
(1936) 03 PAT CK 0024

In the Patna High Court

Jagdish Chandra Deo Dhabal Deb

APPELLANT

Vs

Shankarshan Bhumij and Others

RESPONDENT

Date of Decision : 12-03-1936

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 258, 74A, 74A(5)

Citation : AIR 1937 Patna 202

Hon'ble Judges : Mohamad Noor, J; Macpherson, J

Bench : Full Bench

Judgement

Macpherson, J.—This second appeal arises out of a suit brought in 1930, by the proprietor of the Dhalbhum estate for a declaration that the order of the Deputy Commissioner of Singhbhum, dated 16th May 1930, in T.A. Miscellaneous Case No. 3 of 1920, appointing under the provisions of Section 74.A, Chota Nagpur Tenancy Act, 1908, defendant 1, Shankarsan Bhumij as pradhan of Dhanga-am, a village in the estate, is illegal, ultra vires and without jurisdiction, and for recovery of khas possession of the village, or rather of that portion of it set out in Schedule (ka), by evicting defendant 1 therefrom. The plaintiff was successful in both the Courts below.

2. The plaint sets out as follows: In 1898 the khorposhdar holding Dhanga-am under the proprietor appointed Sudharsan Bhumij, father of defendant 1, pradhan of the village on a temporary basis for a term of nine years. The Dhalbhum estate was under ijara from 1905 to 1929 when it came into khas possession of the plaintiff. Sudharsan Bhumij held on from 1906 with the consent of the landlord until the khorposh lapsed to the parent estate when the manager of the "encumbered estate," as Dhalbhum then was wishing to take Dhanga-am into khas possession and Sudharsan Bhumij being unwilling to continue as the pradhan verbally surrendered, the pradhani office in 1915 from which date the estate is in the khas possession of the village without appointment or existence of any pradhan and in 1919 Sudharsan further executed a registered deed of abdication in favour of the manager. Nevertheless on 12th February 1930, the

three pro forma defendants applied to the Deputy Commissioner of Singhbhum on the allegation that there was a pradhan in Dhanga-am from its first establishment and it was the custom that a pradhan should hold the village and prayed for appointment of a pradhan u/s 74-A, Chota Nagpur Tenancy Act. The Deputy Commissioner appointed defendant 1, Shankarsan Bhumij, son of the previous pradhan to be pradhan, of Dhanga-am and he is in possession as such. The plaintiff sets out that in fact according to the custom of Dhanga-am there has not been a pradhan throughout and also the application was barred by limitation and he accordingly craves that the civil Court will declare him entitled to and give him khas possession of the lands mentioned in the Schedule after evicting defendant 1 therefrom.

3. In his written statement the principal defendant claimed that the suit was not tenable u/s 74-A (5) of the Act and was not triable in the civil Court u/s 139(6) of the Act; that the description in Schedule (ka) was incorrect, that the tenants of the mauza and the Secretary of State should be parties and that the suit was undervalued. On the facts he contended that Dhanga-am was not a khas village but from time immemorial has been held by his ancestors in pradhani right, that they had held long before 1898 and the appointment of 1898 also was not on a temporary basis and that they were entitled to a heritable pradhani right even without a patta, the sole right of the landlord being to realise the pradhani rent from the defendant. The allegations as to surrender in 1916 were denied, the bona fides of the application u/s 74-A asserted and the finding of the Deputy Commissioner that the mauza was pradhani supported. The Munsif of Jamshedpur held that the plaintiff had no cause of action, that the suit was not triable in the civil Court but was barred u/s 74-A, Chota Nagpur Tenancy Act, that Dhanga-am was always a pradhani mauza and the appointment of pradhan was never a temporary one; that the order of the Deputy Commissioner was not ultra vires and liable to be set aside and that the plaintiff was not entitled to obtain possession of the lands in Schedule (ka). He found however that Sudharsan had surrendered the office of pradhan to the manager of the encumbered estate, as he had taken "raiyaati settlement" of the man lands which were the remuneration of the pradhan and had thereafter paid rent, but did not find from what year he had done so. (Actually as the Record of Rights admittedly shows the position is that the man remuneration consists merely of the freedom from rent of Sudharsan's own khuntkatti occupancy lands, which of course he was entitled to retain as such even if he ceased to be pradhan.) The meaning of the term "raiyaati settlement" is that on demitting office his ancestral lands were assessed to the rent which they would have borne in the hands of any raiyat of his class. It may be further observed that though these plots of his khata No. 7 are also included in the lands in Schedule (ka), it is, as Mr. P.R. Das admits, only as part of the pradhani tenancy and not on any claim to direct possession.

