

(1929) 06 PAT CK 0019

In the Patna High Court

Bajnath Surekha and Others

APPELLANT

Vs

Chiranji Lal Marwari

RESPONDENT

Date of Decision : 27-06-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Transfer of Property Act, 1882 — Section 1, 2

Citation : AIR 1929 Patna 537

Hon'ble Judges : Ross, J;James, J;Fazl Ali, J;Das, J

Bench : Full Bench

Judgement

Das, J.—The question in this case is whether Section 8, Bengal Regn. 17 of 1806 is still in force in the Santal Parganas. That section enables the holder of a deed of conditional sale to procure an order rendering the sale conclusive by adopting a very simple procedure; but it is contended before us by the petitioners against whom an order u/s 8 of the Regulation has been passed by the District Judge of the Santal Parganas at the instance of the opposite party that having regard to the express terms of the Transfer of Property Act and the Code of Civil Procedure, the Regulation is no longer in force in the Santal Parganas.

2. As has been pointed out, the position of the Santal Parganas is very peculiar. They are under separate and special legislation which differs widely from the legislation applicable to the rest of the Province: see *Maha Prasad Singh v. Bamani Mohan Singh* AIR 1914 P.C. 140.

3. It is not disputed that until the passing of the Transfer of Property Act, the Regulation was in force throughout India and therefore in the Santal Parganas. It is contended, however, that it was repealed by Section 2, read with the schedule of the Transfer of Property Act, and that this position was distinctly affirmed by Section 3, Regn. 3 of 1872. For the opposite party it was contended that the Transfer of Property Act has no operation in the Santal Parganas, and that the effect of the legislation relating to the Santal Parganas is to make it clear that Regn. 17 of 1806 is still in force in those Parganas.

4. In order to solve the problem, it is necessary to consider some of the material statutes bearing on the point.

5. The special legislation for the Santal Pargannas commences with Act 37 of 1855. Its full title is:

An Act to remove from operation of the general laws and regulations certain districts inhabited by the Santals and others and to place the same under the superintendence of an officer to be specially appointed for that purpose.

6. Clause 1 provides as follows:

The districts described in the Schedule to this Act are hereby removed from the operation of the general regulations of the Bengal Code and of the laws passed by the Governor-General of India in Council, except so far as is hereinafter provided and no law which shall hereafter be passed by the Governor-General of India in Council shall be deemed to extend to any part of the said districts, unless the same shall be specially named herein.

7. If there was nothing else in the Act, I should say without hesitation that the effect of Clause 1 was to remove the scheduled districts from the operation of the Bengal Code, and therefore from the operation of Regn. 17 of 1806. Section 2 vests the administration of civil and criminal justice in special officers to be appointed by the Lieutenant Governor; but it is subject to a proviso which is important and which runs as follows:

Provided that all civil suits in which the matter in dispute shall exceed the value of one thousand rupees shall be tried and determined according to the general laws and regulations in the same manner as if this Act had not been passed.

8. Now reading Clause 1 with Section 2, the result seems to follow that although generally the scheduled districts are removed from the operation of the general laws and regulations, nevertheless these laws and regulations determine the rights of the parties in all civil suits in which the matter in dispute exceed the value of one thousand rupees. In other words, the special officers appointed by the Lieutenant-Governor could not proceed under Regn. 17 of 1806 at all, unless the subject-matter of the application under that regulation exceeded the value of rupees one thousand.

9. The next piece of legislation to be noticed is Regn. 3 of 1873. Section 3 as it stands at present, was substituted by Regn. 3 of 1899 for the original Section 3, as amended by Regn. 3 of 1886. It runs as follows:

(1) The enactments specified in the Schedule shall be deemed to be in force in the Santal Parganas, except.

(a) such portions of such enactments as have been repealed by any enactment specified in the Schedule, and

(b) in the case of any enactments passed before the twentyfifth day of August

1886, such portions thereof as had on that day been repealed in the territories to which the enactment generally applies.

