

(1936) 03 BOM CK 0012
In the Bombay High Court

Nrisingha Charan Nandy Choudhry

APPELLANT

Vs

Rajniti Prasad Singh

RESPONDENT

Date of Decision : 04-03-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 17, 22, 23

Citation : (1936) 38 BOMLR 768

Hon'ble Judges : Shadi Lal, J;Roche, J;Alness, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Shadi Lal, J.—The suit, out of which this appeal arises, was instituted in the Court of the Settlement Officer of the Sonthal Parganas, to enforce two mortgages comprising landed property, the major portion of which was situated in the Sonthal Parganas, and the remainder in the Gaya district. The plaintiffs, who were the mortgagees, submitted with their plaint an application to the Settlement Officer asking him to transfer the suit for trial to the Court of the Subordinate Judge at Gaya; and on this application he transferred the suit to the District Judge of Gaya, who transferred it to the Subordinate Judge of Gaya. When the case came on for hearing before the Subordinate Judge, the defendants challenged his jurisdiction to entertain the suit; but their objection was overruled, not only by the trial Judge, but also by the High Court at Patna to whom the case was taken on revision. From the judgment delivered by the High Court, this appeal has, by special leave, been brought by one of the defendants; and the question of jurisdiction has again been debated by the learned counsel for the parties.

2. The Sonthal Parganas, which originally formed part of the Presidency of Bengal and are now included in the province of Bihar and Orissa, were considered to be a backward tract; and it was, therefore, deemed expedient that that territory should be governed, not by the general laws and regulations in force in the Presidency, but by such laws as may be specially enacted for, or

extended to, it. To. carry out this object a statute entitled the Sonthal Parganas Act, XXXVII of 1855, was passed by the Governor-General of India in Council, providing, inter alia, for the administration of civil and criminal justice by the officer of officers, under whose superintendence and jurisdiction the district of Sonthal Parganas was placed. The law as enacted by that statute was subsequently amended and supplemented by various Acts and Regulations, but their Lordships consider it unnecessary to enter upon an examination of the history of the legislation governing the constitution of the courts established for the administration of civil justice in the district, or of the laws to be followed by them. Their Lordships will deal only with the law which has a direct bearing upon the question of jurisdiction raised by the appeal.

3. It may be mentioned at the outset that at the time of the institution of the suit a settlement was being made of the district of Sonthal Parganas; and, as the plaintiffs sought to enforce their claim by a sale of the mortgaged property including the land situated in that district, they filed their plaint before the officer making the settlement. This was done in compliance with Section 5 of the Sonthal Parganas Settlement Regulation, III of 1872, which, as re-enacted in a modified form by the Sonthal Parganas Settlement (Amendment) Regulation III of 1908, reads as follows :-

5 (1) From the date on which, u/s 9, the Lieutenant-Governor declares, by a notification in the Calcutta Gazette, that a settlement shall be made of the whole or any part of the Sonthal Parganas, until the date on which such settlement is declared, by a like notification, to have been completed, no suit shall lie in any Civil Court, established under the Bengal, Agra and Assam Civil Courts Act, 1887, in regard to-

- (a) any land or any interest in, or arising out of, land, or
- (b) the rent or profits of any land, or
- (c) any village headship or other office connected with any land,

in the area covered by such first-mentioned notification; nor shall any Civil Court proceed with the hearing of any such suit which may be pending before it.

" (2) Between the dates referred to in sub-section (1), all suits of the nature therein described shall be filed before or transferred to an officer appointed by the Lieutenant-Governor u/s 2 of the Sonthal Parganas Act, 1855, or Section 10 of this Regulation, according as the Lieutenant-Governor may from time to time direct, and such officer shall hear and, even though during the hearing the settlement may be declared to have been completed, determine them.

4. It must be observed that the civil Courts referred to in Sub-section (I) were competent to hear all civil suits in which the matter in dispute exceeded Rs. 1,000 in value; but they were deprived of their jurisdiction in respect of the suits relating to lands in the Sonthal Parganas pending the completion of the settlement. Such suits were, as enacted by Sub-section (2), to be heard and

determined by an officer appointed u/s 2 of the Sonthal Parganas Act, 1855, or by an officer appointed u/s 10 of the Regulation to make the settlement.