4. Before the Munsif the plaintiff's contention was that the appointment of a pradhan u/s 74-A, Chota Nagpur Tenancy Act, by the Deputy Commissioner was without jurisdiction within the meaning of Section 258 of the Act since the

Deputy Commissioner refused to consider his objections that there was no custom of having always a pradhan in the village and that the application was barred by limitation. The learned Munsif held that the Deputy Commissioner had jurisdiction but almost erred in the exercise of it, and in particular that there had been no defiance of or non compliance with the essentials of procedure: if the Deputy Commissioner made no special inquiry on the question of limitation, the remedy was by way of appeal under the Act to the Commissioner of Chota Nagpur and not by civil suit. As to the existence in the village of the alleged custom of village headmanship, which he considered to be the chief question, he held, relying upon the Record of Rights and other evidence, that Sudharsan and the father and grandfather of Sudharsan had always held the village as pradhans and from 1866 under pattas having had at least one patta each, that the office was heritable, as was also admitted, and that even though the pattas were miadi or temporary (in fact they merely follow the periodical re-assessments of rent), the pradhan had a right to the new settlement and to hold without a patta at the newly-assessed rent, so that on the whole evidence taken together there was "not the least shadow of doubt that there has always been a pradhan in the village and it is by custom held by a village headman" who could not be ejected at the expiry of the term of the patta or at the will of the landlord. The late pradhan, he proceeded, could "only surrender his personal right and not the right of the tenants to have a pradhan." He accordingly dismissed the suit. In appeal the Subordinate Judge stated that the point for determination was:

Is the suit barred u/s 74-A (5), Chota Nagpur Tenancy Act, and is the order of the Deputy Commissioner appointing defendant 1 as pradhan ultra vires and liable to be set aside?

5. It was argued before him that as the village had been in khas possession since 1915 the Deputy Commissioner had no jurisdiction to appoint a pradhan since the limitation was one year u/s 231, Chota Nagpur Tenancy Act, and also that there was no custom to have a pradhan in Dhanga-am. The learned Subordinate Judge dismissed plaintiff's appeal. He pointed out that, the Deputy Commissioner had in fact considered the question of limitation and had held "that the cause of action accrued when the villagers felt the need of the appointment of a pradhan." He also pointed out that the Deputy Commissioner had found that the alleged custom existed, mentioning that the villagers had the advantage by custom of having a pradhan in the village. On the view that the Deputy Commissioner was of opinion that the application was not time-barred and that the custom existed and so had jurisdiction to decide the matter, he held that it was unnecessary for the Munsif to decide whether the custom of having a pradhan in the village actually existed since it was not the duty of the civil Court to sit in judgment over the decision of the Deputy Commissioner, that the order of the Deputy Commissioner was not shown to be tainted with any fundamental irregularity and that it was not a requisite for the jurisdiction of the Deputy Commissioner that the landlord should admit that there was a custom in the village of appointing pradhan.

6. As to the question of limitation, we are informed that this question of the period of limitation is before their Lordships of the Privy Council at the instance of the appellant in connexion with applications u/s 74-A brought at an earlier date in respect of the office of pradhan in other villages; the proprietor having lost before the Deputy Commissioner (part of whose order is reproduced by the subsequent Deputy Commissioner in the order of 16th May 1930, appealed to the Commissioner of Chota Nagpur and went in revision to the Board of Revenue, and it is the order of the Board of Revenue on this point which is impugned before their Lordships. We have not before us the materials relating to those cases. It is however enough to say at this stage that the Courts below have rightly held that the Deputy Commissioner has in fact considered the question of limitation which arose and has decided it whether correctly or incorrectly, and that the Act makes provision for correction in appeal and revision of an incorrect decision.