(2) No other enactment, heretofore or hereafter passed, shall unless the Santal Parganas be expressly named therein, be deemed to apply to the said Parganas, except so far as regards the trial and determination of the civil suits referred to in Section 2 of Act 37 of 1855, in which the matter in dispute exceeds the value of one thousand rupees, when such suits are tried in Courts established under the Bengal, Agra and Assam Civil Courts Act 1877.

10. Regulation 17 of 1806 is one of the enactments specified in the schedule; and it is therefore contended that that Regulation is in force in the Santal Parganas. But on behalf of the petitioners reliance is placed on para, (b), Clause (1) Section 3, and it is contended that Regn. 17 of 1806 is one of the enactments passed before 25th day of August 1886 and that it generally applied to the Santal Pergannas, and that, as the whole of it had on that date been repealed by the Transfer of Property Act, it must betaken not to be in force in the Santal Parganas.

11. Now I have already said that the effect of the legislation of 1855 was to make a clean sweep of the general laws and regulations, so that it may be said that between 1855 and 1872, Regn. 17 of 1806 did not generally apply to the Santal Parganas; but in 1872, this regulation was mentioned in the schedule annexed to the regulation; and there is little doubt that since the passing of Regn. 3 of 1872, it generally applied to the Santal Parganas. Then came the Transfer of Property Act 1882 which by its terms, extended to the whole of British India except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant. Governor of Punjab and the Chief Commissioner of British Burma. By Section 2, it provided that "in the territories to which this Act extends", and the Santal Pergannas is one of the territories to which the Act, by its terms, extended:

the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned.

12. Regn. 17 of 1806 is one of the enactments specified in the schedule; and it is accordingly urged that Regn. 17 of 1806 has been expressly repealed by an Act which extends to the Santal Parganas.

13. The position, however, is a little more difficult. Section 3(2), Regn. 3 of 1872 expressly provides that "no other enactments," that is to say, enactments other than those specified in the schedule:

heretofore or hereafter passed, shall unless the Santal Parganas be expressly named therein, be deemed to apply to the said Parganas

and then follows an exception which I shall have to consider presently and which, in my opinion, is conclusive of the rights of the parties in this matter. But pausing here, it is clear that, as the Santal Parganas has not been expressly named in the

Transfer of Property Act, it has no application in those Parganas, unless indeed there is something else in the section which makes it applicable. The section proceeds to say:

except so far as regards the trial and determination of the civil suits referred to in Section 2, Act 37 of 1855, in which the matter in dispute exceeds the value of one thousand rupees, when such suits are tried in Courts established under the Bengal and Assam Civil Courts Act.

14. The position now is perfectly clear. The Transfer of Property Act by virtue of Section 1 does "extend" to the Santal Parganas; but it does not "apply" to the said Parganas except so far as regards the trial and determination of the civil suits in which the matter in dispute exceeds the value of one thousand rupees. If the Transfer of Property Act does extend to the Santal Parganas and is applicable to a certain class of suits, then it follows that Regn. 17 of 1806 stands repealed so far as that class of suits is concerned. My conclusion is that Regn. 17 of 1806 is in force in the Santal and may be resorted to provided the claim does not exceed the value of one thousand rupees; but that it is not in force in regard to claims exceeding the value of one thousand rupees.

15. It was contended on behalf of the opposite party that the application presented on its behalf under Regn. 17 of 1806 cannot be described as a "suit" and that accordingly it should be held that the matter comes within the general rule and not within the exception. It was indeed suggested by Mr. N. C. Sinha that it was open to his clients either to bring a suit for foreclosure under the provision of the CPC or to apply under the Regulation. I am not, however, disposed to put such a narrow construction on the term "suit." As Sir Barnes Peacock pointed out in *Burro Chunder Roy Chowdhury v Seoradhonnee Debia* 9 W.R. 402 "the word "suit" does not necessarily mean an action," and that

any proceeding in a Court of justice to enforce a demand is a suit ; the person who applies to the Court is a suitor for relief; the person who defends himself against the enforcement of the relief sought is a defendant; and the claim, if recoverable, is a cause of action.

