

CIVIL RULE.

Before Coxe and D. Chatterjee JJ.

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Feb. 17.

SARDHARI SAH

v.

HUKUM CHAND SAH.*

Sonthal Parganas—High Court, Jurisdiction of—Suits exceeding Rs. 1,000 in value—Sonthal Parganas Civil Rules 1905, rule 29—Sonthal Parganas Act (XXXVII of 1855) ss. 1, cl. (2), and 2—Sonthal Parganas Settlement Regulations (III of 1872) s. 27—Sonthal Parganas Justice Regulation (V of 1893) s. 5—Civil Procedure Code (Act V of 1908) s. 115—The Charter Act (24 & 25 Vic. c. 104) s. 15.

In a suit in which the matter in dispute exceeds Rs. 1,000, the High Court is not debarred by anything in the local Acts and Regulations of the Sonthal Parganas from revising the proceedings of the subordinate Judge, who is subject to the jurisdiction of the High Court under the general powers of superintendence over the subordinate Courts, as contained in the Charter, and an order by the Subordinate Judge adjourning a mortgage sale, pending an enquiry directed to be made by the Deputy Commissioner, may be revised by the High Court. The High Court, however, cannot interfere with an order of the Deputy Commissioner directing an enquiry or with an enquiry by the Subdivisional Officer.

Dungaram Marvany v. Rajkishore Deo (1) followed.

Tej Ram v. Harsukh (2) referred to.

RULE granted to Sardhari Sah, the decree-holder.

On the 19th June, 1911, the plaintiff, Sardhari Sah, obtained a mortgage decree for Rs. 3,338-4, in the Court of the Subordinate Judge of Deoghur, with respect to certain property described as *maurusī mo-karrari*. This decree was, subsequently, made final and on the 18th April, 1912, the property was directed to be sold. Objections were taken to the sale by one

* Civil Rule, No. 1363 of 1913, against the order of J. M. Christian, Subordinate Judge of Deoghur, Sonthal Parganas, dated Sept. 29, 1913.

(1) (1890) I.L.R. 18 Cal. 133.

(2) (1875) I.L.R. 1 All. 101.

Surajmal Marwari and the judgment-debtors on the ground, that this decree was incapable of execution, as there was no specification of the mortgaged property therein. In addition to this objection Surajmal Marwari objected to the sale on the further grounds, that the mortgaged property was the *maurusi mokarrari* property of the judgment-debtors and the sale would be prejudicial to Surajmal Marwari's interest as landlord, and that the sale of the property without the consent of the zamindars would be against the practice prevailing in the Courts of the Sonthal Parganas. On the 7th June, 1912, the Subordinate Judge directed the decree to be amended by the insertion of a specification of the mortgaged property and refused to consider the other grounds of objection, as Surajmal Marwari was an outsider and had no *locus standi*. Thereafter, on the 14th December, 1912, when the plaintiff applied for sale of the mortgaged property in execution of his amended decree, the Subordinate Judge called for the zemindar's *kaifat*. On the 26th January, 1913, the Maharajah of Gidhour put in his *kaifat*, stating, that he had no objection to the sale, if only the *maurusi mokarrari* right of the tenants was to be sold. Surajmal Marwari also put in his *kaifat* on the 19th March, 1913, stating that the judgment-debtors had no *maurusi mokarrari* right to the property mortgaged, but were merely tenants at will, and that he had no objection to the sale of the tenants' right in the holding. The Subordinate Judge having referred this matter under rule 29 of the Rules for the guidance of the Civil Courts in the Sonthal Parganas, 1905, to the Deputy Commissioner for sanction to the sale, the latter, on the 31st March 1913, granted the sanction and on the same date Surajmal Marwari filed his objections to the sale before the Deputy Commissioner. On the 4th April,

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1913, the Deputy Commissioner in answer to these objections directed the Subdivisional Officer to enquire and report what interest the judgment-debtors actually had in the mortgaged property, and in the meanwhile ordered the sale of the same to be kept in abeyance. In accordance with these directions, the sale proceedings were suspended and notice was issued on the plaintiff, fixing the 7th June, 1913, for enquiry. The plaintiff, thereupon, moved the High Court against the order of the Deputy Commissioner and obtained a Rule, under which this order was set aside and it was ordered that Surajmal Marwari be discharged from the record and paid his costs and that the property be sold as described in the mortgage decree, subject to the objection of the zamindar that it was not saleable without his consent. Subsequently, on the 25th July, 1913, the abovementioned order of the High Court was amended at the instance of the plaintiff and with the consent of the parties, and it was directed that the mortgaged property be sold subject to the objection of the landlord, Surajmal Marwari, that it was not *maurusi mokarrari*, but a tenancy-at-will. The case then went back to the Subordinate Judge and on the 26th August, 1913, Surajmal Marwari again applied to the Deputy Commissioner, without notice to the plaintiff, for a further enquiry into the interests of the judgment-debtors on the allegation that the High Court had directed that such enquiry should be made before the sale. The Deputy Commissioner directed the Subdivisional Officer, on the 27th August, 1913, to make the necessary enquiry and report on the matter and followed these directions up by a letter, dated the 25th September, 1913, to the same purport. Upon the plaintiff, thereafter, taking steps to bring the mortgaged property to sale in accordance with the order of the High Court, the Subordinate Judge in his