7. The next point is whether the Deputy Commissioner actually determined that the custom referred to in Section 74-A exists. He certainly refers to the advantage of headmanship as belonging to the tenants of Dhanga-am by custom. That reference implies a finding that the custom exists. The further statement that their interests cannot be bartered away by any individual pradhan resigning, tends in the same direction. In Para. 4 he sets out the highly significant facts that the village is entirely aboriginal and was formerly pradhani and that it is certainly to the advantage of the tenants thereof to have a pradhan. These findings have to be read in relation to the commonplace that the system of village-headman is universal among aboriginals in each of the three great estates, Porahat, the Government Kolhan and Dhalbhum which make up the District of Singhbhum, and Dhalbhum is a part of the tribal area of the Bhumij. And indeed with the pradhani swatalipi of Dhanga-am before him, with the significant absence therefrom of an entry prominently made in the record of some other villages to the effect that when the headman refuses "settlement" at the new rent, the village may be held khas by the estate and with the Record of Rights showing that the late pradhan held khuntkatti land implying that an ancestor in the male line established the village, and furnishing other unmistakable indicate of the custom of pradhani in this Bhumij khuntkatti village, of the village family of which Shankarsan is a member, it must have seemed hopeless to the proprietor's agent if once the plea of limitation failed, to argue on the facts before a Court with local knowledge that the custom alleged did not operate in respect of Dhanga-am, and it must have seemed to the Deputy Commissioner uncalled for to enter upon a dissertation on the obvious. In my judgment the Deputy Commissioner did in fact consider and determine in the affirmative the question whether Section 74-A is applicable to Dhanga-am and in particular held that the village which had always had headmen until Sudharsan vacated the headmanship and was now without a headman, is a tenancy which in accordance with custom is held by a village headman. As to the suggestion that the provision cannot refer to a village in which there was no headman at the date

when it came into operation in 1920, Section 74-A gives power to fill a vacancy existing at the date when the application is made irrespective of whether it occurred before or after the provision came into force, provided that the custom of headmanship exists at that date. That was manifestly the interpretation put upon Section 74-A by the Deputy Commissioner.

8. I am of opinion that the Deputy Commissioner's order u/s 74-A was made with and not, as alleged by the unsuccessful party, without jurisdiction and that accordingly this appeal fails. But even if the Deputy Commissioner had failed to find that the custom of headmanship exists in Dhanga-am the appellant's suit would still fail if in fact the custom exists. On the point the contesting defendant adduced evidence and the Munsif held that it established that the custom exists. The lower appellate Court did not find it necessary to determine the point. The Munsif and Subordinate Judge have long left the district and we were of opinion that on every ground it would be best that the issue of fact should be determined by us on the evidence on record. But as the orders in the order-sheet set out, the appellant has in spite of many opportunities failed to furnish the costs of preparing the paper book. The failure is deliberate and in the face of the assurance that in the circumstances the finding of the Munsif that the custom of headmanship exists in Dhanga-am prima facie must stand.

9. Actually the appellant could not fail to see that even on the facts as set out by the Munsif, it is quite hopeless to upset this finding in respect of a Bhumij khuntkatti village in Bhumij country where, until the present vacancy, a member of the village family has always been headman, once it is held that the rather lengthy vacancy has not destroyed the custom. On the facts on the record before us, the Munsif's finding is certainly not displaced and indeed is clearly correct. There being a custom of headmanship in Dhanga-am the plaintiff's claim is entirely baseless and the appeal must fail on that ground also.