16. This view was substantially affirmed in *Bhoopendro Narain Dutt v. Baroda Prosad Roy* [1891] 18 Cal. 500. I do not overlook some of the decisions in which certain miscellaneous proceedings have not been regarded as suits; but I am of opinion that it; was not the intention of the legislature to give an additional remedy to a suitor, that is to say, a remedy by way of suit, while leaving it open to him to apply under the Regulation. I hold that, Regn. 17 of 1806 is not in force in the the Santal Parganas in regard to claims exceeding the value of one thousand rupees and that it was not open to the opposite party in this case to apply under the Regulation.

17. I would therefore allow the application and set aside the order of the learned District Judge. As the question was not argued in the Court below, I do not propose to make any order as to costs.

As my learned brother takes a different view, the question, namely whether Section 8, Bengal Regulation 17 of 1806, is still in force in the Santal Perganas, must be decided by another Judge of the Court. Place the record before the learned Chief Justice for the necessary order.

Fazl Ali, J.

18. In April 1922 (Bysakh 1329) one Baluram Surekha executed a deed of mortgage and conditional sale in respect of a house in Shahebganj in favour of the opposite party for a sum of Rs. 3,000 which was to be repaid by April 1925 (Bysakh 1332). As the amount was not repaid by the date specified in the deed, on 27th July 1925 the opposite party applied to the District Judge for a notice of foreclosure u/s 8, Regn. 17 of 1806. The proceedings were struck off on 23rd October 1926, as no party was present in Court on that date. In January 1927 the opposite party applied for what the District Judge calls the "revision" of the order and although it was held that the order could not be "revised," the opposite party was allowed to make a fresh application which he did on 20th January 1927.

19. Baluram having died in the meantime, the opposite party made a prayer in this application that the petitioners be substituted as heirs of Baluram Surekha and notices were issued on the petitioners to show cause why the usual notice u/s 8, Regulation 17 of 1806, should not be issued. The petitioners appeared and preferred various objections one of which being that they had neither inherited the mortgaged property nor any other assets from Baluram Surekha, that the mortgaged property had after the death of Baluram been recorded in the name of his nephew Matrumal and that accordingly a notice ought to have been served to Matrumal. On 21st June 1927 the District Judge issued the usual notice u/s 8 of the Regulation informing the petitioners that they must pay off the amount due under the mortgage bond by 21st June 1928, failing which the mortgage would be foreclosed.

20. On 21st June 1928 the petitioners appeared and raised several objections one of which being that one of the notices had been addressed to the deceased Baluram Surekha and that no notice had been served upon one of the petitioners Baijnath. The learned District Judge directed that a fresh notice be served in the correct form on the successors-in-interest of Baluram Surekha, but he declined to entertain the other objections raised by the petitioners. The petitioners then moved this Court against the order of the District Judge and obtained a rule.

21. Now, the main question raised in this case is that Regulation 17 of 1806 was entirely repealed by the T. P. Act (4 of 1882) and so Section 8 of the Regulation is not in force in the Santal Parganas. Reference was made in this connexion to Sections 1 and 2, T.P. Act and the schedule attached thereto. Section 1, T.P. Act says that the Act extends to the whole of British India except the territories administered by the Governor of Bombay in Council, the Lieutenant Governor of the Punjab and the Chief Commissioner of British Burma. Section 2 says that in the territories to which this Act extends for the time being, the enactments

specified in the schedule shall be repealed to the extent therein mentioned. Lastly the schedule shows that the whole of Regulation 17 of 1806 was repealed >by the Transfer of Property Act.

22. Now, if the point raised on behalf of the petitioners was to be decided merely with reference to the Transfer of Property Act, one would be compelled to accept the contention of the petitioners. But it is well known that the position of the Santal Parganas is somewhat peculiar and they are governed by certain laws and regulations which apply exclusively to them and which do not apply to the rest of the province. The Transfer of "Property Act has therefore to be read along with special laws framed for the Santal Parganas. One of the regulations in force in these parganas is Regulation 3 of 1872. Section 3 of this Regulation distinctly provides that:

no other enactment heretofore or hereafter passed shall unless the Santal Parganas be expressly named therein be deemed to apply to the said Parganas etc.

