

(1934) 02 PAT CK 0008
In the Patna High Court

Nrisingha Charan Nandy

APPELLANT

Vs

Rajniti Parsad Singh and Others

RESPONDENT

Date of Decision : 09-02-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 1(3), 17

Citation : AIR 1934 Patna 292

Hon'ble Judges : Wort, J; Mohammad Noor, J

Bench : Full Bench

Judgement

Wort, J.—This rule was issued calling upon the plaintiffs to show cause why the order of the Subordinate Judge of Gaya, dated 18th November 1932, by which he retained jurisdiction of the plaintiffs' mortgage suit, should not be set aside. The action was transferred to the Subordinate Judge of Gaya, by the Settlement Officer of the Santal Parganas on 24th March 1931, and upwards of two years the matter has been pending before that Court. There were certain interlocutory orders made by the Subordinate Judge in the case including an order for the appointment of a receiver, against which there was an appeal by the defendants who are the applicants before this Court.

2. The question of jurisdiction of the Subordinate Judge which is now the question before us was not then taken and was not taken until the end of 1932. These facts are of importance having regard to the view which I take as to the jurisdiction of the Subordinate Judge to try the suit (apart from the other question whether the Settlement Officer had jurisdiction to transfer it to the Subordinate Judge of Gaya). As our revisional powers are discretionary I would discharge this rule on that ground alone as in my judgment the Subordinate Judge having jurisdiction to try the suit, apart from the question of the manner in which he has obtained seisin of it, this Court should not exercise its discretion in favour of the applicants. Two questions arise however as I have already indicated, the one being whether the Settlement Officer was entitled by law to transfer the suit to a Court of the Subordinate Judge situate outside the Santal

Parganas, the other being whether the Subordinate Judge has jurisdiction to try it; the second question being a branch of the main question.

3. Reference must be made in dealing with this question to the legislation concerning the jurisdiction of the Courts in the Santal Parganas.

The important statutes relating to the Santal Parganas have been set out elaborately in the judgment of their Lordships of the Judicial Committee of the Privy Council in *Maha Prasad Singh v. Ramani Mohan Singh* AIR 1914 PC 140 , and it is unnecessary to refer to them in detail here, excepting to state their main provisions and their Lordships' decision with regard to the points which are relevant in this case. Reference will also be necessary to the case of AIR 1925 280 (Privy Council) , which case arose out of the same mortgage in the earlier case and decided one of the questions with which we have to deal in this case, namely of jurisdiction. However for the purpose of one of the arguments of the defendants it becomes necessary to mention some of the earlier legislation relating to the authority of the Governor-General in Council to legislate for the Santal Parganas.

4. In the first instance reference was made to the East India Company's Act of 1773, (13 Geo. III, Chap. 63), an Act of the Imperial Parliament under which the Governor-General with his four Counsellors were enabled to make rules, ordinances and regulations subject to their registration in the Supreme Court after which they were to be "valid in law." Under the Charter Act of 1833 (III and IV, Wm. 4, Chap. 85), the superintendence, direction and control of the territories of the then British India were vested in the Governor-General in Council and his Counsellors to be styled the "Governor-General in Council." There were to be four Counsellors of which one was to be appointed from amongst those persons who were not the servants of the company.

5. By Section 43 the Governor-General in Council, as constituted under the Act, was to have power at a meeting for that purpose to make, repeal, and amend laws and regulations. The Governor-General in Council as constituted under this Act enacted Act 37 of 1855. With this Act we are concerned in this case. Up to and at this date the Governor-General in Council was the supreme legislative authority for the whole of British India. By Section 2 of the Act of 1855, the administration of justice in civil and criminal matters was vested in the officer or officers to be appointed under Cl. (2) who were to have the superintendence and jurisdiction of the districts inhabited by the Santals which districts were withdrawn from the operation of the general laws. By a proviso it was enacted that disputes of Rs. 1,000 and over should be tried and determined according to the general laws and regulations.

