

(1928) 06 PAT CK 0010
In the Patna High Court

Baldeo Das Birla and Others

APPELLANT

Vs

Lal Nilmani Nath Sahi Deo and Others

RESPONDENT

Date of Decision : 22-06-1928

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 208, 212, 214

Citation : AIR 1928 Patna 615

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

Bench : Full Bench

Judgement

Ross, J.—These three appeals are by the purchasers at a sale in execution of a decree for the rent of a property known as Kairo lot. This property belonged to the Maharaja of Chota Nagpur, defendant 6 in the suit, and was a tenure of one Thakur Madan Mohan Nath Sahi Deo who is represented by defendant 7. The plaintiffs in the three suits claimed to be interested in certain villages of the Kairo lot as khorposhdars. The judicial sale was impugned on various grounds. The principal ground was that whereas the Kairo lot consisted of eighty-four villages of which twenty-eight had been excluded from sale by the Commissioner of Revenue under the powers vested in him by Section 208, Chota Nagpur Ten. Act, eleven villages appertaining to the tenure and specified in Schedule 3 to the plaintiffs were neither sold nor excluded and consequently the sale which was a sale of forty-nine villages only was not a sale of the tenure and did not pass the plaintiff's interest in their khorposh villages. The plaintiff in suit No. 21 of 1924 claimed recovery of possession of twelve villages of which eleven had been sold and one, Bero, had not been sold. The plaintiff in suit No. 22 of 1924 claimed a one third share in eleven other villages all of which had been sold and the plaintiff in suit No. 23 of 1924 claimed an interest in only one village which had been sold. The other grounds will sufficiently appear, as will also the defence, from the issues framed in the suit. With regard to the substantial question what Kairo lot consists of, the defence was that the list of villages given in the execution proceedings was in accordance with the decision of the High Court in execution case No. 342 of 1910-11. It should be stated here that the suit for rent

with which this present suit is concerned was suit No. 271 Rule 1 of 1910-11 which was decreed on 3rd March 1911 and the execution proceeding in which the sale of Kairo lot took place was execution case No. 820 R-18 of 1913--14. The execution case No. 342 of 1910--11 referred to in the written statement arose out of a decree for rent passed on 19th April 1905.

2. The learned Subordinate Judge decreed the three suits holding that the execution sale had not the effect of passing to the purchasers (defendants 1 to 5) the tenure free from plaintiffs' encumbrances in respect of the villages claimed by them and he passed a decree for recovery of possession with certain small exceptions in the case of the plaintiff in suit No. 21 of 1924 in respect of portions of the property for which the claim was held to be barred by time. Defendants 1 to 5 have appealed against his decree. Learned Counsel in arguing the appeal followed the course of the judgment and dealt with each issue as it came. I shall follow the same order in dealing with his argument.

The first issue was:

Has this Court jurisdiction to entertain the suit and is it barred by the provisions of Section 214, Chota Nagpur Tenancy Act?

Section 214 provides that

no suit... shall be entertained in any Court to set aside or modify the effect of any sale made under this chapter save u/s 212 or Section 213 or on the ground of fraud or want of jurisdiction.

3. There is no serious allegation of fraud in the plaint, the only reference to fraud being in para 23 which mentions defects in the proceedings dealt with specifically in the plaint as illegalities. The learned Subordinate Judge held that Section 214 was no bar to the suit because the plaintiff's allegation is that the sale was without jurisdiction and, further, because the plaintiff claims that the auction sale not having passed the tenure it does not affect his interest in his villages and, therefore, the suit is not within Section 214. Learned Counsel for the appellants contends that this is a suit to set aside or modify the effect of the sale and that consequently unless the plaintiff establishes want of jurisdiction, the suit cannot be maintained. He further contends that the only remedy of khorposhdars, such as the plaintiffs were, was to apply u/s 212 to have the sale set aside on depositing the amount of the decree with compensation and he referred to the decision in *Anund Lal Mookerjee v. Kalika Pershad Misser* [1872] 20 W.R. 59. Now it is clear that the khorposhdars could not have come u/s 213, because they were not owners of the property; *Lal Nilmoney Nath Sahi Deo v. Protap Udai Nath Sahi Deo* AIR 1923 Pat. 29; and it is contended on their behalf that they could not have come u/s 212 either, because they did not claim an interest in the whole property. They were interested only in a small number of villages within a large tenure. In my opinion the fact that their interest was limited to a portion of the property does not exclude them from the class of persons "who claim an interest therein" and the plaintiffs were entitled to apply u/s 212. The view of the