23. Thus as the Santal Parganas were not expressly named in the Transfer of Property Act, it is clear that the Transfer of Property Act does not generally apply to this tract. Again Section 3, Regn. 3 of 1872, provides that enactments mentioned in the schedule annexed to the Regulation would be deemed to be in force in the Santal Parganas. Section 3 was subsequently amended by Regulation 3 of 1899 and a new schedule was substituted for the schedule that was annexed to Regulation 3 of 1872. In this schedule Regulation 17 of 1806 is mentioned as one of the enactments in force in the Santal Parganas. It may be mentioned here that by 1899 the whole of Bengal Ragn. 17 of 1806 had been repealed except Sections 7 and 8 which thus became the entire enactment. Thus in view of Regn. 3 of 1899 and the schedule annexed thereto, there cannot be any doubt left that Sections. 7 and 8, Regn. 17 of 1806 are still in force in the Santal Parganas.

24. The learned advocate for the petitioners, however, argues that if Section 3, Regn. 3 of 1872, as amended by Regn. 3 of 1899 is properly construed it will show that Regn. 17 of 1806 is no longer in force in the Santal Parganas. Now, Section 3, Regn. 3 of 1872, runs thus:

(1) The enactments specified in the schedule shall be deemed to be in force in the Santal Parganas except:

(a) such portions of such enactments as have been repealed by any enactment specified in the schedule and

(b) in the case of any enactments passed before 25th day of August 1886, such portions thereof as had on that day been repealed in the territories to which the enactment generally applies.

(2) No other enactment, heretofore or hereafter passed, shall unless the Santal Parganas be expressly named therein, be deemed to apply to the said Parganas, except so far as regards the trial and determination of the civil suits, referred to

in Section 2, Act 37 of 1855, in which the matter in dispute exceeds the value of Bs. 1,000, when such suits are tried in Courts established under the Bengal Agra and Assam Civil Courts Act 1887.

(3) Notwithstanding anything hereinbefore contained, the Local Government may, by notification in the Calcutta Gazette:

(a) declare that any other enactment shall be deemed to be in force in the Santal Parganas;

(b) withdraw any such declaration, or

(c) with the previous sanction of the Governor General in Council declare that any enactment specified in the schedule shall cease to be in force in the Santal Parganas.

25. It is conceded that Clause (3) may be ignored for the purposes of the present discussion and reliance is placed by the learned advocate for the petitioner on Sub-clauses. (a) and (b), Clause 1 and Clause 2. The Sub-clause (a), Clause (1), does not evidently help the petitioners because in the first place the Transfer of Property Act is not one of the enactments specified in the schedule and in the second place, because it is not the case of the petitioners that any other enactment specified in the schedule has repealed Sections 7 and 8, Regn. 17 of 1806. It is however, argued that Order 39, Rule 2, Civil P.C. which re-enacts Section 86, T.P. Act, repeals in substance Section 8, Regn. 17 of 1806 and accordingly as both the enactments, namely, Regn. 17 of 1806. and the CPC have been inserted in the schedule of Regn. 3 of 1899 and as the latter enactment repeals in effect the former, the former, that is Regn. 17 of 1806, should not be deemed to be in force in the Santal Parganas. The argument is rather far fetched, because the CPC does not say in so many words that it repeals Regn. 17 of 1806 and Section 3, Clause (1), Sub-clause (a), Regn. 3 of 1872 has therefore no direct application.

26. The real controversy, however, is as to the proper construction of Section 3, Clause (1), Sub-clause (b) which may be reproduced as follows:

The enactment specified in the schedule shall be deemed to be in force in the Santal Parganas except in the case of any enactment passed before 25th day of August 1886 such portions thereof as had on that date been repealed in the territories to which the enactment generally applies.