10. I had thought of including in this judgment for the sake of clearness an account of the headman system in the aboriginal area of Chota Nagpur and particularly in Dhalbhum where this reclaiming tenancy is the ancient system of land tenure. But it is sufficient in the circumstances to refer to the account given in Paras. 74 to 82 of Reid's Settlement Report of 1912. The Record of Rights in Dhalbhum was being prepared by him at the same time as I was finishing the Record of Rights in the adjoining Pargana of Porahat, both being undertaken by Government to prevent encroachment on the rights of or even extrusion of the village headman, especially aboriginal headmen. Only three observations fall to be made. First, subject to the basic fact that the headmanship system is the indigenous system of village tenancy, the case of each village falls to be decided on its own facts. Next the "village headman" as defined in the Chota Nagpur Tenancy Act, and especially the aboriginal village headman, suffers severely from the confusion caused by inadvertent (and sometimes the interested) extension of a name such as pradhan to non-aboriginal or even mere non-agricultural holders of a lease with no permanent right to renewal and again by the similar extension

in popular parlance of the name thikadar with its basic implication of temporary tenancy to persons who have a permanent right in their tenancy subject only to periodical re-assessment (which generally involves enhancement of rent). The third observation is in supplement of Mr. John Reid's account. It was probably due to the necessity for compression that he makes the statement in respect of the "incidents of the tenure or office" in para. 76, which is also found in his edition of the Chota Nagpur Tenancy Act, 1908:

If the headman refuses to take settlement after the expiry of his lease at fair and equitable rates, the settlement may be made with a third person or the village may be field khas by the landlord.

11. In point of fact the portion underlined [italicized] appears in the Record of Rights as to non-khuntkatti headmen but is significantly absent from the pradhan satwalipis of Dhanga-am, and other khuntkatti villages. The differentiation is deliberate; it is not a right of the landlord to hold such a village khas. In accordance with custom that is to say the system, the village is entitled to have a pradhan, the preferential right in a vacancy appertaining to the members of the village family. As to the headmanship itself, it is generally difficult or impossible to describe it in ordinary legal, terms. Indeed attempts in that regard in regard to Chota Nagpur institutions have been attended with so much peril that the legislature in desperation described the Mundari Khuntkattidari Tenancy as "neither a tenure nor a holding." But whether the headmanship is an office with tenancy annexed or is a tenancy with an office conjoined, or whatever it is, it is always exceedingly inexpedient to attempt to interpret it in terms of ideas alien to the environment, the only safe course being to get the facts clear and in close detail for an estate first and then for the particular village. The appeal is without merits and I would dismiss it with costs.

12. Mohamad Noor, J.

13. I entirely agree. The main question for consideration is whether the order of the Deputy Commissioner u/s 74-A, Chota Nagpur Tenancy Act, can be questioned in the civil Court, and if so, to what extent. The relevant provisions of the Chota Nagpur Tenancy Act bearing on this point are contained in Sections 74-A, 139(6) and 258:

Section 74-A(1): Where a tenancy which in accordance with custom is held by a village headman has for any reason been vacated, any three or more tenants holding land within the said tenancy, or the landlord, may apply to the Deputy Commissioner to determine the person who in accordance with custom should be village headman entitled to hold the tenancy.

(2) Such application may be made notwithstanding that a person is in possession of the land of the tenancy, or part thereof, under the authority or with the consent of the landlord.

(3) On receiving such application the Deputy Commissioner shall, after giving

notice in the prescribed manner to the landlord, the person, if any, referred to in Sub-section (2) the heirs of the last village headman, the tenants and such other persons, if any, as he considers should be parties to the proceeding, make such inquiry as appears necessary, and determine the person who in accordance with custom should be village headman entitled to hold the tenancy, and shall place such person in possession of the tenancy, if such person is not already in possession thereof.

(4) In every such inquiry the Deputy Commissioner shall have regard to the entries in a Record of Rights finally published under this Act or under any law in force before the commencement of this Act and to the suitability of a person in respect of tribe:or caste, membership of the village family or of the late village headman's family (if it be not the village family), residence, character and other matters, to be the village headman of the particular village or group of villages comprised in the tenancy.

(5) No suit or application shall be entertained in any Court concerning any matter which is the subject of an application under Sub-section (1), or which has been determined under Sub-section (3), except a title suit in the civil Court, instituted within one year from the date of the order passed by the Deputy Commissioner under Sub-section (3) to establish the right of the plaintiff to succeed to the tenancy and to recover possession thereof from the person determined by the Deputy Commissioner to be the village headman entitled to hold the tenancy.

(6) No application shall be made under Sub-section (1) concerning a matter which is substantially in issue, or has been substantially in issue and has been determined in a suit instituted under the provisions of Sub-section (6) of Section 139.