6. This last provision the Judicial Committee of the Privy Council had decided regulated the law to be applied by the officers under the Act and did not affect the procedure by which they were to be regulated: *Maha Prasad Singh v. Ramani Mohan Singh* AIR 1914 PC 140.

It appears that there was some question as to the validity of certain regulations made subsequent to this Act as will appear from the reference to a section of the later Act to which I am about to refer. By the India Council Act 1861 (24 and 25 Vict., Chapter 67) the legislative body was reconstituted. Additional members in number not less than 6 and not more than 12 were to be appointed. The Governor-General in Council was to have powers for making, repealing, and amending laws for all of Her Majesty's territories in India at a meeting specially convened for that purpose and to which the additional members were to be called. Section 25 of this Act removed the doubt whether the Governor-General in Council, except at meetings for making laws and regulations in conformity with the Act of 1833, had power to make rules and regulations for territories known from time to time as non-regulation districts.

7. By 33 Vict., Chap. 3 of 1870 (Section 1), the Governor-in-Council of Presidencies, Lieutenant-Governors or Chief Commissioner were given power to propose drafts of regulations subject to the approval of the Governor-General in Council which should have the force of law as if the law had been made by the Governor General of India in Council at a meeting for the purpose of making laws and regulations. This in a sense constituted a Provincial legislature.

We have therefore an Act being Act 37 of 1855, passed by the Governor-General in Council as then constituted by which the Santal Parganas were removed from the operation of the then law and regulations of the Bengal Code. This power to legislate for British India which was exercised in passing Act 37 of 1855 ceased by the Act of 1861, under which a new legislative body as we have seen came into existence.

8. It is clear that between 1861 and 1870 the Governor-General, apart from his authority at a meeting properly constituted for the purpose, had no power to make laws and regulations for any part of British India. The Act of 1870 as we have also seen revived that power in the form as provided by Section 1. The position therefore after the passing of the Imperial Act of 1870, was that the Governor-General in Council at a meeting for that purpose was the legislative body for the whole of British India and in his executive capacity, sanctioning draft laws and regulations submitted to him by the Lieutenant-Governors of Provinces, he became in a sense the provincial legislature. It was under these powers that Regn. 3 of 1872 with which we are concerned in this case came to be promulgated, Sections 5 and 5(a) as at present existing, replacing in the year 1908 the old Section 5 of the Regulation as it was originally passed. In the meantime, that is between 1872 and 1908, Regulation 5 of 1893 had been enacted under which Courts other than those of the officers referred to in the Act of 1855 came into existence.

9. These were Courts (Section 2) to be established under the Bengal, Agra and Assam Civil Courts Act of 1887 (replacing a similar Act of 1871). Under this Act was established the Court of the District Judge and Subordinate Judge. We are in no way concerned with the subsequent reforms of the legislature for India. It will

be seen that Sections 5 and 5(a), were not only specially applicable to the Santal Parganas, but they had no binding effect outside the Santal Parganas by reason of the fact that they were passed by a legislative authority having no jurisdiction to legislate for India as a whole.

10. In those circumstances the question to be decided is the effect of Section 5 and Section 5(a), Regn. 3 of 1872. Section 5 has the effect of taking out of the jurisdiction of the ordinary civil Courts any suit with regard to land or an interest in land with regard to which a settlement is proceeding. There is no doubt that this action comes within the mischief of that section. The powers of the Settlement Officer to transfer, who has seisin of a case of this nature, are granted as we see by Cl. 5(a) of the Regulation. He is entitled to transfer it to a Court established under the Bengal, Agra and Assam Civil Courts Act of 1887, which, but for that Section (being Section 5) would have had jurisdiction to try the suit.

11. A number of arguments have been raised in connexion with the subsequent provisions of that section, but with those we have no concern for the moment. It is to be noticed in the first instance that Section 5(a) was enacted in the year 1908. In the meantime as we have also seen Courts of two descriptions, other than Settlement Officers' Courts existed by reason of Regn. 5 of 1893: first the Courts established under the Bengal, Agra and Assam Civil Courts Act, and second the Courts of Officers appointed by the Lieutenant-Governor of Bengal u/s 2 of the Regulation (Act 30 of 1855). In the first instance it is therefore argued that in enacting Section 5(a) in 1908 (not forming part of Regn. 3 of 1872, when it was first promulgated), the legislative authority had in mind those Courts under the Bengal, Agra and Assam Civil Courts Act which were established in the Santal Parganas by the Regulation of 1893, and it is argued that the Legislature's intention was not to include in that class of Courts those Courts which were established under the Bengal Act outside the Santal Parganas.

