

Bombay Friday 20th July 1860.

the Sudder



Dewanee Adawlat

N^o 4218 Special
Gungathurapa _____ Appellant
_____ Versus _____
Oolwapa _____ Respondent
_____ Rupees 214-0-0

In this case Gungathurapa prays the reversal of a Decree passed in the Court of the Joint Judge of the Zillah of Dharwar, setting forth that he originally sued Oolwapa in the Court of the Principal Sudr Ameen of the said Zillah for the release from attachment of certain property which he Gungathurapa had purchased from a person named Anapa, against whom a decree had been obtained by a person named Moorgiapa; and which property was pointed out by Oolwapa Anapa's security and attached at his instance as available in execution of Moorgiapa's decree. Oolwapa's defence was that it was false that Anapa had sold the property, and that it was in his possession at the time of attachment.

The Principal Sudder Ameen held that the attachment being in execution of Moorgiapa's decree should have been issued at the instance of Moorgiapa, and not of Oolwapa, and he accordingly ordered the attachment

attachment to be raised.

In appeal this decision was annulled in the Court of the Joint Judge on the ground, that Gungathurapa could not sue Oolwapa to raise the attachment placed in execution of Moorgiapas decree.

Whereat holding himself aggrieved Gungathurapa prayed the admission of a Special Appeal in the Suddur Dewane Adawlut which was allowed under the following certificate.

"It appears from these papers that the Principal Sudder Ameen attached the property in dispute at the request of Oolwapa against whom there was a warrant for arrest as security for Anapa: it is not competent, as was decided in Special appeal No 4134, for security to point out property of which there is any question as to whether the ownership is with the person for whom he stands security, or not; and on that ground I admit this Special appeal, and am moreover of opinion that it was not competent for Oolwapa to attach the property at all. the attachment should have been Moorgiapas, and it was a mistake in practice the Principal Sudder Ameen attaching the property on Oolwapa's petition and it ought under all circumstances to be raised."

Whereupon the said case being this day called on for hearing, and the Vakils of both parties being present, the Court find, that under the interpretation of April 1834, on Clause 2 of Section LXII of Regulation IV of 1827, it was competent to Oolwapa to point out the property in dispute for attachment previous to his own incarceration; and further, that since Moorgiapa expressly refused

refused to have any thing to do with the attachment of the said property, the action has been rightly brought against Odwapa only. The decree of the Court below is therefore reversed, and the case remanded to be tried on its merits, and a decision to be passed according to law.

Head of Exhibits

- A Letter from the Judge of Dharwar forwarding Petition of Special Appeal &c.,
- B Petition of S. Appeal
- C Decree of the Joint Judge
- D Decree of the P. S. Muzen
- E Judgment (English Version of the Joint Judge's Decree)
- F Vakalutnama of Appellant in the name of Vakeel Shinglal Muthooradas
- G Supplemental Petition of Appellant
- H Vakalutnama of Respondent in the name of V. Fubirapa,
- I Precept to and return from the Judge certifying papers regarding attachment as called for.
- J Certificate of S. Appeal with translation of the same
- K Precept to and return from the Judge certifying copy of Security Bond for costs together with papers and proceedings from the Joint Judge's Court nos 1 to 13 and from the P. S. Muzen's Court nos 1 to 27.
- L Copy of Appellant's Security Bond for costs
- M Precept to and return from the Judge with Summons
- N Summons to Respondent
- O Decree of the Suddar Dewanee Adawlut
- P Precept to the Judge of Dharwar forwarding an attested copy of the Decree,

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True Translation

[Signature]

1st Assistant Registrar