plaintiff. The Judge of Gya, in returning the case to the High Court, says, "Looking
" then at the facts as elicited by the fresh
" evidence in this case, I am of opinion that
" the Plaintiff Sooraj Lal has established his
" claim;" and the High Court, in the judgment which they gave, affirmed that finding, and dismissed the appeal. The decree they drew up is this: "It is ordered and decreed by
" the said Court that the special appeal be dis-
" missed, and the decree of the Lower Appellate
" Court be affirmed." The decree of the Lower Appellate Court, which was affirmed, was a decree merely reversing the decree of the Principal Sudder Ameen. In this state of the record there is nowhere to be found an affirmative decree setting forth the rights to which the Plaintiff is entitled. Mr. Doyme suggested that in this state of things he is entitled to ask this tribunal to define the rights of the Plaintiff which the High Court in its judgment ought

to have affirmed as to the mesne profits; and also to decide another question, namely, the right of a person who intervened in the suit. On this latter question the facts appear to be these: one Nirban Singh intervened in the suit upon a claim that the mortgagor, the Plaintiff, had sold and conveyed to him, four years after the zurpeshgee mortgage, one half of the mokurruree; and it seems that an issue was framed upon his right, and that evidence was given upon it. But the Principal Sudder Ameen having dismissed the suit altogether, there was of course an end not only of the Plaintiff's right, but of any derivative title which could be claimed through him. The zemindar, the present Appellant, appealed, but Nurban Singh did not appeal, and throughout the subsequent proceedings does not appear to have interfered in the litigation. Their Lordships think that in this state of things they cannot possibly affirm that he has established his right to the one half of this mokurruree, and so cut down what the Plaintiff may be entitled to recover in this suit.

Their Lordships apprehend that there is nothing in this record to conclude any question which may hereafter arise between Nirban Singh and the Plaintiff, although it may be that Nirban Singh not having appealed, and not having taken any further part in this suit, may be barred from any claim against the zemindar.

Their Lordships will therefore humbly advise Her Majesty to dismiss this Appeal, and to affirm the judgment of the High Court; but will remand the cause to the High Court with directions to amend their decree in conformity with their judgment, by declaring affirmatively what the Plaintiff is entitled to recover. The Appellant must pay the costs of this Appeal.