12. Whether that was in fact the intention of the Legislative authority can be seen only from the language which was used in the section, the description of the Courts established under the Bengal, Agra and Assam Civil Courts Act, being (1) that it is a Court established under that Act, and (2), that it is a Court which would have had jurisdiction to try the suit but for Section 5 of the Regulation of 1872. In determining the intention of the legislature, therefore the first duty is to ascertain what Courts would have had jurisdiction apart from Section 5 of the Regulation.

13. A very elaborate argument has been addressed to us on this point and repeated references have been made to three cases, the first being *Setrucharlu Ramabhadra Raju v. Maharaja of Jeypore* AIR 1919 PC 150, the second *Maha Prasad Singh v. Ramani Mohan Singh* AIR 1914 PC 140 and the third AIR 1925 280 (Privy Council) , which was a fresh action in the same matter as that reported in *Maha Prasad Singh v. Ramani Mohan Singh* AIR 1914 PC 140. The facts of these cases briefly were these.

In the case of *Setrucharlu Ramabhadra Raju v. Maharaja of Jeypore* AIR 1919 PC 150, a mortgage action was brought under the Civil Procedure Code, with regard to lands some of which were outside and the others situate inside the agency district.

14. So far as the agency districts were concerned the CPC did not apply as it was one of the districts referred to in Section 1(3) of the Code, the districts having been scheduled by Act 24 of 1839. The question before the Judicial Committee of the Privy Council was whether the Courts outside the agency district had jurisdiction to try the suit so far as regards the lands were concerned situate in the agency district. The view expressed by their Lordships of the Judicial Committee of the Privy Council in the opinion given by Lord Dunedin was that the test to be applied was whether the two Courts had concurrent jurisdiction in the sense of Section 17, Civil P.C. Their Lordships stated that the word "Courts" in Section 17 must be held to be Courts to which the Code applies and as the agency District Courts were not Courts to which the Code applied there was no concurrent jurisdiction of those Courts with the Courts outside the agency district.

15. Therefore so far as the agency lands were concerned, the ordinary Civil Courts had no jurisdiction to deal with them. The point of that decision is that the test to be applied as to the application of the Civil P.C. In the case of *Maha Prasad Singh v. Ramani Mohan Singh* AIR 1914 PC 140, a mortgage action had been brought in the Court of the Subordinate Judge of Bhagalpur. Of the lands included in the mortgage some were situate in the Santal Parganas and some in the district of the Subordinate Judge of Bhagalpur, one-third of them being so situated. At the time that the action was brought the land was under settlement; the jurisdiction of the Bhagalpur Court was brought in question and their Lordships then decided that the Bhagalpur Court had no jurisdiction. Incidentally they decided that Section 6 of the Regulation of 1872 which deals with the rate of interest to be allowed by Courts having jurisdiction in the Santal Parganas applied to the Bhagalpur Court.

16. In the case of AIR 1925 280 (Privy Council) , the action was with regard to the same mortgage which was brought in the Bhagalpur Court and it was there decided that Section 6 to which reference has just been made applied to the Bhagalpur Court. 8. 5(c) excluded the jurisdiction of the Civil Courts and it is also clear from the reading of the section itself that the test to be applied u/s 5(a) was as to whether the Court had jurisdiction on the assumption that Section 5 had not been enacted. Having regard to the test which their Lordships of the Judicial Committee of the Privy Council in the Madras case applied, we must consider Regn. 3 of 1872. In the schedule to that enactment, part 2 (which is a schedule of enactments in force in the Santal Parganas), as regards enactments of 1908 item 5 states:

The CPC 1908, and then in the forth column Sections 38 to 42 and Section 156 and Rule 49, Order 21 in Schedule 1 and the rest of the Code only for the trial of suits referred to in Section 10, Santal Parganas Justice, Regulation 5 of 1893,

and the rest of the Code (only for the trial of suits referred to in Section 10, Santal Parganas Justice Regulation, Section 10, Justice Regulation of 1893 says that the trial of such suits (meaning suits mentioned in Section 9) shall be regulated by the CPC for the time being in force in the Bhagalpur District, etc., etc.

