

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Grish Chunder Chuckerbutty and Rajmohun Roy v. Jibanewari Debia (No. 46 of 1876), and also on the Appeal of Grish Chunder Chuckerbutty and Rajmohun Roy v. Biseswari Debia (No. 47 of 1876), from the High Court of Judicature, at Fort William, in Bengal; delivered May 4th, 1880.

Present:

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS case was reduced during the argument to a point of law which becomes intelligible upon the statement of a few facts.

Brojo Kishore and Ram Kishore were brothers, joint in estate, of whom Ram Kishore died sometime before 1835, leaving two sons, Ram Kumar and Nobo Kumar. In the year 1835 an estate, consisting of an 8-anna share in a talook called Newaz Ali, and belonging to one Abdul Sumud, was bought in the name of Ram Kumar, but with the joint funds of the family. Brojo Kishore died in 1836, having, shortly before his death, separated from the other branch of the family. He left two widows, each of whom adopted a son, one adopted son being Ishan Chunder and the other Mohesh Chunder. Upon or sometime after the death of Brojo Kishore, Ram Kumar set up an exclusive title to the purchased estate; and the representatives of Brojo Kishore, who at that time were the adopted sons, in the year 1839 brought a suit against

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Ram Kumar and his brother Nobo Kumar for the purpose of having their title declared and obtaining possession of Brojo Kishore's moiety of this property, and obtained a decree awarding to them that possession on the 11th November 1843. Both the Plaintiffs in that suit afterwards died, Ishan Chunder being now represented by his widow Jibaneswari, the Respondent in one of these appeals, and Mohesh Chunder by his adoptive mother Bireswari, the Respondent in the other appeal. After their death, and in or about 1848, the representatives of Ram Kishore obtained a decree against the two last-named widows, as the then representatives of Brojo Kishore, in respect of a money demand against Brojo Kishore. They proceeded to the execution of that decree. The usual notice and proclamation of sale were made, and on 16th July 1850 the Appellants bought, in pursuance of the usual proclamation, among other things, the right, title, and interest of the judgment debtors in the decree of the 11th November 1843. The question in the cause is, what passed by the sale of that decree?

It is necessary to state that in the year 1837 the whole talook of Newaz Ali, which was subject to a number of disputed claims, was attached by an Order of the Civil Court, and remained in the possession of an officer of the Collector until the year 1866. But notwithstanding this, the Court, upon the representatives of Brojo Kishore obtaining their decree in November 1843, attempted to give the decree holders, at all events, constructive possession of a certain number of the mouzahs, part of their share of the purchased estate, and for that purpose deputed an Ameen to ascertain what belonged to them. The Ameen made a lengthened investigation, and, after hearing both parties and going over the ground, he

marked out by sticks and posts certain lands which, according to his view, the decree holders were entitled to, and he gave them or professed to give them possession of those lands, and he also required the ryots to sign kubulyuts with respect to these lands. These proceedings came before the Court, and were approved by the Court. It is undoubted, therefore, that the Court intended to deliver possession as far as it could, and believed that it had the right to deliver possession effectual for the execution of the decree to the decree holders of a certain number of mouzahs. The question is whether the representatives of Ram Kishore, buying the decree on the 16th of July 1850, bought with it those mouzahs with respect to which it had been executed in the manner described, or only so much of the property to which it relates with respect to which it remained unexecuted?

The attachment continued until 1866, when it was discharged. Thereupon Jibaneswari brought her suit for the purpose of obtaining possession of her share of those mouzahs of which, as she alleged, possession had been given in execution of the decree of the 11th November 1843. Biseswari also brought a suit for the purpose of obtaining her share of the same mouzahs. These suits involve the same question, and the same judgment applies to both of them. The Defendants alleged their right to the whole of that which had been bought of Abdul Sumud. The First Court in India found in favour of the Plaintiffs in the two suits with respect to the greater part of the property. That decision was affirmed by the High Court upon the grounds on which it was given, the main ground of both decisions being that, in point of fact, possession was delivered of the mouzahs in question before the sale of the 16th August 1850, as far as it could be delivered

considering the Government attachment to which the whole talook was subject, and that the delivery of the possession, such as it was, was effectual to execute the decree.

Their Lordships have felt some difficulty about this case; but, on the best consideration they are able to give it, they do not see their way to reversing the decision of the High Court. It has been contended, with a good deal of force, that no actual possession could have been given while the whole talook was under attachment. At the same time, the Court appear to have undertaken to execute the decree, to give such possession as could be given, and to have adopted proceedings which they deemed proper for that purpose, and possession has been given in the manner described of the mouzahs now in question. That being so, the question is, what was sold by the description of "the right and interest of the judgment debtors in the decree?" Was it that of which possession had been given in the manner described, or was it only of that portion of the decree which remained to be executed? Their Lordships, on the whole, think it must be taken that what was put up for sale, what was intended and what was understood to be sold, must have been the unexecuted portion only of the decree. Under these circumstances, although the case is not unattended with difficulty, their Lordships will humbly advise Her Majesty that the decision of the High Court be affirmed. Inasmuch as the Respondents have not appeared by Counsel, there will be no costs of this Appeal.