27. Now, the learned advocate for the petitioners contends that as Regn. 17 of the 1806 is one of the enactments passed before 25th day of August 1886 and the whole of that Regulation was repealed by the Transfer of Property Act before 25th August 1836, it follows that under this, sub-clause, Regn. 17 of 1806 should be deemed to have been repealed so far as the Santal Parganas are concerned. The argument is no doubt a plausible one and the section being somewhat inartistically drafted appears at first sight to lend some support to the argument of the learned advocate for the petitioners. But I am, absolutely

certain that the interpretation placed by the learned advocate is not the correct interpretation.

28. One of the reasons why I say so is this : It is obvious that Regn. 3 of 1899 was passed nearly 13 years after 25th August 1886 the critical date mentioned in Sub-clause (b) and if the intention of the legislature was to provide that certain enactments (such as Regn. 17 of 1806) which formerly applied to the Santal Parganas had been repealed in consequence of anything which happened before 25th August 1886, I do not understand why instead of adopting, the simple course of omitting those enactments altogether in the schedule the legislature proceeded to arrive at the same result by providing a cumbrous, subclause the interpretation of which has been the subject matter of so much discussion. In my opinion what Sub-clause (b) really provides is that if any particular enactment was still in force in other territories than Santal Parganas in 1899 when this subclause was inserted and if portions of such enactment had been repealed on or before 25th August 1866 in those territories, then, those portions would not apply to Santal Parganas also.

29. It must be noted that, the expression used is "territories to which the enactment generally applies" and not "the territories to which the, enactment formerly applied." The use of the present tense indicates that only those enactments have been referred to which were still in force in other territories than Santal Parganas and only portion of which were repealed on or before 25th August 1886. Now, it cannot be said that Regn. 17 of 1806 is one of the enactments which applied to other tracts than Santal Parganas in 1899 because the whole of the Regulation was repealed by the Transfer of Property Act in 1882, so far at least as the territories other than the Santal Parganas are concerned.

30. Thus I entirely agree with my learned brother that Regn. 3 of 1872 as amended by Regn. 3 of 1899 makes it clear that Sections 7 and 8 of Regn. 17 of 1806 are still in force in the Santal Parganas and have not been repealed by the Transfer of Property Act be far as that part of the province is concerned.

31. I regret, however, that I am unable to subscribe to the view expressed by my learned brother that this Regulation is not in force so far as regards claims which exceed Rs. 1,000 and therefore it will not apply in the present case where the value of the claim exceeds Rs. 1,000. This view has been arrived at by my learned brother on a consideration of Section 3, Sub-clause (2), and is based on the reasoning that under this clause the Transfer of Property Act would apply so far as regards the trial and determination of civil suits in which the matter in dispute exceeds the value of Rs. 1,000, and accordingly Regn. 17 of 1806 stands repealed so far as that class of suits is concerned.

32. Now one of the questions to be considered is whether proceedings taken u/s 8, Regn. 17 of 1806 can be described as a suit. I fully concede that "a suit" does not necessarily mean a regular action and that in many cases proceedings initiated on a mere application by a party may come within the description of a

suit. But I am not at all sure that the proceedings which may be initiated u/s 8, Regn. 17 of 1806 can be described as a suit. It was pointed out by the Judicial Committee as early as in the year 1865 in *Alexander John Forbes v. Amirunnissa Begum* [1865] 10 M.I.A. 340 that the functions of the Judge under Regn. 17 of 1806, Section 8, are purely ministerial. The observations which were made by their Lordships in that case were as follows:

It was held by the Circular Order of 22nd July 1813 No. 37 and has ever since been settled law that the functions of the Judge under Regn. 17 of 1806, Section 8, are purely ministerial and that a mortgagee after having done all that this Regulation requires to be done in order to foreclose the mortgage and make the conditional sale absolute must bring a regular suit if he is out of possession or obtain a declaration of his absolute title if he is in possession.