Section 139(6). Subject to the provisions of Sub-section (5) of Section 74-A all suits by or against a village headman [headman of villages or groups of villages] [whether known as Mankis or Pradhans or Manjhis or otherwise] for a declaration of title in or for] possession of ejectment from or recovery of [their] his office or land comprised in his village headman's tenancy [or agricultural land] whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant and whether brought or not by or against the landlord of such land.

Section 258. Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify or set aside either directly or indirectly, any decision, order or decree of any Deputy Commissioner or Revenue Officer in any suit, application or proceeding u/s 29, Section 32, Section 35, Section 42, Section 46, Sub-section (4), Section 49, Section 50, Section 54, Section 61, Section 63, Section 65, Section 73, Section 74-A, Section 75, Section 85, Section 86, Section 87, Section 89 or Section 91 [proviso], or under Chs. 13, 15, 16 or 18, except on the ground of fraud or want of jurisdiction and every such decision, order or decree shall have the force and effect of a decree of a civil Court in a suit

between the parties and subject to the provisions of this Act relating to appeal, shall be final.

14. It has been contended on behalf of the defendant that Sub-section (5) of Section 74-A bars the present suit. This sub-section bars suits concerning any matter which is subject of an application under Sub-section (1) or which has been determined under Sub-section (3) except a particular kind of suit specified. The first bar refers to the stage when the application is pending before the Deputy Commissioner. The verb used "is" in the present tense. The word "is" does not mean "can be" or "has been" and is in contrast with "has been" which refers to the stage when the matter has been determined by the Deputy Commissioner, i.e., appointment has been made, I shall presently show that suits about the disputed claim to village headmanship are still entertainable in the revenue Courts if no application has been made u/s 74-A. The second bar, as I have said, refers to the stage when the matter has been determined by the Deputy Commissioner, i.e., the appointment has been, made. Had the sub-section stood alone there would have been perhaps some force in the contention of the defendants, but read with Section 139(6) and Section 258 it is clear that Sub-section (5) does not bar all classes of suits. The subject matter of the application can only be the appointment of a village headman and the determination of the matter referred to in Sub-section (3) of Section 74-A can only be the determination as to who should be the village headman. It does not refer to a suit like the present one which is based on the ground that the Deputy Commissioner had no jurisdiction to appoint a village headman u/s 74-A. Such a suit is expressly permitted by Section 258. What is barred is a suit which questions the appointment made by the Deputy Commissioner except in the matter provided. Whether the plaintiff has been able to show want of jurisdiction in this case is another matter and I shall deal with it later. At present I am dealing with the question of the maintainability of the present suit. Other suits referred to in Section 139(6) are also not barred, for instance, the landlord can still institute a suit before the Deputy Commissioner for ejectment of a village headman even if he be the man appointed by the Deputy Commissioner if he has behaved himself in a manner as to entitle the landlord to eject him provided that his appointment is not questioned. Then suits can be instituted by the landlord to recover possession of land which has been encroached upon by a village headman as such or a suit by the village headman on the ground that the landlord has deprived him of a portion of the land comprised in his tenancy. These are matters beyond the scope of Section 74-A.

15. Section 139 of the Act gives exclusive jurisdiction in certain class of suits and applications to the Deputy Commissioner and the cognizance of other Courts is barred. Sub-section (6) deals with suits by or against a village headman. They are (1) suits for a declaration of title in and possession of the tenancy or the office of the village headman; these are obviously suits between rival claimants for the village headmanship, (2) suits for the ejectment of the village headman or recovery of his office: these are suits by a landlord to remove the village

headman for non-performance of duty or when the village headman has lost his right to hold the office or the tenancy, and (3) suits to recover possession of land comprised in the tenancy of the village headman. The present suit does not come in any one of these classes. This section relates to a suit by or against a village headman as such. It is to be noted that Section 74-A was added to the Act by the Amending Act of 1920 and in consequence of it Section 139(6) was also amended to make it conform with the newly added section. The new words added have been underlined (italicized) and the portions omitted have been enclosed within brackets. It will be seen that the first amendment is that this sub-section has been made subject to the provisions of Sub-section (5) of Section 74-A, as a suit in the civil Court has been provided for in the latter. The second amendment is that the words village headman" have been used instead of headman of villages or group of villages," etc., etc. This was in consequence of the definition of "village headman" added by the Amending Act. The third amendment is that suit for ejectment of the village headman is provided for and the fourth is the addition of the words "whether brought or not by and against the landlord of such land."