learned Subordinate Judge that the suit is not barred by Section 214 because the allegation is that the auction sale did not affect the plaintiffs' interest, seems to me to rest on a merely verbal argument. The sale proclamation was under Act 8 of 1865 which was recited therein. The sale-certificate (Ex. B) is expressed to be granted u/s 208, Chota Nagpur Tenancy Act and Section 11, Act 8 of 1865, and it certified that the Birlas had purchased Dehat Kairo at a sale by public auction u/s 203, Act 6 of 1908 and Section 11, Act 8 of 1865. The sale therefore was a sale u/s 208 and it was a sale of a tenure which therefore passed to the auction purchasers free from the plaintiffs' encumbrances by force of the sale itself. Consequently there is no meaning in saying that the auction sale did not pass the tenure and therefore did not affect the plaintiff's interest. The plaintiffs' position is not tenable. They are encumbrancers and the sale of the tenure necessarily destroyed their encumbrance. Consequently if the sale was a sale of a tenure, they were represented by the tenure-holder and are not entitled to attack the sale on grounds which were not available to the tenure-holder; but the tenure-holder manifestly could not plead that the sale did not affect his interest. The plaint in effect is for a declaration that the sale under Act 8 of 1885 was not a sale under the Act. This is a suit to set aside or at all events to modify the effect of the sale and such a suit can only be brought on the ground of fraud or want of jurisdiction. In my opinion, this suit is within Section 214 and to hold otherwise (as the learned Subordinate Judge has done) would be to destroy the special jurisdiction which the Chota Nagpur Tenancy Act is designed to create. The power of the civil Court to question a rent sale under the Chota Nagpur Tenancy Act is limited to cases of fraud and want of jurisdiction; and it is not entitled on a mere pretence of this kind to extend its jurisdiction. But as there is a definite plea that the sale was without jurisdiction, the suit is maintainable in form.

Issue No. 2 was:

Is the suit barred by limitation under Articles 12, 14, 47 and 95, Schedule 1, Lim. Act, or under Sections 177 and 211, Chota Nagpur Tenancy Act?

4. No reference was made in the judgment or in the argument to Article 95 and as this suit is not a suit based upon fraud that article has no application. The objection based upon Article 14 was not pressed.

5. Learned Counsel for the appellant contended that the suit was barred by Article 12 of the Schedule to the Limitation Act which provides a period of one year for a suit to set aside a sale of this kind. The learned Subordinate Judge meets this objection (as he met the objection to Section 214) by treating the suit as a suit for a declaration that the sale was void or did not affect the plaintiffs' right. This argument so far as the plea of limitation is concerned is open to precisely the same objections as I have already found in discussing the decision about Section 214. The argument is merely verbal and is designed to defeat the plain provisions of the law. Learned Counsel for the appellants referred to the decision of the Judicial Committee in *Malkarjun v. Narhari* [1900] 25 Bom. 337. That was a case in which there had been a sale in execution of a decree on a

mortgage and subsequently a suit for redemption was brought in which the judicial sale was ignored. Their Lordships held that the suit was barred by Article 12. The learned advocate for the respondents pointed out a passage at p. 351 where their Lordships referred without apparent disapproval to the opinion of Candy, J., that the article did not apply to a suit for a declaration that the sale was inoperative as against the plaintiff and he argued that this is a suit of that kind. But their Lordships held that in the case with which they were concerned the sale was operative as against the plaintiff though liable to be set aside for due cause.

6. That is precisely the position here. The sale is a sale under Act 8 of 1865 and is therefore operative as against the plaintiffs though liable to be set aside for fraud or want of jurisdiction. But then the suit must be brought within one year. The present suits are therefore in my opinion barred by time. The learned Subordinate Judge has given effect to the bar arising under Article 47 in respect of certain lands in villages claimed by the plaintiff in suit No. 21 of 1924 which had been the subject matter of proceedings u/s 145, Criminal P.C., and this part of the decision is not questioned.

Section 177, Chota Nagpur Tenancy Act deals with claims by third persons to receive rent and provides that the decision on the question of the actual payment of the rent to such third persons in good faith shall not affect the right of any party who may have a legal title to such rent to establish such title by a suit in civil Court instituted within one year from the date of the decision. The Subordinate Judge held, and in my opinion rightly, that the present suit was not a suit of the nature contemplated by Section 177 which was therefore no bar. Learned Counsel referred to the judgment in certain rent suit of 1921-1922 (Ex. E) in which the present appellants were the plaintiffs and the present plaintiff Lal Nilmony Nath Sahi Deo was a pro forma defendant. In this judgment it was held that the plaintiffs (now defendants) acquired Mouza Parhepat, one of the villages now in suit, free from encumbrances and were entitled to realize rent from the tenants direct. It was conceded that this decision does not bring the case strictly within Section 11, Civil P.C.; but it was argued that the present plaintiffs ought to be concluded by this decision. In my opinion, the present suit cannot be concluded by the decision of the Deputy Collector in a rent suit and the present suit is not within the language of the proviso to Section 177, Chota Nagpur Tenancy Act.

7. Section 211 deals with claims by third parties made before the sale of a tenure and provides that the party against whom judgment is given by the Deputy Commissioner may at any time within one year from the date of the judgment bring a suit in the civil Court to establish his right. The learned Subordinate Judge held that the title which the plaintiff set up in these suits is not the title which was set up by Nilmony Nath Sahi Deo in the execution case where he claimed as co-proprietor whereas now he claims as a subordinate tenure-holder. Learned Counsel for the appellants contends that the claim made

then would cover the claim to the khorposh right now set up. The petition is Ex. A; and it was stated therein that the properties of the petitioner also had been put up for sale. In my opinion the learned Subordinate Judge was right in treating this as the claim of a co-proprietor and it is obvious that a khorposh right could not have been made the basis of a claim because such a right necessarily disappeared as the result of sale of the tenure. The next four issues were tried together and they were:

3. Was the auction sale held by the revenue Court in connexion with the decree passed in rent suit No. 271 R-1 of 1910-1911 without jurisdiction on the several grounds set out in the plaint and is it void?