33. The same view was reiterated by the Judicial Committee in *Norendra Narain v. Dwarka Lal Mandal* [1877] 3 Cal. 397 where it was held that the service of the notice required u/s 8 must be established by evidence in an action brought to recover possession and that the mere return of the Nazir on the back of the Judge's parwana to the effect that the mortgagor had been duly served is not legal evidence of service : their Lordships observing that the duties of the Zilla Judge in the matter of a foreclosure are purely of a ministerial nature.

34. Thus the view that I take is that an application u/s 8, Regn. 17 of 1806 is not a suit and at any rate is not a civil suit to be tried and determined u/s 2, Act 37 of 1885, which has been specifically referred to in Clause (2), Regn. 3 of 1872.

35. I may say here that in the view that I take as to how Clauses (1) and (2) of Regn. 3 of 1872 ought to be construed, it is not very necessary to decide as to what is the precise meaning of the expression "civil suit" as used in Clause (2) and whether an application u/s 8, Regn. 17 of 1806 is or is not such a suit. In my opinion there was a definite object in inserting Clause (2) after Clause (1). Clause (1) declares that the enactments specified in the schedule shall be deemed to be in force in the Santal Parganas and Sub-clauses (a) and (b) deal with cases where the enactments mentioned in the schedule have been repealed and with the extent to which they have been repealed. Clause (2) on the other hand deals with, cases in which enactments other than those mentioned in the schedule will apply to Santal Parganas. Thus if a question arises as to whether a particular enactment mentioned in the schedule has been repealed or not, the question has to be determined solely with reference to Sub-clauses (a) and (b), Clause (1) and Clause (2) will be of no help at all in determining that question.

36. In this particular case we find that Regn. 17 of 1806 is one of the enactments mentioned in the schedule and, as I have pointed out there is nothing in Sub-clauses (a) and (b) to show that it was repealed by the Transfer of Property Act of 1882 or by any other enactment so far as the Santal Parganas are concerned. Once therefore it is established that the enactment in question is still in force in the Santal Parganas and has not been repealed by the Transfer of Property Act, it

is difficult to hold that it should be considered to have been repealed to a limited extent, merely because under Clause (2), T.P. Act, may be held to apply to certain civil suits in the Santal Parganas. To take this view will be to read into Clause (2) something which has not been distinctly provided there, because there is nothing in Clause (2) to suggest that the enactments which will apply to Santal Parganas under this clause will necessarily repeal any, of the enactments mentioned in the schedule to the extent to which they are applicable in the Santal Parganas.

37. There is one difficulty, however, which presents itself here, but the difficulty is to my mind more apparent than real. There is no doubt that Order 34, Rule 2, Civil P.C. (which deals with an action for foreclosure) applies to Santal Parganas so far as regards the trial and determination of suits in which the matter in dispute exceeds the value of Rs. 1,000 ; and a question arises as to whether the mortgagee is to proceed under Order 34, Rule 2, Civil P.C. or u/s 8, Regn. 17. The point has not been fully argued before us, but the answer which suggests itself to me is that both Section 8, Regn. 17, and Order 34, Rule 2, Civil P.C. being in force in the Santal Parganas, it is for the mortgages to choose how they will proceed in a particular case and there is really no conflict in the two alternative courses provided by the two enactments.

38. The conclusion, therefore which I have arrived at is that even assuming that the Transfer of Property Act does apply to those civil suits in which the claim exceeds the value of Rs. 1,000 (which is not conceded by the learned advocate for the opposite party in this case) it would appear on a proper reading of Section 3, Clauses (1) and (2) that Sections 7 and 8, Regn. 17 of 1806 are in the Santal Parganas in their entirety and without any limitation and they apply to all claims whether they do or do not exceed the value of Rs. 1,000. It appears to me therefore that the District Judge had the jurisdiction to issue a notice u/s 8 in this case and the application of the petitioner should be dismissed.