17. Section 9 as we have seen of that Regulation provides in the first instance that the jurisdiction of the District and Subordinate Judge established by Sections 5 and 7 of the same regulation extended to suits of which the value exceeds Rs. 1,000 and which are not excluded from his cognizance by the Santal Parganas Settlement Regulation (those actions are excluded which related to lands which were the subject matter of the settlement). Section 10 of this Regulation provides that the trial of such suits shall be regulated by the Code of Civil Procedure. Now it is on the construction of these words that most of the argument has been raised. It is suggested that the words in the Schedule 3 of 1872, "only for the trial of such suits" referred to in Section 10 mean that the Code is to refer to the method of trial and has no bearing or force with regard to their institution, and therefore Section 17, Civil P.C., does not apply.

18. The argument on behalf of the plaintiff however is this that this action could have been started in the Court of the Subordinate Judge in the Santal Parganas, but for Section 5 of the Regulation of 1872 and that the CPC in its entirety applies to such Courts. The CPC applied to the Subordinate Judge's Court in the Sahtals in the District in which certain of the lands in suit were situate. As there were lands both in the Santal Parganas and in the Gaya District the plaintiff, by reason of Section 17, Civil P.C., could elect to bring his action in the Gaya Court or in the Court of the Subordinate Judge of the Santal Parganas. It is clear therefore, so it is contended that the Gaya Court had jurisdiction (but for Section 5 of the Regulation of 1872, within the meaning of Section 5(a) of the Regulation of 1872. The Gaya Court was therefore a Court having jurisdiction within the meaning of Section 5(a) of the Regulation referred to. This, in my judgment, is the correct view.

19. The only argument that could possibly meet it is based on an artificial interpretation of the schedule of the Regulation of 1872 that is to say that in construing the expression "only for the trial of suits referred to in Section 10" the word "only" was referable to "trial" and not the class of "suits." The plain reading of the schedule seems to me to be that the Civil Procedure Code, applies only to those suits referred to in Section 10 and even if we are to take, as of course we must, the word "trial" into consideration it cannot be construed as meaning that the Code only applied to the actual procedure during the actual hearing of the suit. To construe it in that sense would be to disregard the actual wording of the schedule which is the "rest of the Code."

20. It is contended by Mr. Manuk on behalf of the plaintiffs that as regards the jurisdiction of the Court situated outside the Santal Parganas in a suit of this kind, the matter has been finally decided by the case of AIR 1925 280 (Privy

Council) . In the first place it was argued that inferentially at least the question of jurisdiction was decided in the case of *Maha Prasad Singh v. Ramani Mohan Singh* AIR 1914 PC 140, in the sense that as they decided that the Court of Bhagalpur had no jurisdiction by reason of the land the subject matter of the suit being under settlement, it must be assumed that had the land not been under settlement the Judicial Committee of the Privy Council would have decided in favour of the jurisdiction of the Bhagalpur Court. It is impossible however to hold this.

21. The only point which was decided authoritatively was that the land being the subject matter of settlement in any event the Bhagalpur Court's jurisdiction was ousted. In the later case however of AIR 1925 280 (Privy Council) , it was decided that although there were properties and the majority of them in the Santal Parganas the Bhagalpur Court had jurisdiction. The decision of their Lordships in this case was based on the fact which was found by the High Court, that the mortgagors had failed to prove that the land in suit or any part of it was notified for settlement and therefore the jurisdiction of the Court was not ousted by Section 5 of Regulation 3 of 1872.