4. Is the auction sale referred to in issue 3 effectual as against the interest of the plaintiff in the disputed properties?

5. Are defendants 1 to 5 bona fide purchasers for value and without notice of the alleged illegalities? If so, are they protected?

6. Is the plaintiff entitled to the declarations sought for and to recover possession of the properties described in Schedule 4 of the plaint?

8. The first question dealt with by the learned Subordinate Judge was whether the sale was without jurisdiction for want of the notice prescribed by Section 190 of the Act. The proceedings in execution were admittedly taken more than a year after the date of the decree and more than a year after the last previous application for execution; and the question is as to the effect of this omission if there was an omission to serve notice. The finding of the learned Subordinate Judge is not as clear as it might have been. He deals with the case first on the assumption that such notice was necessary. He finds on the evidence that notice was not given and, on the decided cases, that want of notice goes to the jurisdiction of the Court; but he then treats the matter as an irregularity which could be waived and as the judgment-debtor appeared throughout, he held that the irregularity was waived. Then on the construction of the relevant sections of the Act he held that notice u/s 190 is necessary only when warrant of execution against the person or moveable property of the judgment-debtor is prayed for and not otherwise. He, therefore, held that the sale was not without jurisdiction on this ground. Learned Counsel for the appellants supported the decision and contended that no notice was necessary; that the cases under the CPC and under the Bengal Tenancy Act, both of which enactments expressly provided for such a notice, had no application; and if they had, the defect was merely an irregularity which could be and had been waived. His reading of the relevant sections of the Act from Section 181 onwards was that the earlier sections deal with execution against the person or moveable property of the judgment-debtor and that the term "warrant of execution" is used only in connexion with such proceedings and that Section 208 introduces a new subject--execution by sale of the tenure or holding itself--and that this section which incorporates the Bengal Rent Recovery (Under tenure) Act 1865, with the exception of certain sections, forms a

complete Code in itself and, as no such notice is required by the Rent Recovery Act, it is not required when a tenure or holding is sold. Now it is true that Section 208 with the Rent Recovery Act forms a complete Code for the actual process of selling and the effect of the sale of a tenure or holding. But this does not prevent the operation of sections dealing with the institution of the execution proceedings themselves; and if a decree is more than one year old, I see no reason why it should be executed without notice against a tenure or holding when it cannot be executed without notice against the person or moveable property of the judgment-debtor. Learned Counsel did not point out any difference in principle between the two cases. As to the argument based upon the structure of this part of the Act it may be pointed out that the arrangement of the rules in Order 21, Civil P.C., is not dissimilar and that the rules dealing with the sale of immovable property also come long after Rule 22, and are as far removed from it as Section 208 is from Section 190.

9. It was contended that a distinction must be drawn between "process of execution" the term used in Section 184, and "warrant of execution" the term used in Section 185. It does not appear, however, from the language of Section 185 that the term "warrant of execution" is limited to cases of attachment of the person or moveable property of the judgment-debtor; and I see no reason why the term should be confined to such processes. It may be mentioned also that the decree-holder himself was apparently under the impression that a notice was necessary, because in the petition for execution (Ex. 8) it was prayed that a notice under Order 21, Rule 22 might be issued against the judgment-debtor. In my opinion, a notice u/s 190 was necessary to give the Court jurisdiction to sell this property and the decisions on the corresponding rule of the Code and Section of the Bengal Tenancy Act are relevant and their effect is that the sale was without jurisdiction if no notice was served. I cannot, however, accept the decision of the learned Subordinate Judge that no notice was served. It appears that after the execution proceedings were started, it became necessary to amend the plaint by adding a list of the villages constituting the Kairo lot and notice was then given to the judgment-debtor. The notice was in these terms:

Whereas the decree-holder has filed a petition for amendment of plaint in the original suit, along with the application for execution of decree, a notice is issued to you to appear personally or through a pleader on 5th October 1915 to show cause whether you have any objection to the execution on amendment of the plaint.

10. The fact that the question of amendment of the plaint is raised in this notice does not in my opinion make it any the less effective as a notice u/s 190. I hold, therefore, that the sale was not without jurisdiction on this ground.

