

*Judgment of the Lords of the Judicial Committee
on the Petition of Syud Gholam Gaffer for
relief; delivered 1st July 1876.*

Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE applicant was Plaintiff in a suit commenced on the 6th July 1866, in the court of the Principal Sudder Ameen at Rungpore against Syud Ekram Hossein and others to recover certain movable and immovable property valued at 33,605 Rs. The suit was dismissed with costs on the 7th August 1867. That decree was affirmed by the High Court on appeal.

It appears from the statement in the plaint that all the property in dispute was owned by Ruzceumissa Chowdhraim of Shibgunge, and the Plaintiff alleges that she, not having any child, on 2nd Phalgun 1252 (*i.e.* about 1845) adopted him as her son, and executed an ekrar to his father by which she agreed to convey to the Plaintiff her estate real and personal by a hibanamah; and that if under any circumstances the hibanamah should not be given the said ikramamah should have the same force as a hibanamah. The Plaintiff further stated that the said lady afterwards performed the ceremonies of feeding him with rice for the first time, and of giving him a name, and maintained him with maternal affection; that she died suddenly on the 20th Jeyt 1253 (about 1846), whereupon Rankanye Roy, her manager, entered into possession of the entire property on behalf of the Plaintiff. That the first Defendant insti-

tuted a suit against the manager Ramkanye Roy in the Court of the Principal Sudder Ameen, to recover possession of the property; that the said Ramkanye Roy made no allusion to the ekrar, but rested his answer on a hibba which he alleged had been given, and that in the absence of evidence of the genuineness of the hiba the suit was decreed in favour of Ekram Hossein on the 9th May 1849, more than 27 years ago; that the said Ekram Hossein, who is the first Defendant in the present suit, took possession of the property in execution of his decree in the month of Bhadro 1256, that is, in the same year 1849. The Plaintiff further alleged that he was not bound by the decree, which was passed during his minority; that he was born in Kartiek 1252, and came of age in Assin 1270, about 1863; and that his suit, which was commenced on 6th July 1866, was within the prescribed time. The Plaintiff further alleged that Defendant No. 1 sold 5 annas of the entire zemindaree of the said Ruzeeunissa Chowdrain to Ahmed Ali; that Doctor Dyal Singh purchased one half of the other 11 annas at an auction sale in execution of a decree; that Husina Khatoor had purchased another portion of the property at another sale by auction under a decree; and that those parties were consequently made co-Defendants.

The Defendants set up as a defence, amongst other things, that the ekrar or agreement on what the Plaintiff relied was engrossed on a stamp of inadequate value and was therefore inadmissible; that the Plaintiff was bound by the decree of 1849; that the Plaintiff, not being a landholder, came of age at 15, and consequently that the suit was barred by limitation; and, thirdly, that the ekrar was a forgery and was opposed to the Mahommedan law.

The Principal Suddur Ameen held that the

Plaintiff was not bound by the decree of 1849, which was passed during his minority; that he did not attain his majority until the age of 18; and that the suit was not barred by limitation; but he refused to receive in evidence the document produced by the Plaintiff, upon the ground that it was not adequately stamped, and dismissed the suit without determining the issue as to the genuineness of the ekhar.

The Plaintiff appealed to the High Court, and that Court, after argument, upheld the decision of the Principal Sudder Ameen, and dismissed the appeal with costs. An application for a review of the judgment of the High Court was presented and rejected.

The applicant has now presented a petition praying that Her Majesty in Council will be graciously pleased to grant him leave to have his case heard by the High Court on the merits upon his paying the penalty and stamp duty, unless he shall succeed in obtaining a remission of the same by the Sudder Board of Revenue, and has handed in his papers, and their Lordships have carefully considered his case. They have no power to grant such leave in the present stage of the proceedings. The utmost they could do would be to grant leave to appeal against the decree of the High Court, and this they think they ought not to do at this distance of time.

The Defendant Syud Ekram Hossein and purchasers for value under him have been in undisturbed possession of the property from the year 1849, under the decree of a Court of Justice.

The decree of the High Court in the appeal from the decree of the Principal Sudder Ameen was passed on the 9th November 1868, nearly eight years ago, and the application for review was rejected on the 22d May 1869.

The Plaintiff does not appear to have applied to the High Court for leave to appeal to Her Majesty in Council, or to have taken any steps whatever since his application for review was rejected in May 1869.

The only excuse for the long delay given by the Petitioner is that, being a poor man and sick, he had been quite unable to prosecute his case.

Their Lordships are of opinion that that excuse is not sufficient.

In the case of Sarchet, 10 Moore's P. C. Cases, 533, after a delay of eight years the Judicial Committee refused to grant leave to appeal *in formá pauperis* notwithstanding the impoverished circumstances of the Petitioner.

Their Lordships are always anxious that every case should be decided upon its merits, and they are disposed to make every allowance for the Plaintiff's unfortunate condition, but they cannot fail to remark that the ekhar upon which the Plaintiff relies was not brought forward in 1849 in the suit brought against Ramkanye Roy, who, the Plaintiff alleges, held possession for him, and which suit he treated in his plaint as a suit against himself. The Defendants have been in undisturbed possession for more than a quarter of a century, and their Lordships cannot in justice allow them to be harassed by further expensive and probably protracted litigation, by permitting the Plaintiff to appeal *in formá pauperis* from a judgment passed in 1869, in respect of which nothing appears to have been done since that year. They therefore feel bound to reject the petition.