It is clear from the judgment that the question depended so far as the argument was concerned on the question of whether there was a settlement or not, although it appears to have been admitted that if there was no settlement the Bhagalpur Court had jurisdiction.

22. It is suggested by Mr. P.R. Das that the question whether the Courts situate outside the Santal Parganas had jurisdiction (but for Section 5 of Regn. 3 of 1872), was not decided. The proposition that a decision is an authority only for that which it specifically decides is not open to doubt. But, in my judgment, in the decision of the Judicial Committee of the Privy Council the question whether Courts outside the Santal Parganas had jurisdiction was in fact determined. If the question of jurisdiction was decided it was decided and the fact that every possible argument, including the argument which is put up in this case, was for reasons best known to those engaged in the case not advanced does not detract in any way from the authority of the, decision on the specific point.

23. We can only assume that neither counsel nor their Lordships of the Judicial Committee thought that the argument which is put forward in this case based on a consideration of the question of concurrent jurisdiction depending on the applicability of the CPC was of any value. Even if it be held that the decision of their Lordships did not finally decide this point for the reasons which I have already stated in detail, I am of the opinion that the Gaya Court, being a Court established under the Bengal, Agra and Assam Civil Courts Act of 1887, was a Court which, "but for that Section (Section 5)" had jurisdiction. Now, the question arises as to whether the Settlement Officer was entitled to transfer this case to the Gaya Court. As I have stated above, the contention of the defendants is that the Courts referred to in Section 5 were Courts established under the Bengal, Agra and Assam Civil Courts Act of 1887 in the Santal Parganas and not

those outside.

24. Having regard to the view which I have expressed that the Gaya Court had jurisdiction, the question, in my judgment, is answered. But it is said that it is one thing for the Gaya Court to have jurisdiction, apart from Section 5, and quite another thing for the Gaya Court to take cognizance of the case by reason of a transfer which it is said the Settlement Officer had no jurisdiction to make and for this reason.

In enacting Regn. 3 of 1872, it is said that the Governor-General in Council, apart from a properly constituted meeting of the Governor-General in Council for the purpose of making laws, approving of the draft regulation on the recommendation of the Lieutenant-Governor and thus giving the regulation the force of law, was in fact acting not as the supreme Legislative authority of British India, but merely as a Provincial Legislature.

25. Between 1861 and 1870 as I have already stated it is admitted that he had no authority so to legislate, apart from a properly constituted meeting for that purpose, although previously, that is in 1855 when the Act excluding the Santals from the operation of the ordinary laws the legislative body passing that Act was the legislative authority for the whole of British India. By 1870 under the procedure enacted in the Act of that year the Governor-General was empowered to pass laws and regulations for the Santals. On this it is sought to distinguish between the effect of the legislation of 1855 and the regulation of 1872. It is said that the Courts of the whole of British India are bound to pay regard to the Act of 1855 (37 of 1855), but when it comes to Section 5(a), Regn. 3 of 1872 the Courts outside the Santal Parganas must treat that on the same footing as the Courts of one province would treat the legislation of another province.

26. At this point it is sought to distinguish the effect of Section 6 of the Regulation of 1872 and Section 5(a). The defendants are forced into this because it has been said that the Judicial Committee of the Privy Council has held that in dealing with the property situate in the Santal Parganas, Courts situate outside the Santal Parganas are bound to pay regard to the provisions relating to usury as set out in Section 6 of the Regulation of 1872. It is said that the difference between the one and the other is, to use the words of Lord Moulton in the case of *Maha Prasad Singh v. Ramani Mohan Singh* AIR 1914 PC 140, that the one is a matter of substance and the other of procedure.