11. The next ground was the failure to implead all the registered tenants as defendants to the rent suit. The plaintiffs claim that the consequence of his failure was that the decree was not a decree for rent and could only be executed as a decree for money. The learned Subordinate Judge holds that the suit was

defective in this respect, not apparently on the ground that the alleged tenants were tenants when the suit was brought, but because the Maharaja defendant should have produced his books to show that they were not. This ground is clearly bad, because the appellants did call upon the Maharaja to produce his books and they were not produced because they were filed in a case which was before the Privy Council in appeal and could not be produced. There seems to be no ground whatever for supposing that these alleged tenants Rahim, Fahim and others were registered tenants of the Kairo lot when this suit for rent was brought. The plaintiff's contention rests upon a plaint (Ex. 6a) for the rent of the years 1901-1906 in which Rahim and Fahim were described as purchasers of half of Mauza Bikarni, Ganesh and Mahesh, as auction purchasers of two-annas of Mauza Jingi and Shekh Dilu and others as zerpeshgidars of Mauza Bakarni. Zerpeshgidars were entitled to be registered under the old Act; but they were not necessary or proper parties to rent suit. As to the alleged purchasers the Record-of-Rights is silent. The learned Subordinate Judge finds this and is of opinion that their interest accrued subsequently: but the plaint must have been filed before the publication of the Record-of-Rights in 1910; and the proper inference is that if these persons ever had any interest, it had disappeared before the Record-of-Rights was finally published; and this inference is also to be drawn from the fact that no decree was passed against them. The record of the case has been destroyed; and there is absolutely nothing apart from the plaint (Ex. 6a) to show that these persons ever had any interest in the tenure. They were not impleaded in the rent suit now in question; and they were not in the Record-of-Rights. Unless it is shown that the Record-of-Rights is wrong, there is no ground for thinking that they ought to have been impleaded. None of them was cited as a witness; and the Record-of-Rights is not rebutted by a plaint filed before its final publication especially when effect was not given to that part of the plaint in the decree that was actually passed. Moreover Jingi and Bakarni were excluded by the Commissioner from sale. It follows that they were khorposh villages and consequently the persons entered in the plaint (Ex. 6-a) as purchasers must have been purchasers of the khorposh right and were therefore not tenants of the Kairo lot under the Maharaja; and the explanation given by Mr. Pappe, the Manager, that the names were entered in the register by mistake must be correct. This ground of objection to the sale therefore fails.

12. Before dealing with the substantial question in the case, I shall depart from the order followed by the learned Subordinate Judge in his judgment and refer to three subordinate matters which are dealt with towards the end of the judgment. In the first place, the learned Subordinate Judge held that the sale was defective because there was no fresh proclamation of the sale which having been adjourned on 17th April 1918, the date for which it was fixed, and again on 17th May 1918. the adjourned date, was actually held on 17th June 1918. He was of opinion that inasmuch as a sale under the Rent Recovery Act avoids encumbrances, it was necessary for the protection of encumbrancers, that the adjourned date of sale should have been proclaimed also. Now the old CPC did

not require fresh sale proclamations after adjournment, but sales could be postponed by consent without being proclaimed afresh; Hurdeo Narain Sahee v. Girdharee Singh [1873] 19 W.R. 227; Gobind Chunder Aooch v. Bamun Doss Mookherjee [1874] 22 W.R. 481 and Noorul Hossein v. Mt. Omatool Fatma [1875] 25 W.R. 34. The Rent Recovery Act is silent on this subject. Learned Counsel further referred to the decision in Bipin Behari v. Jatindra Nath [1910] 37 Cal. 897 as showing that it is not open to a party who obtains an adjournment at his own request to complain that there was no fresh sale proclamation. The learned advocate for the respondents contends that this decision does not apply because the adjournment was not taken at their request. But this merely raises the question which has already been discussed as to whether the khorposhdars were represented in this matter by the tenure-holder. In any view if a fresh sale proclamation was necessary (and in my opinion it was not) the omission would be an irregularity only and would not affect the jurisdiction to sell.

13. The learned Subordinate Judge has further found that the sale was not held and accepted by the proper Court, because the auction was conducted by a Deputy Collector Mr. S.K. Haldar who was not in seisin of the case. The Deputy Collector who had seisin of the execution, Mr. Chowdhury, directed the bailiff of the Court to hold the sale fixed for 17th June 1918 (Ex. 1). The bids are recorded on the back of this writ by Mr. Haldar. No order seems to have been recorded by the Deputy Collector in seisin of the case accepting the highest bid on the day of the sale; but on 22nd June this Deputy Collector recorded an order that the property was sold to the Birlas for Rs. 3,15,000. on 17th June and the Nazir was required to report by 25th June if the balance of the price had been deposited. On 25th June the Deputy Collector recorded an order to the effect that the balance of the purchase money had been deposited. It is true that the defendants' witness Kamalakant Mukhtar says in cross-examination that the auction sale was held by the Deputy Collector Mr. S.K. Haldar and it was also accepted by him; but in the absence of documentary evidence I am not prepared to accept this statement. The presumption is that official acts were properly performed. The Court issued an order to the bailiff to conduct this sale; and there is nothing in the fact that the bids were recorded by Mr. Haldar to show that the sale was not conducted by the bailiff of the Court. There is, in my opinion, no substance in this objection.

