

Bombay, Friday, 14th December 1860

In the Sudder



Dewanee Adawlut

No. 4244 Special

Nilkuntapa^{jun} Shidapa Woonkee, deceased, his
heir and son, Chembusapa, resident of Purwatee
(original Plaintiff) ————— } Appellant

— Versus —

Bhowrow Venkatesh, resident of Purwatee (ori-
ginal Defendant) ————— } Respondent

— Rupees 50-0-0 —

The claim in the original suit was for
the release of a house from attachment.

This special appeal is from a decision
in Appeal (No. 424 of 1859) by the Assistant
Judge of the Zillah of Dharwar, affirming the de-
-cree in the original suit by the Moonsiff of
Roan, who threw out the claim of Nilkuntapa and
affirmed the attachment.

Whereat Nilkuntapa being dissatisfied,
made special appeal in the Sudder Dewanee
Adawlut on the following grounds.

1st That the Assistant Judge has misconstrued

Exhibit

Exhibit No 9 there being nothing in the document which can be held to amount to an acknowledgment that the Petitioner was a tenant of Kalowa.

2nd That the house which was built by the Petitioner cannot be made liable for Kalowa's debts, although her rights to the land on which it stands may be held to be established.

3rd That only Kalowa's right to receive rent for the land in question can be attached and sold by her judgment creditor.

The Court reverse the decree of the Assistant Judge and remand the case for further investigation. Costs to follow the final decision.

Bill of costs.

In the Suder Dewanee Adawlut

By appellant	_____	11-4-"
By Respondent	_____	"-2-"
		<u>Rupies 11-6-"</u>

Ch 11/5/61

Ch 11/5/61

Vakils' Fee to be reckoned according to the provisions of Act II of 1846.

P. Henry

Priside Judge

H. H. Lawrence

Acty Priside Judge

for W. H. Hall

Priside Judge

H. H. Robert

Acting Priside Judge

सुखं तद्विद्य १४ मये विसर्ग उभय ६० शुभकर

उद्य उद्य विसर्गविद्या

सुखं तद्विद्य
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True Translation

Edward Harrington
1st Assistant Registrar

6
Extract from the Proceedings of the Assistant Judge
of the Zillah of Dhurwar dated the 19th September 1859

Appeal No. 424 of 1859

Appellant Nilkuntapa.

vs.

Respondent Phow Row.

Claim Rupees 50-0-0.

Sheik Muktoom appears for the appellant.
Ramechunder Row for the Respondent.

Nilkuntapa sued Phow Row to
cause him to raise attachment from a
house, placed by the latter in satisfac-
tion of a decree obtained against Kallowa
a Deshayane. On the grounds that
his Nilkuntapa's ancestor built the
house about sixty years ago, and it
has been occupied by the family since.

Phow Row answered that the
house is Kallowa's. that the plot on
which it is built is her's. That she,
as ^{also} he did in other cases, allowed Nil-
kuntapa to build and occupy the house
for a specified period, after which it
was

house as well
the ground

was to revert to her. That rent for the house has been paid by Kilkuntapa this father to Kallawa, since the expiration of the period during which he was to use the house free of rent. That in satisfaction of the decree in behalf of which the present attachment is placed, the rent of this very house has been paid to him Phaw Raw, instead of Kallawa. That no length of occupation can under the circumstances avail Kilkuntapa for the establishment of a title.

Kilkuntapa replied that his ancestors built the house 80 years ago, and paid rent therefor to the late Government. That... Subsequently, and about fifty or sixty years back, that Government ordered the rent to be paid to the Deshpūt and it was thence forth so paid. That nevertheless this does not make good Kallawa's title, for although she is the holder of the Deshpūt

^{Desherut} the receipt of rent did not carry with
it the right of landlord over tenant,
that right still resting with the Go-
-vernment.

Phou Row rejoined that if
the plot of land on which the house
stands were Government land, rent
would not have been paid for it sub-
-sequent to the Government order a-
-bolishing Moturfa, rent to Government
for houses &c^{ca}. that the land on which
it stands is a part of the Desherut
of which Kallawa was Desheranee.
That when the Desherut was taken
away from Kallawa by Government
she was allowed to retain the land
on which this house stands, as it was
considered a part of her private pro-
-perty, that he Phou Row challenges
Nilkuntapa to produce the order of
the late Government whereby he as-
-serts that the late Government order-
-ed rent for the plot of land to be
paid

paid to the Deshpoot. That on a late
occasion when Kilkuntapa petitioned
the 1st Assistant Collector, to order
the payment for rent to be discon-
tinued, that Officer ruled that rent
was due to the Deshayane.

The Moonseiff finding
that Kilkuntapa had admitted in
his reply, that rent was paid to Kal-
lowa for the house, held that his ad-
mission amounted to an acknow-
ledgment that he was a tenant of
Kallowa, and therefore that he had
no right to dispute Kallowa's title,
and it being so that Kallowa's title
was proved and that the attachment
ought to hold good. (The Moonseiff
in support of this judgment cited
Norton's evidence page 47 Section 95.)

Against this judgment appeal
being

being made. It is for this Court to determine whether the Moonsiff's decree should stand or not. It considers that it ought. The suit as in the instance of nine others was brought by the occupant of houses, on a plot of land, to raise attachment on their houses, placed by a Creditor in satisfaction of his debt against one Kallawa a Deshayance, whom he the Creditor (the Defendant in the action) seeks to shew is the ground landlord. The lower Court holding as recorded above, did not take evidence in the suit & this Court thinks that the course adopted was the right one. Nilkant-
-apanni in his reply (exhibit A 9) admits, that subsequently to an order from the late Government directing him to do so, he paid rent to the Deshpote;

But

But this Court fathers (it can only do this much for his object is by no means clearly set forth in the Sichi-lit b. 9) that Vilkuntapa would further wish to make it appear, that although rent was paid to the holder of the Deshpur, it was not paid to him, as from his tenant; but as a tenant of Government, paying rent (due to Government) to a third party; on account of some engagement, or otherwise, between Government the real landlord and the Deshpur as a third party. If this view of the Case, is that which Vilkuntapa desired to present before the lower Court. It was, although, the only presumption on which an objection to the Moonseiff's judgment could be based, a matter, as a fact, so unlikely

unlikely to be proved. That the Moon-
siff in the face of the admitted
facts before him to the effect that
ground rent had been paid to the
Deshayane up to a very late period,
could only be justified in doing
what he did. He could only act
on the assumption that the ad-
mitted payment of rent to Hallowa
by Niltuntapa proved him to be
her tenant and that therefore Hal-
lowa's title was established and
no good cause for raising the at-
tachment shewn. The Moon-siff's
decree is affirmed & all Costs are
on the Appellant Niltuntapa.

Signed G. W. Elliot
Assistant Judge
True Extract
Gurnit
Assistant Judge

3/11/12

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judgment

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