27. Mr. Manuk contends however that Section 5 was a matter of procedure and that although Lord Moulton in the case of *Maha Prasad Singh v. Ramani Mohan Singh* AIR 1914 PC 140 did appear to distinguish Section 6 as being a matter of substance, it was not intended by their Lordships of the Judicial Committee of the Privy Council to say that the Regulation which from one point of view may be considered a matter of procedure should be disregarded. The argument is put in another way by Mr. Manuk, that if the Courts situate outside the Santal Parganas are bound to recognize the ban imposed on their jurisdiction by

Section 5 in the trial of suits which otherwise they would have jurisdiction to hear and determine, how can it be said that they are not bound to recognize the removal of the ban which is the effect of Section 5(a). The contention that although the Gaya Court might otherwise have jurisdiction but for Section 5 it cannot assume jurisdiction by transfer by the Settlement Officer seems to me to be based upon a fallacy.

28. It is said that the transfer was made by an officer the office of whom is a creation of a legislative authority whose enactments have no force outside the Santal Parganas, and whose orders have no power or effect outside the limits of his own jurisdiction, and the transfer was made under conditions, not recognized by the Civil Procedure Code, in other words they are transfers made by Judicial Officers whose orders the Subordinate Judge of Gaya are not bound to recognize. The fallacy appears to lie in assuming that in any sense of the word the transfer has the effect of an order upon the Subordinate Judge to whom the case is transferred. Whether a Court to which a transfer is made by a judicial authority has jurisdiction to test the validity of the order of the transfer may be open to question and in any event it depends upon the circumstances of the case.

29. It may be true that a Court may be entitled to refuse to take seisin of a case transferred by a Court having no jurisdiction to transfer. But the test to be applied is not whether the transferring Court has jurisdiction to make orders binding upon the Court to which the transfer is made, but whether the law binding upon the transferring Court empowers the Court to transfer.

The two questions, if they arise at all, which have to be decided by the Judge to whom the case is transferred are, first, "Have I jurisdiction to try the suit;" and secondly, "Has the Court transferring the case to me jurisdiction to transfer it."

30. In this instance, for the reasons which I have already elaborately stated, the first question would have to be answered by the Subordinate Judge of Gaya in the affirmative, and it seems to me that there is no method of avoiding the answer in the affirmative to the second question. Undoubtedly the legislative authority has given power to the Settlement Officer of the Santal Parganas to transfer the action to a "Court otherwise having jurisdiction." The arguments that the legislative body giving the power to transfer has no authority over the Courts to which under those powers the case is transferred is, in my judgment quite beside the point. It is an argument which was equally applicable to the question of the application of Sections 5 and 6, but was negated by the Judicial Committee in their decision so far as the matter related to the Santal Parganas.

31. It is said that if the Courts of which the Settlement Officer has jurisdiction to transfer a suit are Courts other than those situate in the Santal Parganas. why did the legislature give power to transfer a suit outside the presidency or province, say to Bombay for instance. This is a fallacious argument, the answer to it being that the legislature has not given that power. That in enacting the regulation the legislature was considering the presidency or province and the

mere fact that by their words they had limited the Courts to which a transfer may be made is no reason for our holding that we should limit the jurisdiction still further, a limitation which the plain reading of the section of the Regulation does not warrant. The argument is put in another way.

32. It is said that the question of whether the Gaya Court had jurisdiction to try the suit can be answered completely only by first ascertaining the method by which seisin of the case was obtained. It is said that the law recognizes only two ways. First by the institution of the suit by the procedure provided by the Civil Procedure Code, and secondly by transfer of a case by a Court to whose jurisdiction the Gaya Court is subordinate. This, in my opinion, is not well founded. The answer to this branch of the question seems to me to be the Court may obtain seisin of a case by any method recognized by law. The law recognizes the method given by Section 5(a) of the Regulation of 1872, the method being to transfer the case to a Court which under the general law would have jurisdiction. There is no question in this case of Section 5(a) of the Regulation creating a jurisdiction in the Gaya Court.

33. Jurisdiction, it already had and by the order of transfer the ban on the exercise of that jurisdiction placed upon it by local legislature was removed in my judgment, not only had the Court of the Subordinate Judge, Gaya jurisdiction to try the suit, but the Settlement Officer had jurisdiction to transfer it to that Court. For these reasons in my opinion the rule should be discharged with costs. Hearing fee 10 gold mohurs.

Mohammad Noor, J.