14. The learned Subordinate Judge also holds that the sale was bad as a sale of the tenure because it was held for the full amount of the decree, Rupees 17,798-11-9 although in fact on 17th April 1918 when an adjournment of the sale was obtained by the judgment-debtor, a sum of Rs. 1,000 was paid towards the decree (Ex. B-6). Now that exhibit shows that the judgment-debtor agreed to the sale being held on 17th May without issue of fresh sale proclamation. Consequently the sale had to be held for the full amount of the decree as that was the amount in the sale proclamation. Nothing turns on this, because the property was actually sold for Rs. 3,15,000 and the amount recoverable on account of the decree and the subsequent arrears was actually about Rs. 68,000.

Moreover the learned Subordinate Judge is wrong in his figures. The sale notice (Ex. N 4.) issued in October 1917 was for Rupees 17,478-15-3 and not, as the learned Subordinate Judge says, Rs. 17,798-11-9. By June 1918 the amount must have increased considerably because the decree carried interest at six per cent. What was done in this case was what is done everyday when an adjournment is taken and fresh sale proclamation waived; the amount due on the date of sale is never the amount shown in the sale proclamation in such cases. In any view, the sale to the auction purchaser could not be avoided on this account; see *Rewa Mahton v. Ram Kishen Singh* [1886] 14 Cal. 18 their Lordships of the Judicial Committee said:

A purchaser under a sale in execution is not bound to inquire whether the judgment-debtor had a cross-judgment of a higher amount any more than he would be bound in an ordinary case to inquire whether a judgment upon which an execution issues has been satisfied or not. Those are questions to be determined by the Court issuing the execution. To hold that a purchaser at a sale in execution is bound to enquire into such matters would throw a great impediment in the way of purchasers under executions. If the Court has jurisdiction a purchaser is no more bound to inquire into the correctness of an order for execution than he is as to the correctness of the judgment upon which the execution issues: see also *Pramatha Nath Bose and Others Vs. Bhuban Mohan Bose and Another*, .

15. I now turn to the question of substance raised in these suits. Three schedules were attached to the plaints. Schedule 1 is a list of eighty-four villages forming the Kairo lot; Schedule 2 is a list of forty-nine villages sold; and Schedule 3 is a list of ten villages neither sold nor excluded by the Commissioner. These schedules were amended and in its amended form Schedule 3 consists of eleven villages; Tan, Bodai Basardhi, Santo, Chorgain, Bajodih, Saraidih, Jamdih, Dandupura, half of Bero and Sukurhatu. In the written statement it was pleaded that Jamdin, Basardih, Boda, Santo, Chorgain and Bajodih never formed part of the Kairo tenure; that there was no sufficient identification of Saraidih and no such village formed part of the Kairo lot. With regard to Tan and Bero it was pleaded that there were judicial decisions that they were not part of the Kairo lot. There was no independent village called Dandupara; and as to Sukurhatu, the tenure holder had only the right to receive Rs. 26-4-0 as rent and this right admittedly was sold. The learned Subordinate Judge has held that there is no sufficient evidence that Saraidih and Jamdih appertained to the tenure and further that Dandura had been sold as a tola of Mauza Khukhra. But as regards the remaining eight villages, he held that the plaintiffs had established their case that these villages were part of Kairo lot and were neither excluded nor sold. It is necessary therefore to examine the evidence about each of these villages. But first of all something should be said about the number of villages composing the Kairo lot. On this point the written statement is silent but the documentary evidence shows that according to the settlement record the lot was called Kairo lot (or Dehat Kairo) eighty-four villages (Ex. 10-11 and Ex. 10-3). The

defendants" papers show varying numbers. Thus Ex. 2(f) a petition to amend a plaint filed on 26th May 1913, that is after the final publication of the Record-of-Rights, contains a list of eighty-one villages while Ex. 6 a plaint in a suit for rent of the years 1967 and 1968 contains a list of eighty villages. Ex. 6(b) the plaint in the suit with which the present suit is concerned contains a list of only 74 villages. The plaintiff themselves do not give a correct account of eighty-four villages. These amended schedules show fifty villages sold and, eleven neither sold nor excluded from sale. The plaint says that twenty-eight were excluded. This gives a total of eighty-nine. It seems doubtful whether "74 villages" is anything more than a name. The Mulki papers on which the plaintiffs principally rely do not show eighty-four villages.