39. I may say here that even independently of the question raised in this case, the petitioner does not appear to me to have a very strong case for revision, as the petitioner disclaims all interest in the mortgaged property as will appear from para. 6 of his petition. Besides, as the view that I take is that the functions of the Judge under Regn. 17 of 1806 are purely ministerial and in discharging that function he is not called upon to judge or decide any question, it is debatable whether any orders passed by him will come within the purview of Section 115, Civil P.C., which empowers the High Court to call for the record of and revise only those cases, which have been "decided" by any Court subordinate to such High Court. These questions, however, do not arise because in my opinion the petitioner has failed to show that Regn. 17 of 1806 does not apply to Santal Parganas. (On account of difference between Das and Fazl Ali, JJ., the case was placed before James, J.).

James, J.

40. The area forming the Santal Parganas was removed from the operation of the general laws and regulations by Act 37 of 1855, which provided that no law which should thereafter be passed by the Governor-General in Council should be deemed to extend to any part of this district unless the same should be specially named therein. The Act made special provision for the administration of civil justice, directing that the officers appointed under the Act should be guided by the spirit and principle of the Civil and Criminal laws administered in the Courts of the East India Company, subject to the important proviso:

that all civil suits in which the matter in dispute shall exceed the value of one thousand rupees shall be tried and determined according to the general, laws and regulations in the same manner as if this Act had not been passed.

In 1872, by the Santal Parganas Settlement Regulation, the legislature prescribed what enactments should be enforced in the Santal Parganas, and how future enactments should be applied to that district. Section 2 of the Regulation contains the direction that it shall be read with Act 37 of 1855; while Sub-section (2), Section 3, prescribes that no other enactments than those specified shall be deemed to apply to the Santal Parganas unless that district be expressly named therein, except so far as regards the trial and determination of the civil suits referred to in Section 2, Act 37 of 1855, in which the matter in dispute exceeds the value of one thousand rupees, when such suits are tried in Court established under the Bengal, Agra and Assam Civil Courts Act. Regn. 17 of 1806 is among the Regulations specified in the schedule, which are to apply to the Santal Parganas.

41. I will discuss first the ground taken by Mr. Shiva Narain Bose that u/s 3 (1) (b), Regn. 3 of 1872, Rega. 17 of 1806 could not apply at all to the Santal Parganas, because the whole of the Regulation had been repealed before 26th August 1887 in the territories in which it generally applied at the time of its enactment in 1806. But the Santal Parganas Settlement Regulation of 1872, read with Regns. 3 of 1887, and 3 of 1899, clearly means that such portions of Regn. 17 of 1806 as had not been repealed in those territories in which it was in force on 25th August 1886, (as for instance in the Punjab) should be regarded as in force in the Santal Parganas also and since in the areas to which the Regulation applied in 1886 the whole of it had been repealed, except Sections 7 and 8 only these two sections of the Regulation came into force in the Santal Parganas.

42. It is argued that the proviso contained in Section 2, Act 37 of 1855, can have no application to proceedings under Regn. 17 of 1806; because the proceedings under the Regulation, initiated by the mortgagee's petition, cannot be regarded as proceedings in a suit. Reliance is placed in this connexion on the decision of the Judicial Committee of the Privy Council in *Alexander John Forbes v. Ameeroonissa Begam* [1865] 10 M.I.A. 340 in which it was pointed out that the action of the Court under Regulation 17 of 1806 is merely ministerial; and it is argued that merely to ensure the service of process on the mortgagor at the suit of the mortgagee and subsequently to record the fact that the deposit of the

