

Bombay, Friday 14th December 1860

In the Sudr



Dewanee Adalut

N^o. 4245 Special
Gudgeepa bin Dodapa Teepa, resident
of Purwate (original Plaintiff) ——— } Appellant

Versus.

Bhowrow Venketesh, resident of Purwate
(original 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 (N^o. 425 of 1859) by the Assistant
Judge of the Zillah of Dhurwar, affirming the
decree in the original suit by the Moonsiff of Roan,
who threw out the claim of Gudgeepa and affirmed
the attachment.

Whereat Gudgeepa being dissatisfied
made Special appeal in the Sudr Dewanee
Adalut on the following grounds.

1st. That the Assistant Judge has miscon-
strued Exhibit N^o. 9, there being nothing in the
document which can be held to amount to an

acknowledgment

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 Sudder Dewanee Adawlat

To appellant ————— 7-4-"

To Respondent ————— " 2-"

Rupies 7-6-"

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

A. Kemp
Puisne Judge

H. Lewis
Acting Puisne Judge

J. W. Hall
Puisne Judge

H. Metcalfe
Acting Puisne Judge

Extract from the proceedings of the Sudder
Dewanee Adawlut dated 14th December 1860

In this case Gudegapa has
sued to raise an attachment off
the house in dispute, asserting it to
have been built by one of his ancestors
some sixty years ago and to have
been since then in the possession &
of his family. He has at the same
time admitted that the land on which
the house stands does not belong to
him, but that he has been in the
habit of paying rent for the same
to the Deshgut.

The Assist^t Judge has thrown
out Gudegapa's claim on the ground,
that he has admitted himself in his
reply to be a tenant of Bhowrao's &
judgment debtor and therefore, that
he has no right to dispute her title.
But the Court do not find that
Gudegapa

Gudgapa has made any such admission. The Assist^t Judge and the Moonsiff have both confounded his admission of his paying ground rent with an admission of his paying house rent.

The Court are of opinion that this amounts to a substantial error in the investigation of the case and that it must be remanded for further investigation and decision on its merits. They consider the lower Court should determine the ownership of the house, placing the onus probandi on the Defendant Phowrao, the Plaintiff Gudgapa being in possession, and in doing this the lower Court should ascertain the custom of the country whether, according to it, the right and title to a house built on another person's land vests in the person who built it, or, after the lapse of any term of years passes to the owner of the site, and then, applying this

this custom to this case, should
decide, whether Bhowrow's judgment
debtor is the owner of the house in
dispute, or not.

The decree of the assist^t. Judge
is reversed and the case remanded
accordingly - costs to follow the final
decision.

True Extract