16. Now before the amendment of 1920 a suit between rival claimants for a village headmanship was cognizable by the Deputy Commissioner only. Such a suit is still cognizable by the Deputy Commissioner if no application has been made to him u/s 74-A (1) or no appointment has been made by him u/s 74-A (3). But a new remedy has been provided not to the rival claimants but to the tenants of the village and to the landlord. It is clear that before 1920 a civil suit could only be brought when two or more persons claim to have succeeded to the headmanship. There was no provision for the tenants to get a headman appointed when the line of the last headman has become extinct or when on account of dispute between two rival claimants the office is practically vacant. There was also no provision for the tenants of the village to get a headman suited for their needs if after the office has become vacant the landlord has failed to appoint one or has appointed one who is not acceptable to them.

17. These defects were removed by the Amending Act of 1920, Section 74-A enables any three or more tenants of the village to approach the Deputy Commissioner for the appointment of a village headman. It also enables the landlord to have a village headman appointed if he wants to have one when there is a dispute between two rival claimants, or the man whom he wishes to appoint is unacceptable to the tenants. In all these cases the Deputy Commissioner can take action on the application of three or more tenants of the village or on the application of the landlord. Once the matter has become the subject of an application u/s 74-A the rival claimants cannot institute suits u/s 139(6), because the institution of suits has been made subject to the provisions of Sub-section (5), Section 74-A. But after the Deputy Commissioner has made the appointment, the aggrieved claimant has his remedy now not in the Court of the Deputy Commissioner but under Sub-section (5) in the civil Court. If however a suit to settle the dispute between the rival claimants has already been

instituted before the Deputy Commissioner u/s 139(6), an application u/s 74-A has been barred by Sub-section (6) of that sub-section. The position now therefore is this. If there are rival claimants to the office of a village headman the matter can be settled in one of two ways. One is for claimant to institute a suit before the Deputy Commissioner u/s 139(6). The suit is subject to the provisions of appeal and second appeal, etc. If no such suit is pending, or has been instituted and determined, or if there are no rival claimants and the landlord has not appointed any headman or has appointed a man not acceptable to the tenants, the tenants may approach the Deputy Commissioner for the appointment of a suitable headman.

18. The second class of suits referred to in Section 139(6) are suits for ejectment of the village headman. This was added, as I have shown, in 1920. Formerly which is the forum for such a suit was doubtful and it was held in this Court in *Tata Iron and Steel Co., Ltd. v. Raghunath Mahto* AIR 1918 Pat 392 that u/s 139(6) as it then stood, a suit for ejectment of a *pradhan* (village headman) did not lie before the Deputy Commissioner. That section refers only to suits relating to rival claims to the office. The third class of suits refer to suits for possession of lands within the tenancy of the village headman. This is a new provision. Now Section 139(6) was subject-matter of an interpretation before the amendment of 1920 in *Durga Prasad Singh v. Hari Ram Mahto* AIR 1915 Cal 685. It was held that the suit contemplated in this sub-section is a suit instituted by or against the village headman as such, and not when the suit is unconnected with his village headmanship though the plaintiff or the defendant happens to be the village headman. The present suit is for a declaration that the order of the Deputy Commissioner is *ultra vires*.

19. Then comes Section 258 of the Act which bars suits in respect of various orders and decisions of the Deputy Commissioner. In this section the words "S. 74-A" were advisedly added in order to bar suits in respect of the appointment of the headman by the Deputy Commissioner under that section. But the suits are not barred if instituted on the ground of want of jurisdiction or fraud. If the legislature had thought that Section 74-A, Clause (5) or Section 139, Clause (6), bars all classes of suits in civil Court when in any way the question of village headmanship comes in, there was no necessity of adding Section 74-A to Section 258. It is however conceded by the appellant that the suit is barred u/s 258 unless he is able to show that the Deputy Commissioner had no jurisdiction to appoint the defendant as a village headman.

