

1868.
 SHEK ABA'S
 v.
 IBRA'HIMJI
 HASANJI.

low, and, therefore, it is not desirable to allow it to be raised now : and moreover, when we look into the case, we find that the appellant, Shek Abás, has received no injury by the non-dismissal of the suit ; and the man who was not served with a notice has his rights undisturbed.

Decree confirmed with costs.

Aug. 24.

Civil Petition.

VITHOBA' bin KESHAVSHET.....*Petitioner.*
 SHA'BA'JIRA'V and ANANDRA'V*Opponents.*

Jurisdiction—Mortgage—Assessment paid by Mortgagee—Mofussil Law.

A suit by a mortgagee to compel a mortgagor to repay him the amount of Government assessment, which he has been compelled to pay, when in occupation of the mortgaged property, is in the Mofussil an obligation in Equity to repay, and is not cognisable by a Court of Small Causes.

THE petitioner held certain land in mortgage, and while the mortgage was in existence the revenue authorities obliged him to pay the assessment due on the land. The mortgagor afterwards sued the mortgagee, and obtained a decree for redemption, under which he was put in possession of the land. But the amount which the mortgagee had paid on account of the assessment was not charged to the mortgagor. The mortgagee, therefore, sought to recover the same by a suit which he filed in the Court of the Principal Şadr Amín at Puńá. The Principal Şadr Amín refused to receive the plaint, on the ground that the suit was cognisable by the Court of Small Causes. The Judge of the latter, however, was of opinion that the suit was not cognisable by him, but by the Principal Şadr Amín. The petitioner thereupon petitioned the Judge of the District, F. Lloyd, who concurred in opinion with the Principal Şadr Amín.

As neither the Principal Şadr Amín, nor the Judge of the Small Cause Court, would receive the plaint, the petitioner made the present application to the High Court.

It was heard before COUCH, C.J., and NEWTON, J.

Shántarám Náráyan for the petitioner.

COUCH, C. J. :—The subject-matter of this suit is an obligation in equity on the mortgagee to repay what another has been obliged to pay for him, and this suit should, therefore, be tried by the Principal Şadr Amín : *Rambux Chittangeo v. Modhoosoodun P. Chowdhry and others (a)*, which is a Full Bench Ruling of the Calcutta High Court.

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NEWTON, J. :—I concur.

PER CURIAM :—The Principal Şadr Amín to be ordered to receive and register the plaint.

(a) 7 Calc. W. Rep., Civ. R. 377.

Special Appeal No. 761 of 1867.

Aug. 25.

BA'I KHEDA' Appellant.
 DA'SU SA'LE et al. Respondents.

Bhágdári Tenure—Custom—Right of Females to succeed to a Bhág.

The custom in the Broach District of male first cousins succeeding to property held on the *bhágdári* tenure in preference to daughters or sisters, upheld in a case in which the *bhágdárs* were Muhammadans.

THIS was a Special Appeal from the decision of S. H. Phillpotts, Acting Senior Assistant Judge at Broach, in Appeal Suit No. 164 of 1867, reversing the decree of the Munsif of Broach.

The plaintiff, the daughter of a Bohrá *bhágdár*, sued the defendants, her cousins, to recover ten-twelfths of certain lands which had been held on the *bhágdári* tenure by her brother Abrám Sále up to the time of his death, and since had been wrongfully taken possession of by the defendants.

The defendants, by their written statements, answered that though the plaintiff, as sister of the deceased, might in other cases be entitled to a share, according to the Muhammadan Law, she was not so entitled in this particular case, in consequence of a usage prevailing in the *bhágdári* villages which debarred females from inheriting, and which usage was, by Sec. 26 of Reg. IV. of 1827, to be preferred to the law of the parties.