34. I agree that the rule be discharged. My reasons however are slightly different from those of my learned brother. The questions raised for our decision were: (1) whether the Gaya Court irrespective of the restrictions placed by Sections 5 and 5-A of Regulation 3 of 1872 has jurisdiction to try a suit involving properties a portion of which is situated within the Santal Parganas, and (2) whether the Settlement Officer of the Santal Parganas had jurisdiction to transfer the case to the Gaya Court, Regarding the first question I entirely agree with my learned brother that it must be answered in the affirmative. The test laid down by the Privy Council in the case of *Setrucharlu Rambhadra Raju v. Maharaja of Jeypore* AIR 1919 PC 150 is to be applied. It is not disputed that the Gaya Courts are governed by the Civil Procedure Code.

35. The contention however was that Section 17 of the Code, which gives concurrent jurisdiction to various Courts when the subject matter of the suits is situated within the jurisdiction of more Courts than one is not in force in the Santal Parganas. My learned brother has given reasons with which I entirely agree that the section along with other provisions of the Code has been extended to the Santal Parganas by the Schedule annexed to Regulation 3 of 1872 as amended by Regulation 3 of 1899 in respect of suits exceeding Rs. 1,000 in value and he has shown that to hold otherwise would be to apply an artificial (?)

meaning to the words:

36. The Code including Section 17 is in force in Bhagalpur. Sir Sultan Ahmad contended that the CPC only applies so far as the trial of a suit is concerned and not for the purposes of jurisdiction. I am unable to agree with this contention. Institution of a suit is the first step towards the trial of a suit and a provision that a suit is to be instituted in such and such a Court is as much a question of procedure as the steps which are to be taken in that suit subsequent to institution. In my opinion the powers of a Court are governed by the law which constitutes that Court, but the territorial limits and provision of transfer of suits, etc, are matters of procedure. It is needless to repeat the reasonings given by my learned brother.

37. I am of opinion that all the Courts situated outside the Santal Parganas to which Section 17, Civil P. C, applies have concurrent jurisdiction with the Courts inside the Santal Parganas for the trial of suits in which the properties involved are both outside and inside the Santal Parganas and the value of the properties exceed Rs. 1,000 and therefore in ordinary circumstances the Gaya Court has jurisdiction to try such suits, barring of course the restrictions placed under S.5, Regn. 3 of 1872.

38. The next question is whether the settlement Officer had jurisdiction to transfer the case to the Gaya Court. I regret I am unable to agree with the views of my learned brother in this respect. I am clearly of opinion that the Settlement Officer, though he had power to transfer the case, could not send it to the Gaya Court. The power of transfer, as has been pointed out by my learned brother, is vested in the Settlement Officer by virtue of Section 5-A, Regn. 3 of 1872, an enactment which as he has said is a sort of provincial legislation.

39. The legislative authority which has enacted that Regulation had no power under the Parliamentary Act of 1833 to enact for British India generally. Its power is confined to enact for the good government of certain tracts only. Though every Court outside the Santal Parganas must take judicial notice of the laws in force in the Santal Parganas, they cannot be governed by them. I give an example. Supposing the local legislature of Bihar and Orissa enacts that a Subordinate Judge may transfer a suit to another Subordinate Judge having jurisdiction to try it. This act will be binding upon the Courts situated in Bihar and Orissa. But supposing a Subordinate Judge of this province purporting to act under this enactment sends the case outside Bihar and Orissa, say to Allahabad (under the CPC which governs the Allahabad Court the power of transfer from one province to another is given to the High Courts only). I have no doubt that the Allahabad Court will not and cannot recognize this transfer and such a transfer cannot give jurisdiction to the Allahabad Court to proceed with the trial of such a suit. Similar is the case here.

