

336

No. 12 of 1864 Special
Abbechund Dhuloochund } Appellant
blind by his Mookhtar Jeyram }

vs.

Chutoorbhace & Bnyachund - Respondents

PA. 44-126

1 That a substantial error in law in the inves-
-tigation of the case which has produced error
in the decision of the case upon its merits, in
that ^{the Appell} ~~applicant~~ being in possession of the
property at the time when it was attached
the Judge was in error in requiring him
to prove the validity of his mortgage but
should have required the ^{Special} respondents
to prove it invalid.

2 That ^{and} a Judgment does not bind the
property until it is attached, the Judge was
~~therefore~~ in error in holding the mortgage
bond fictitious on the grounds he has done.

Friday March 13th 1863.

Abbaichund Dulloochund } Appellant
blind. His Mooktiar Jeyram } (Plaintiff)

44 Jowarichund

Mukel Looklal Chataram

Versus

2 Chutoorbae Kom Koolalchund } Respondent
and Bayachund wuled Ruk } (Defendant)

= Major

Mukel Rughoonath Mulhar

Original claim No. 44 as per

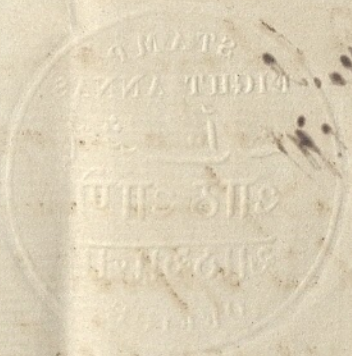
In Appeal No. 12-6

Claim

Under date 24th March A.D. 1855 Essoo wd Pheiroo mortgaged to me for 25 Rupees one fourth of a certain field and a well. In A.D. 1860 Chutoorbae got a decree against Essoo and in December A.D. 1860 attached the land in execution of that decree. at which time I exhibited my mortgage-bond. but notwithstanding this, on 20th July A.D. 1861 the auction consequent on that attachment took place and as Bayachund was the purchaser I see him as well as Chutoorbae. I had obtained a decree on my mortgage-bond previous to the sale. Hence I include in this suit besides the sum advanced by me to Essoo, the cost of suing Essoo as well as the value of the standing crop in the field which crop was my property.

Statement of Chutoorbae.

The field was in Essoo's possession until the attachment. I attached the whole field. There was a difficulty in carrying out the decree consequent on opposition by Essoo's relations. The claimant made no opposition in the matter, and it becoming necessary to attach only a fourth of the field, the rest was



~~Handwritten text in a cursive script, possibly a signature or title, crossed out with a horizontal line.~~

~~Multiple lines of handwritten text in a cursive script, all crossed out with horizontal lines.~~

The stamp required for this copy was furnished on the 9th April 1863
The copy was ready for delivery on the 14th
It was delivered on the 14th

was released from attachment. The claimant and Essos got up a suit by collusion to obtain release of the remaining fourth share and Essos as defendant gave in an admission of the claim. Claimant has never had possession of that field, and he only began his opposition on the occasion of the auction, never before. The court refused his application. I attached the land only because there was no other means of realizing Essos's debt to me.

It was reported that Bayachund had signed summons but did not answer nor appear

Moonsiff's decree

Under date 21st July A.D. 1861 this court on a petition in the Miscellaneous department decided adversely to claimant. Claimant produced Exhibits No 17 & 19 to shew that the land was in his possession but this is not reliable evidence. No 17 is the village report in which it is stated that the land is in Abbachund's possession. But this is dated the day on which the attachment was placed, and on the "Yad" of attachment it is similarly stated. There is ground for distrusting such evidence. No 19 tends to shew the Government receipts for rent and from this it would seem that from the year A.D. 1857 to A.D. 1859 four items of rent were paid by claimant but neither before nor after is there evidence to shew that claimant paid any rent and on all the other numerous occasions of rent-paying it was paid either by Essos or by other persons than claimant. No rent being paid by him in A.D. 1860. His possession in the land that year is not shewn in any degree. From exhibit No 4 copy of mortgage bond dated 24th March A.D. 1855. it seems that payment of the loan was to be made in one month after date of the bond if not made

the

the mortgage was to become a deed of conveyance of the property. So that it is very remarkable that claimant did not assume possession till two years after that. There is reason to suppose the bond not to be genuine, and certainly not valid. claim rejected.

Appeal

The land was in my possession when attached. The Moonsiff's decree cannot stand.

Decree in Appeal

The question is whether the mortgage is a valid mortgage.

The want of proof of payment of rent more than 4 or 5 times in nearly as many years, and the circumstance of Abbachund's living on his mortgage-bond (so called) only a few days before the decree was obtained by Chutoorbae against Escoo. are strong grounds of suspecting the mortgage bond to have been either fictitious as a fact or as to the purport of it. So that even had evidence been given directly in support of it, (but in this case only a copy was produced) the court would feel bound to doubt the validity of the claim. The Moonsiff's decree is therefore affirmed. Costs on Abbachund represented by his Mooktiar powarchund.

(Signed) G. A. Hobart
Acting Judge

True copy

G. A. Hobart

Judge

Copy
ML