mortgage money has or has not been made within the prescribed period, cannot be regarded as the determination of a suit. That is to say, the words "trial and determination" in Act 37 of 1855 mean only trial and adjudication, and "suit" means nothing less than a formal action. This is I think placing too narrow a construction on the words used. "Determination" and "suit" are both words which may bear more than one meaning and I think that here the words "determination" is clearly used in its proper sense as meaning the bringing of the proceedings to a conclusion. As for the word suit, the tendency in India in recent times has been to treat it as equivalent to "action," and to nothing short of that. I am asked to hold that the legislature intended to use the word in this limited sense in 1855 and 1872. It may be observed that although the word "suit" was used in other sense in England at that time, and although it was specially applied to proceedings in particular Courts, it was not generally recognized as being equivalent to "action," since by Section 100, Judicature Act of 1873, it was specially provided that in the Act and in rules made under the Act the word "suit" should include "action" ; but it must be conceded that the word was used in India in this general sense as including every form of action, and as a substitute for the term "action," long before 1855. But this is far from saying that the word was not used in any other sense. Sir Barnes Peacock, in 1868, pronouncing the judgment of a Full Bench of the Calcutta High Court in *Hurro Chander v. Shoorodhonee Debie* 9 W.R. 402, observed that the term suit did not necessarily mean an action, saying:

Any proceeding in a Court of justice to enforce a demand is a suit; the person who applies to the Court is a suitor for relief.

43. The word "suit" may now have become in India a technical term for proceedings initiated by a statement of claim which is called a plaint, and for certain other proceedings specially defined as suits, but this distinction between suits and applications is of recent growth. It would perhaps be idle in discussing some new Act of the Legislature, to attempt to give its original meaning to a word such as suit : but it would I think be equally erroneous to read into a Act of 1855 the limitation on the meaning of the term which have been made in recent years. In this connexion the terms in which the *Sadar Amin of Purnea* acting in 1852, in the case in which *Alexander John Forbes* appealed to the Judicial Committee, which has been mentioned above, determined the proceedings under Regn. 17 of 1806 are significant. The form of the order is as follows:

For as much as the term of one year has expired from the date of the issue of notice, and the mortgagor has not deposited the amount of the mortgage, and that the plea of the before-mentioned third parties is not cognizable in this miscellaneous case, therefore, considering that Regn. 17 of 1806 has been complied with, it is ordered that this suit be decided, and that the papers of the case be forwarded to the Judge's Court.

44. In my opinion, the entertainment of an application under Regn. 17 of 1806, and the disposal of the case is the determination of a suit within the meaning of

Act 37 of 1855 and Regn. 3 of 1872.

45. In 1882 the Transfer of Property Act came into force. It was never extended to the Santal Parganas ; and it appears to have been generally considered that it had no application in that district. Whether or not the Act may have applied generally to dealings with property which formed the subject-matter of suits before the Subordinate Judge, it must certainly be held that those sections which governed the procedure of the Courts in mortgage suits, which were contained in Chap. 4 of the Act, did apply when he tried such suits in which the matter in dispute exceeded the value of a thousand rupees, since those suits had to be tried according to the general laws in the same manner as if Act 37 of 1855 and Regn. 4 of 1872 had never been passed at all. Section 83, T.P. Act, prescribes the manner in which the mortgagor may deposit the money due on the mortgage. Section 85 and the following sections prescribed the manner in which suits should be instituted for foreclosure, sale, or redemption. Nothing in Section 3 of the Santal Parganas Settlement Regulation barred the application of these sections in cases in which the mortgage money exceeded a thousand rupees; and it must be held that the Section 2 of the Act also applied, repealing Regn. 17 of 1806. I therefore consider that from the time when the Transfer of Property Act passed into law Regn. 17 of 1806 has not been in force in the Santal Parganas, except in cases in which the amount of the mortgage money in respect of which the procedure prescribed by the Regulation was to be followed has been less than a thousand rupees.

46. As argument of Mr. Manohar Lal remains to be considered, that the order of the learned District Judge cannot properly be regarded as subject to revision u/s 115, Civil P.C., because he did not decide any case ; but the petitioners raised various objections in the course of the proceedings under Regn. 17 of 1806 which he partly accepted and partly overruled, before he finally ordered that a fresh notice should issue in proper form. This is an order deciding a case within the meaning of Section 115, in which the learned District Judge by issuing notice under a Regulation which for that purpose was not in force, exercised a jurisdiction not vested in him by law, which was subject to revision. I would allow the application and set aside the order of the learned District Judge, directing each party to bear his own costs.