20. This leads me to the consideration whether the Deputy Commissioner acted without jurisdiction. It is for the plaintiff to show the want of jurisdiction. Three grounds have been urged before us to show that the Deputy Commissioner had no jurisdiction to make the appointment: (1) that Section 74-A is not retrospective, that is, the Deputy Commissioner had no jurisdiction to appoint a village headman when the vacancy had occurred before the amendment of 1920 by which the new Section 74-A was added to the Act, (2) that the application for

appointment of a village headman was barred by limitation, and (3) that there was no custom of the village headmanship and in the absence of custom the order of the appointment is without jurisdiction. I take up these points in the above order.

21. In my opinion the fact that in this case the vacancy occurred before the amendment of 1920 does not affect the jurisdiction of the Deputy Commissioner. When an authority has been constituted by law to do a particular act or pass a particular order it is for that authority to decide all questions of law and fact which arise in the course of the proceeding and decision of which is necessary in order to enable him to pass the order which the law enjoins or authorizes him to pass. It was therefore for the Deputy Commissioner to interpret the section under which he was authorized to appoint a village headman and decide whether the vacancy mentioned in Section 74-A of the Act includes vacancies which occurred before the addition of this section to the Act. It however seems that this question was not raised before the Deputy Commissioner nor was it raised before any of the two Courts below. Apart from this, in my opinion, there is no force in this contention. There is no question of the section being retrospective, as it only requires the Deputy Commissioner to appoint a village headman under certain circumstances. The power of appointment commenced when the section came into force. We are not dealing with the case of an appointment made prior to it. There is nothing in the section which confines the appointment of the village headman only to cases where the vacancy occurred after the passing of the Amending Act. The section is general, and in my opinion an appointment can be made even if the vacancy occurred before the passing of the Act. Mr. Das contended that the last village headman surrendered the tenancy which terminated before the enactment of Section 74-A and there was no tenancy to which an appointment could be made. To uphold this contention will mean nullifying the provision of the section, because it can be said in every case of surrender that the tenancy has terminated. This argument ignores the nature of the village headmanship. It is a tenancy to which an office is attached or vice versa and in which not only the headman but the raiyats are also interested. A headman may surrender his own interest but he cannot surrender interest of his successors nor can he terminate the tenancy and deprive the raiyats of their customary right to have a headman.

22. Next comes the question of limitation in respect of which the same consideration arises. Whether a particular application is barred by limitation or not is a matter to be decided by the authority who is to act on that application. If that authority decides the question wrongly, the remedy is an appeal to the higher authority, and not a suit in the civil Court. The learned Deputy Commissioner has decided that the cause of action for filing the application accrued when the villagers felt the necessity of having a headman. It is not for the civil Court to say whether or not that interpretation is correct. No appeal lies to the civil Court against the order of the Deputy Commissioner. The jurisdiction of an authority can only be affected in either of the four ways, namely, if the

authority legally constituted (1) has no pecuniary jurisdiction, (2) has no territorial jurisdiction, (3) has no jurisdiction over the subject matter of the case, or (4) has no jurisdiction over the person with whom it is dealing. In this particular case the Deputy Commissioner had all these four jurisdictions subject of course to the question of the existence of custom which I shall take up in a moment. Mr. Das has argued that the Deputy Commissioner was given a special jurisdiction which was not possessed by him before 1920 and therefore if he made an appointment which was out of time he has exceeded his jurisdiction. I am unable to agree with this contention. An order passed on a barred application is not a nullity or ultra vires. I must overrule the contention of the appellant in this respect also.

23. The last ground taken in derogation of the jurisdiction is that a village headman cannot be appointed unless there is a custom of having a village headman in the village. The learned Munsif, being of opinion that the question of custom was not decided by the learned Deputy Commissioner, proceeded to decide it and found that the custom existed. The learned Subordinate Judge, on the other hand, was of the view that the question of custom was decided by the learned Deputy Commissioner and held that it was unnecessary to decide it in the suit and did not give his decision on this issue of fact.