16. Before I discuss the evidence about particular villages in detail a general remark should be made about the evidence. The learned Subordinate Judge has given the greatest weight to the Mulki papers. From the evidence of Mr. Peppe, Manager of the Maharaja of Chota Nagpur given in a previous case (Ex. 3), it appears that these Mulki forms were compiled about 1841 or 1843 and contained a description of tenures in Chota Nagpur. The learned Subordinate Judge has gone on the assumption that when a village is entered in these Mulki papers, it is necessarily in Kairo lot; but this is not so. Ex. 5 is the principal Mulki form and it shows the villages in the jagir of Udainath Sahi Deo headed by the name of Mauza Kairo; but the rental of the jagir is Rs. 1,510, whereas the rental of the Kairo lot is Rs. 1,453-5-1. Evidently, therefore, this Mulki form while containing the villages of Udainath's jagir is not confined to villages forming the Kairo lot. The form does not purport to be a list of villages of Kairo lot. The Mulki papers were not accepted in execution case No. 342 either by the Deputy Collector or by the High Court (see Ex. F-6); and the learned Subordinate Judge in a judgment (Ex. M) in dealing with this Mulki form said that the document as it stands shows that Thakur Udainath Sahi Deo held about forty-five villages including village Bero under the proprietor, but it nowhere states that all these villages formed one and the same tenure and it is admittedly an incomplete document. Similarly the Rokar books upon which the learned Subordinate Judge has also relied merely show realization of rent and they cannot show that the villages mentioned therein necessarily belonged to any particular tenure. (His Lordship then dealt with the several villages in detail and proceeded). On this part of the case a further observation falls to be made. I have found that in fact the list of villages proclaimed for sale was not defective. But even if it had been defective this would not have affected the jurisdiction to sell the tenure. That the Court intended to sell the tenure is unquestionable. This is clear from the nature of the decree and from the sale notice and sale certificate. That the Court had jurisdiction to sell the tenure is not and cannot be questioned. If the list of villages notified for sale was defective this would only show an error in the exercise of jurisdiction not a want of jurisdiction itself; and even if the plaintiff's allegations on this point had been established the sale as a sale of the tenure would have been unaffected.

17. In my opinion, therefore, these suits fail both on the merits and by reason of Section 214, the plaintiff having failed to prove that the sales were held without jurisdiction and also by reason of the bar of limitation.

The appeals are decreed with costs and the suits are dismissed with costs. It is unnecessary to decide the cross objection. The costs will be payable to the auction purchasers.

Fazl Ali, J.

18. There is tenure known as Kairo lot, which consists of a large number of villages and which lies within the estate of the Maharaja of Chota Nagpur in the District of Ranchi. It appears that the rent and cesses in respect of the holding for the years 1964, 1965 and 1966 became due and so the Maharaja brought a rent suit against one Madan Mohan Nath Sahi Deo, who according to him was the holder of the tenure and obtained a decree against him on 3rd March 1911. The execution proceedings which followed, were greatly protracted for a number of reasons and ultimately the tenure was sold and purchased by the appellants on 17th April 1918. The three suits out of which these appeals arise were instituted on 17th June 1924, that is to say, a little over six years after the sale. The plaintiffs in all the three cases attack both the decree and the sale. Their contention is that the decree passed was not a rent decree because (1) all the recorded tenants were not impleaded by the landlord; and (2) neither in the original plaint nor in the original decree the names of the villages constituting the tenure were mentioned but the holding was referred to merely as Kairo Dehat or Kairo lot. It may be mentioned here that on 21st June 1916 in the course of the execution proceedings the decree-holder filed an application (Ex. B-6 in this case) before the Court in which a prayer was made to amend the plaint as to the description of the property cent whereof was claimed

and to issue a sale-proclamation according to the amended plaint. The petition was granted by the Court and the plaintiffs contend in their plaint that the order allowing the amendment was illegal. It is further contended that the list of villages supplied by the decree-holder along with the petition (Ex. B-6) was not exhaustive, that a number of villages which formed part of the Kairo lot were not included in the list and so the Deputy Collector sold not the whole Kairo lot but a part of the holding only. It is said that there were other irregularities in the sale and the sale was without jurisdiction because among other things (1) the decree in execution of which it was held was not a rent decree; (2) it was not a sale of the whole tenure; (3) it was held by a Deputy Collector, Mr. Haldar, who had nothing to do with the execution case (4) no fresh sale proclamation was issued although one should have been issued under the law in the circumstances of the case; (5) the decretal amount mentioned in the sale proclamation was not correct and (6) a notice u/s 190, Chota Nagpur Tenancy Act, was not issued before the sale of the property.

19. I shall first consider whether the decree obtained by the Maharaja of Chota

Nagpur can be successfully attacked by the plaintiffs on the ground that it was not a rent decree. The entire case of the plaintiffs that there were other recorded tenants in respect of the holding besides Madan Mohan is based on plaint [Ex. 6(a)] in which five other persons appear to have been impleaded as defendants. It is denied on behalf of the appellants that these persons were tenants of the holding and the plaint [Ex. 6(a)] is met by the decree which was passed in that suit as also by the Record-of-Rights of a later date as well as a number of plaints subsequently filed [Ex. 6(b), Ex. P and Ex. (d)]. No evidence has been offered on behalf of the plaintiffs to prove that there was any other tenant of the holding except Madan Mohan at the time when the suit in question was instituted. It is, therefore, clear that the plaintiffs cannot succeed on this point. The other objection is that a list of villages constituting the holding was not given in the plaint and that the holding was insufficiently described merely as Kairo Dehat (Kairo let). There seems to be no substance in this contention either. It is well-established law that it is not necessary for a decree-holder to particularize by name all the villages which appertain to a main village or holding and it is quite enough if the description is sufficient to identify the holding: see in this connexion *Govind Das Khandewal v. Durham Waite* [1918] P.H.C.C. 333 *Durga Prasad v. Dineswar Nath* [1918] P.H.C.C. 5, *Rajendra Prasad Sahu v. Gangan Kuer* [1919] 2 Pat. L.J. 623. It is thus clear that the decree passed was a rent decree which the Deputy Collector had jurisdiction to pass and in execution of which the entire tenure was liable to be sold.