5. The officer thus invested with special jurisdiction may, however, consider it desirable that a suit of the description mentioned in Sub-section (I) should be tried by an ordinary civil Court; and has, therefore, been authorised to transfer it to such Court for trial. This authority is conferred by Section 5A, which, so far as is material to the question before their Lordships, is in these terms :-

5a.- (1) Notwithstanding anything contained in Section 5, whenever it appears to any officer empowered thereby to try any such suit to be just and expedient that the suit or any issue arising therein should be tried by a Civil Court/established under the Bengal, Agra and Assam Civil Courts Act, 1887, which but for that section would have had jurisdiction to try the suit, he may, either on the prayer of the parties or of his own motion but subject to the control of the officers to whom he is subordinate, make a certificate to that effect and transfer the record, if any, to such Court.

" (2) On receipt of any such certificate and on payment of such court-fees as would have been payable if the suit had been originally filed in such Court (if the said fees have not already been paid), the Court shall proceed to hear and determine such suit or issue as if the suit had been originally instituted therein.

6. It was in exercise of the power conferred by Sub-section (1) of Section 5A that the Settlement Officer, before whom this suit was filed, recorded a certificate to the effect that it appeared to him just and expedient that it should be tried by a competent civil Court in the Gaya district, and sent the record of the case to the District Judge, Gaya, who transferred it to the Subordinate Judge of that district.

7. There can be no doubt, and indeed it is not disputed, that the Settlement Officer was entitled to make an order that the suit should be heard, not by him, but by a competent civil Court. The rule to determine the civil Court competent to try it is laid down in the sub-section itself. That Court must satisfy two conditions : (1) it must be a civil Court established under the Bengal, Agra, and Assam Civil Courts Act, 1887 (which may be conveniently referred to hereinafter as the Civil Courts Act); and (2) it must be a Court, which, but for Section 5 of the Regulation, would have had jurisdiction to try the suit.

8. It is argued for the appellant that both these conditions are satisfied by the Court of the Subordinate Judge established under the Civil Courts Act within the Sonthal Parganas, but not by any Court established outside that district. The first part of this argument is unassailable, but the second part, which seeks to deny the jurisdiction of the Gaya Court, cannot be accepted. It is beyond dispute that the Court of the Subordinate Judge at Gaya has been established under the Civil Courts Act, and the crucial question is whether that Court fulfils the second condition.

9. Now, the mortgage deeds include, as already stated, lands situated, not only

in the Sonthal Parganas, but also in the Gaya district. What is the ordinary rule for determining the Court which can take cognizance of a suit for immovable property situated within the local limits of two or more tribunals ? The answer is furnished by Section 17 of the Code of Civil Procedure, Act V of 1908, which provides that where a suit is to obtain relief respecting immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate.

10. The plaintiffs maintain that, as a portion of the mortgaged property was situate in the district of Gaya, they could, in the absence of Section 5 of the Sonthal Parganas Settlement Regulation, institute their suit in the Court of the Subordinate Judge at Gaya and were not bound to institute it in the Court of Subordinate Judge in the Sonthal Parganas. But, as laid down in (1919) L.R. 46 I.A. 151 (Privy Council) , the choice given by Section 17 can be utilised only if the Code applies to both the Courts. It is incontrovertible that the whole of the Code is applicable to the Gaya Court, but it is urged that the section in question has not been extended to the Court of the Subordinate Judge in the Sonthal Parganas. It is necessary to consider whether there is any justification for this contention.

11. The learned counsel for the appellant argues that the Sonthal Parganas Act, XXXVII of 1855, which removed the district of the Sonthal Parganas from the operation of the general laws and regulations governing the Presidency of Bengal, specified only certain laws which were extended to that district, and that Section 17 or its predecessor is not to be found in that list. It is true that that statute provided a complete code of the laws which then governed the district, but it did not prevent an addition to that list of other laws specially made applicable to the territory thereafter.