24. Now two questions arise. The first is whether the learned Deputy Commissioner had decided that the custom existed, and if so, can the civil Court revise the decision in order to determine the existence of the foundation of his jurisdiction. The second is if the existence of custom has not been decided by the Deputy Commissioner, what is the effect of this omission. In my opinion, the learned Deputy Commissioner has decided the question of custom though he has not very clearly expressed it. In one portion of his judgment he says that:

It is possible that tenants had not previously felt the need for a pradhan and this fact should not now preclude them from the advantages which it was the intention of the Chota Nagpur Tenancy Act to allow them and which are theirs by custom.

25. Then further on he says that "the village is entirely aboriginal and was formerly pradhani." These observations clearly show that the learned Deputy Commissioner decided that it was customary in the village to have a headman. Mr. Das, however, argued that even if the Deputy Commissioner has decided that the custom existed, the civil Court can examine the correctness of that finding and if it finds that the custom did not exist the order of appointment ought to be set aside. In my opinion this contention has no force. The learned advocate referred us to *Secretary of State v. Jatindra Nath Chaudhury* AIR 1924 PC 175, *Secretary of State v. Fahamidannissa Begum* (1890) 17 Cal 590 and AIR 1933 122 (Privy Council). In my opinion, none of these cases is in point. In the first case the Board of Revenue had assessed a land which was already included in the Permanent Settlement. Their Lordships of the Judicial Committee held that the jurisdiction of the civil Court was not barred and that an appeal to the civil

Court provided by Regulation 2 of 1819 was not taken away by the subsequent Act 9 of 1847. In fact the decision is based upon a statutory provision which their Lordships held was still in force. In the second case there are no doubt observations of Lord Shaw to the effect that the civil Courts can examine the foundation of jurisdiction, but there is nothing in that observation to show that when a legally constituted authority which has been given jurisdiction to do a particular act if a certain set of facts exists, decides the existence of those facts, the decision can be revised by the civil Court on materials which may or may not have been before that authority. In the third case, the question was whether a particular decree was or was not a rent decree.

26. The revenue authorities, who had sold the tenure in execution of that decree, held during the course of the proceeding for delivery of possession that the decree was a rent decree. It was held by the Judicial Committee that the nature of the decree can be questioned in the civil Court. It is to be noted that neither in the Chota Nagpur Tenancy Act nor under the Rent Recovery Act, under which the delivery of possession was being given, had the Revenue Court any power to decide whether or not a particular decree which had been obtained and which purports to be a rent decree is in fact so certainly. In fact, the suit was a title suit or a declaration that the interest of the plaintiff was not affected by the sale under that decree. None of these cases can, in my opinion, be any authority for holding that while taking action u/s 74-A, Chota Nagpur Tenancy Act, the Deputy Commissioner decides that there is a custom of having a headman in a certain village, that decision can be questioned in a civil Court. Assuming, however, that the learned Deputy Commissioner has failed to find the existence of custom, the question is what is the effect of that omission. Mr. Das has contended that this omission makes the order ultra vires even if we come to the conclusion that the custom existed. I am unable to agree with this contention.

27. The foundation of the jurisdiction of the Deputy Commissioner is the existence of the custom, and not the decision that such a custom existed. I agree with the learned Subordinate Judge that a simple omission to decide the existence of custom did not take away from the Deputy Commissioner the jurisdiction to appoint a village headman, but in case of such omission it is, in my opinion, competent to the civil Court to examine whether the foundation of jurisdiction existed. If the civil Court finds that there was such a foundation, the order cannot be interfered with simply on the ground that the legally constituted authority failed to decide a fact which it was necessary to decide before the appointment could be made. The learned Munsif on the evidence before him decided that the custom existed. The learned Subordinate Judge did not pronounce any judgment on this issue. We were prepared to hear the appellant on the issue of fact but he made persistent default in paying the cost of typing the evidence. The finding of the learned Munsif as pointed out by my learned brother is on the face of it correct and the plaintiff must have felt that on the state of the record it could not be displaced. I agree that the appeal be dismissed with costs.