20. The next question is as to what would be the effect of the amendment of the plaint in 1916 on the basis of the petition, Ex. B-6, filed in the course of the execution case No. 820 of 1913-14. In order to understand how the decree-holder was led to file this petition it will be necessary to refer to another execution proceeding between (sic) same parties. This proceeding was taken in connexion with a rent decree obtained in the year 1905. The execution case was numbered 342 of 1910-11 and was protracted for a number of years like the execution case No. 820 of 1913-14 with which we are concerned in these appeals. Madan Mohan objected to the sale on a number of grounds in that case and as the Deputy Collector has pointed out in his judgments Exs. F (1) to 5 the parties went to the High Court no less than seven times during the pendency of the execution proceedings. One of the objections raised by Madan Mohan was that the tenure had not been correctly described in the plaint which is substantially the question raised in the present suit. Ultimately on 4th September 1926, the Deputy Collector decided as to what villages were included in the Kairo lot and held that the list of villages filed by the decree-holder was correct. Madan Mohan appealed to the High Court and on 10th January 1916 the High Court dismissed the appeal. On 21st June 1916, Maharaja of Chota Nagpur filed the petition (Ex. B 6) in the execution case No. 820 of 1913-14. The petition runs as follows:

The decree-holder prays that sale proclamation may be issued after amendment of the plaint as to the description of the property rent whereof is claimed, and

the dispute between the parties regarding the amendment of the plaint as to the description of the said tenure was settled by a competent Court on 4th September 1915 in execution case No. 342 of 1910-11, and it was decided that the mauzas noted in the list filed by the decree-holder (Ex. E) are included in the said tenure except half of Mauza, Bero. The said decision was upheld on appeal by the High Court. Therefore, this petition is filed and it is prayed that this case may be decided according to the decision and Ex. E. copies whereof are filed with the petition.

21. It appears that the amendment was duly made and the execution proceeded. Madan Mohan does not appear to have seriously opposed the amendment. On the other hand, subsequent to the amendment he made several applications for time and got the sale postponed more than once. The reason why the petition (Ex. B-6) was filed is obvious. Madan Mohan had raised the question in the previous execution proceeding that the list of villages forming Kairo lot as given in the plaint was incorrect and ultimately the Courts had given a decision. The Maharaja wanted to avoid having to face the same objection in the execution case No. 820 of 19th March 1914 and so he filed the petition Ex. B-6. The object of this petition was obviously not to vary or modify the plaint in any way but to amplify the description of the property sought to be sold. There was therefore nothing illegal in the order of the Deputy Collector when he allowed the decree-holder to specify the villages. A similar course was adopted in the execution case No. 342 of 1910-11 between the same parties. In fact the learned advocate for the respondent also did not press before us that there was any illegality in the order of the Deputy Collector when he allowed the prayer made in Ex. B-6. I have, however dealt with the question, because it is raised in the plaint and because it has an important bearing on the main point in the case on which great stress was laid before us on behalf of the respondent, namely, that the list of villages supplied to the Court by the decree-holder in 1916 was not exhaustive and did not include some of the villages appertaining to Kairo lot and so the sale was without jurisdiction, being a sale of a part of the tenure only.

22. Now it is contended on behalf of the appellants that the question as to what constituted the Kairo lot having once been decided between the decree-holder and Madan Mohan who represents the whole tenure including the subordinate interest of the plaintiffs, it is no longer open to the plaintiffs to raise the same point in the present suits. Mr. Pugh contends that, though strictly speaking, the matter may not be *res judicata* u/s 11, Civil P.C., yet the principle underlying that section will apply, and having regard to the circumstances of the case, we should hold that the matter is concluded and cannot be re-opened. It is also said that the matter having once been decided between the landlord and the tenant, it is clear that it cannot be re-opened by the latter in every successive rent suit and if the defence is not available to Madan Mohan in a rent suit, it will not be available to the khorposhdars who hold under Madan Mohan and whose interest would be automatically annulled if the decree in execution of which the tenure was sold was a rent decree and the Court had jurisdiction to sell the tenure. It is further

contended that any other view will be opposed to the scheme of the Chota Nagpur Tenancy Act as well as the policy underlying Section 214 of that Act. Mr. Roy, on the other hand, contends that this cannot be a case of *res judicata* because (1) the plaintiffs were no party to the decree or execution proceedings; (2) no interest was acquired by them subsequent to the proceeding (3); the *khorphosh* tenure is not a subordinate tenure. [Here Mr. Roy sets up the analogy of the *mulgeni* tenure and relies upon the observations in *Seshappaya v. Venkatramana Upadhya* [1910] 33 Mad. 459.] The Court on whose decision reliance has been placed was not competent to decide the matter. In this connexion Mr. Roy relies upon the following passage in the Privy Council decision in the case of *Gokul Mandar v. Pudmanund Singh* [1902] 29 Cal. 707:

They (their Lordships) will only observe in reference to arguments addressed to them that u/s 18, Civil P.C., a decree in a previous suit cannot be pleaded as *res judicata* in a subsequent suit unless the Judge by whom it was made had jurisdiction to try and decide not only the particular matter in issue but also the subsequent suit itself in which the issue is subsequently raised.