12. Now, the Sonthal Parganas Justice Regulation, V of 1893, introduced important changes in the law relating to the administration of justice in that district. It added to the special courts already existing therein a new class of courts, namely, the Court of the District Judge and the Courts of Subordinate Judges which were established under the Civil Courts Act, and expressly provided by Section 10 that the trial of the suits in those courts should be regulated by the CPC as for the time being in force in the Bhagalpur district. The Code including Section 17 is undoubtedly in force in the Bhagalpur district, and consequently its operation extends also to the Courts established in the Sonthal Parganas under the Civil Courts Act. It is, however, said that only that portion of the Code, which regulates the trial of suits, has been extended to the Sonthal Parganas, and that the word " trial " does not include jurisdiction to take cognizance of the suit. There is in the opinion of their Lordships no foundation for this argument. In their view the provision that " trial " of suits is to be " regulated " by the Code includes all the essential matters governing the hearing of a cause, including the preliminary matter of the competence of the Court to entertain it.

The Code therefore supplies, not only what may be called procedural rules, but also the rules governing jurisdiction.

13. It follows that Section 17 is applicable to the Court of the Subordinate Judge in the Sonthal Parganas, as well as to the Court at Gaya; and, if Section 5 of the Regulation had not been enacted, the plaintiffs could have instituted this suit in the Gaya Court, and that Court would have been competent to try it. Both the conditions necessary for the exercise of the power of transfer conferred upon the Settlement Officer have, therefore, been satisfied.

14. The argument is then advanced that it was not contemplated by the legislature that suits relating to lands in the district of Sonthal Parganas, while under settlement, should be heard and determined by a civil Court established outside that district. The intention of the legislature must be gathered from the language used by it, and the expression " a Civil Court established under the Bengal, Agra and Assam Civil Courts Act, 1887 " is wide enough to include a civil Court established in the district of Gaya. The Court, in which the suit is now pending, was established under that Act, and there is nothing in the language of Section 5A of the Regulation to show that that Court was excluded from its operation.

15. Moreover, the phrase " Civil Court established under the Bengal, Agra and Assam Civil Courts Act, 1887 " is used, not only in Sub-section (1) of Section 5A, but also in subs. (1) of Section 5; and it should have the same meaning in both the sub-sections. It cannot be disputed that that expression, as used in Sub-section (1) of Section 5 must include a Court established under the Civil Courts Act outside the Sonthal Parganas; as it is the only law which has been invoked to deprive such a Court of the jurisdiction which it might have under the CPC to try a suit relating to land in the Sonthal Parganas during the pendency of the settlement. It follows that a Court established outside that district must come within the ambit of the same expression as used in Sub-section (1) of Section 5A. In other words, the latter sub-section is calculated to remove the ban imposed by the former sub-section.

16. Lastly, it is contended that, even if the Settlement Officer had removed the bar to the jurisdiction of the Subordinate Judge at Gaya by making a certificate u/s 5A, Sub-section (1), he had no authority to make an order binding upon the Subordinate Judge, who was, in no way, subordinate to him. But the language of the statute empowers the Settlement Officer to transfer the case to a competent civil Court established under the Civil Courts Act, and the Court of the Subordinate Judge at Gaya is certainly such a Court.

17. It is true that that Court is not subordinate to the Settlement Officer and may not be bound to obey his order. But this is a mere matter of comity between the two Courts and cannot affect the jurisdiction of the Subordinate Judge. If the Gaya Court had refused to receive the plaint, the plaintiffs could have moved the High Court, to which it was subordinate, to direct it, u/s 22 read with Section 23

of the Code of Civil Procedure, to entertain the suit. The fact, however, remains that the Subordinate Judge of Gaya has received the plaint, and in their Lordships' opinion he has jurisdiction to hear and determine the suit.

18. For the foregoing reasons their Lordships concur in the conclusion reached by the High Court. They will, therefore, humbly advise His Majesty that the appeal should be dismissed with costs.