40. The Santal Parganas may be taken to be province where the legislative authority is different from that of the rest of British India. The Act of that

legislature will have no legal force outside the Santal Parganas and therefore the Court situated outside the Santal Parganas cannot take up cases on transfer from the Settlement Officer of the Santal Parganas. I am also of opinion that the framers of Regn. 3 of 1872 when they stated in Section 5-A that the Settlement Officer can transfer a suit instituted before him to a Court established under the Bengal, Assam and Agra Civil Courts Act of 1887, had no other Court in their minds except the Court established under that Act in the Santal Parganas itself. This Section 5-A was substituted in Regn. 3 of 1872 by Section 2, Regn. 3 of 1908. Prior to 1908 there was no provision for transfer of suits by a Settlement Officer to a Civil Court.

41. In 1908 when the legislature of the Santal Parganas provided for the transfer of suits by the Settlement Officer to a Civil Court established under the Act of 1887 such Court had already been established by the Justice Regulation of 1893 and they had no other Court in their minds except the Courts so established by them. They could not have been thinking of other Courts established by any other authority, otherwise I see no reason for them to restrict the transfer to a Court established under the Act of 1887 only. Courts established under the Act of 1887 may be situated outside the local limits of the Local Government. They may be in Assam or in the province of Agra. If the framers of Section 5-A contemplated a transfer to Assam or to any Court in the province of Agra I see no reason why they could not have contemplated a transfer to Bombay or Madras or the Punjab. From what we have already held in connexion with the jurisdiction of the Courts outside the Santal Parganas to try suits involving properties situated in the Santal Parganas we have shown that the test is whether the two Courts are governed by Section 17, Civil P.C. Other provinces like Bombay, Madras, the Punjab, etc., have their own Civil Courts Acts and those Courts are governed by Section 17, Civil P.C.

42. It is clear from what we have already stated that such Courts ordinarily have jurisdiction to try suits relating to properties inside the Santal Parganas provided that a portion of the subject matter of the suit is within the limits of their own jurisdiction and the value exceeds Rs. 1,000. It is not difficult to conceive that a suit may be instituted in Bombay or in the Punjab involving properties partly situated in any one of those provinces and partly in the Santal Parganas. Leaving aside Section 5 which I am not considering at present, those Courts will have jurisdiction to proceed with the trial of suits relating to properties in the Santal Parganas also. Supposing a plaint instituted before a Settlement Officer involves some properties situated in Bombay or the Punjab, I see no reason why the Settlement Officer should not have been empowered to transfer such a suit to Bombay or the Punjab, while he has been given power to transfer it to Assam or to Agra. It would have been enough if the framers of Section 5-A, Regn. 3 of 1872 had stopped at the words "tried by a Civil Court," There was no necessity for adding the words "established under the Bengal, Assam and Agra Civil Courts Act, 1887." These words were added as these were the Courts which had been established in the tracts for which they were legislating.

43. Then again the legislature of the Santal Parganas could not have enacted for something to be done outside the Santal Parganas. Section 5-A, C1. (5) places a certain duty upon the Court to which the suits are transferred and enjoins it to do a certain thing. It is obvious that the local legislature of the Santal Parganas could not have thought of imposing any duty upon the Courts which were not subject to their legislative jurisdiction. Therefore as I have said, in my opinion the Settlement Officer had no jurisdiction to send the suit to Gaya though he had jurisdiction to transfer it.

44. Now, as we have held, there is no inherent want of jurisdiction in the Gaya Court. The ban imposed by Section 5, Regn. 3 of 1872 was removed and the Gaya Court had full jurisdiction to receive the plaint if properly presented and proceed with the trial. It is true that in the present case the suit has not been instituted before it in the manner in which suits are to be ordinarily instituted. The plaint has been received by him in an irregular manner. The irregularity does not go to the root of the jurisdiction. It is not disputed that the Settlement Officer could send it to a civil Court constituted under the Bengal, Assam and Agra civil Courts Act of 1887 situated within the Santal Parganas itself.

45. That Court is subordinate to this Court as much as the Gaya Court is. Ordinarily both the Courts had concurrent jurisdiction to try the suit. Apart from this it would always have been open to us to transfer the suit from the Santal Parganas to Gaya. In this case, as I have said, there is no inherent want of jurisdiction, but it is only a case of an irregular receipt of plaint. We should not therefore exercise our discretionary power of revision in a case like this and I agree that the rule should be discharged.