23. Without endorsing every argument advanced by Mr. Roy, I agree with my learned brother that strictly speaking the decision of the Deputy Collector cannot be held to be *res judicata*; but at the same time if after his judgment and other judgments in which the question as to whether certain individual villages formed part of Kairo lot or not was gone into, the plaintiff seriously wants to raise the question as to what constitutes Kairo lot he must produce strong and cogent evidence to show that the villages which have already been held not to appertain to Kairo lot really do appertain to it and should have been included by the decree-holder in the list filed with Ex. B-6. My learned brother has very fully discussed the evidence in respect of each of the individual villages and shown that the objection raised by the plaintiffs on the score of those villages not being included in the sale proclamation is without substance. Thus I hold (1)

that the decree in execution of which the sale book place was a rent decree and (2) that the sale has not been proved to be a sale of only a part of the tenure but was really a sale of the entire holding.

As was pointed out in the case of *Gobind Das Khandewal v. Mr. W.E. Durham Waits* [1918] P.H.C.C. 333.

It is the intention of the Court which sells the property which is to be looked at and not the intention of the decree-holder who was selling the property. The true test is what did the Court intend to sell and what did the purchaser understand he bought.

24. In the present case it is clear that the Court as well as everyone else concerned in the sale took it to be a sale of the entire tenure and I do not see how it can be held to be a sale of a part only.

25. My learned brother has dealt with the other ground on which the sale has

been attacked and I do not wish to repeat his arguments. In my opinion there was no irregularity in conducting the sale. The fact that the sale was conducted under the supervision of a responsible officer, Mr. Halder, instead of being conducted by a Nazir of the Court, is of little consequence when it is conceded that Mr. Nazir Alam, who was the executing Court and on whose order the sale was held, was duly empowered under the Chota Nagpur Tenancy Act to sell the property. My learned brother has further shown that under the circumstances of the case there was no necessity for issuing a fresh sale proclamation or for altering the decretal amount mentioned therein. As to the provisions of Section 190, Chota Nagpur Tenancy Act, having been infringed, the learned Subordinate Judge was rightly of opinion that under the circumstances of the case it will not be a sufficient ground for setting aside the sale but as my learned brother has pointed out Ex. G-6 is a complete answer to the appellants' argument on this point. The learned Subordinate Judge enunciates the correct principle when he says that:

auction sales specially when the purchasers at such sales are strangers and particularly rent sales, which are of constant occurrence, should not be lightly held inoperative, inasmuch as anything which impairs the security of purchasers at such sales tends to lower the prices of properties set up for sale.

26. In my opinion this principle should have been kept in view in the present case as no substantial grounds have been made out by the plaintiffs to justify our holding that the sale is a nullity or liable to be set aside.

27. Then remains the question as to whether the plaintiff's suits should be held to be barred by Section 214, Chota Nagpur Tenancy Act and Article 12, Limitation Act. There was a good deal of argument before us as to the meaning of the expression "to modify the effect of the sale". The expression is not altogether happy nor is the meaning very clear. It is said that in construing Section 214, Chota Nagpur Tenancy Act we must keep in view the following passage in the statement of objects and reasons attached to the bill by which the principle underlying the section is explained:

Attempts are made from time to time to nullify the effect of sales in execution of rent decrees to the great detriment of the bona fide purchasers, and as any want of security in the title of the purchaser in a rent sale affects the interests of judgment-creditors and judgment-debtors alike prejudicially, the principles enunciated in the rulings... have been specially set forth.

28. On the other hand, as was pointed out by Das, J. in construing Section 258 of the Act in the case of *Shaiba Prasad Manjhi v. Golam Manjhi* [1919] P.H.C.C. 147 it is elementary that a statute which purports to oust the jurisdiction of the civil Court must be very strictly construed. In the present suits there is a prayer for a declaration that the sale, though ostensibly a rent sale, was not so in fact and that it cannot operate as a rent sale but will pass only the right, title and interest of the judgment-debtor. In other words, the plaintiffs seek a declaration that the

sale never possessed the legal effect which is attributed to it and the question is, whether we would be "modifying the effect of the sale" by merely stating in plain terms that it never had the legal effect which is attributed to it. I do not wish to express any decided opinion on this question because (1) the suit fails on the merits and (2) both my learned brother and I are agreed that there being a definite case in the plaint that the sale was without jurisdiction the suits are maintainable at least in form. As to the effect of Article 12, Limitation Act, I would again reserve my opinion, because in view of the findings arrived at both by my learned brother and myself the suits fail on the merits and it is not necessary to decide this question. In my opinion the, appeals should be allowed with costs and I concur with the decision given by my learned brother.