capacity of Sub-divisional Officer rejected the plaintiff's application, on the 29th September, 1913, and refused to go on with the sale proceedings on the grounds that the Deputy Commissioner had ordered a further enquiry in this matter and that notices had been issued on the parties fixing the 8th December, 1913, for the same. Thereupon, the plaintiff applied for and obtained this Rule from the High Court.

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The Deputy Legal Remembrancer of Bihar and Orissa (Mr. S. Ahmed), for the Government, contended, *first*, that rule 29 of the Sonthal Parganas Civil Rules, 1905, applied to all suits irrespective of their value; and, *secondly*, that the jurisdiction of the High Court to interfere, whether under section 115 of the Code of Civil Procedure or under section 15 of the Charter, was barred. With regard to the first contention, the policy of the Government in the Sonthal Parganas was to protect the interests of the Sonthals from the greed of foreign traders. With that object in view, several regulations were passed and Circular Orders issued. Local officers were vested with extraordinary powers, and interference by the High Court has never been contemplated. All technicalities must be avoided and the principles of equity applied in all dealings between traders and the Sonthals: see the Sonthal Parganas Manual, 1911, page 11, Resolution of the Government, dated the 21st July, 1884, in the Calcutta Gazette Supplement, pages 1263, to 1266, and the Commissioner's letters Nos. 311J, 1238J and 535J. The practice of referring matters involving the rights of tenants to the Deputy Commissioner and those concerning proprietary interests to the Commissioner has been uniform since 1884 and the Deputy Commissioner's power to interfere under rule 29 of the Sonthal Parganas Civil rules has never been

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questioned, irrespective of the value of the suit in which this power was exercised. There were great advantages in this procedure. There were numerous non-transferable *ghatwali* tenures in the Sonthal Parganas, and if no reference were made to the Commissioner at the time of sale there would be a great risk of these tenures being sold as private estates. As regards the sale of *railyati* rights, the reference to the Deputy Commissioner would enable him to see whether the provisions of section 27 of Regulation III of 1872 have been observed. In no case could a tenant's rights be sold without notice to the zemindar and the recording of the same in the Record of Rights. It would, therefore, be idle to suggest that Regulation III of 1872 dealt only with suits below Rs. 1,000 and that nothing in that Regulation applied to a suit above Rs. 1,000. The judgments in the Regular Appeal No. 48 of 1911 (1) and in Civil Rule No. 3829 of 1911 (2) relied on in support of the first contention. As to the second contention, the High Court had no jurisdiction to interfere in the present case. Section 115 of the Code of Civil Procedure had no application, Regulation III of 1872, s. 27, proviso (c), gave the Commissioner jurisdiction to interfere in such matters. The High Court had also no power to interfere in this matter under section 15 of the Charter. Moreover, the order granting adjournments was an interlocutory order and with such orders this Court did not usually interfere.

Mr. S. P. Sinha (with him *Babu Bipin Bihari Ghose* and *Babu Mohini Mohan Chatterji*), for the petitioner. The Regulations governed only suits below Rs. 1,000 : see Act XXXVII of 1855, Section 2, Regulation III of 1872, Section 3 and Regulation V of 1893, Sections 5, 6 and 7. The Civil Courts Act of

(1) Unreported.

(2) Unreported.

1887 applied to suits valued above Rs. 1,000 and the Local Government had no authority to give any directions as to such suits. The Court of the Subdivisional Officer in the present case was clearly appointed as the Court of the Subordinate Judge. He was the Civil Court under that Act and as Subordinate Judge he was not under the control of the Local Government. Section 67 of the Code of Civil Procedure enabled the Local Government to make rules as to sales of land in execution of decrees. There was, however, no notification published under that section. The Lieutenant-Governor had the power to give directions to the officers appointed by the Local Government, but not to those appointed under the Civil Courts Act. In none of the rules in the Manuals of 1901 and 1905 did the Local Government purport to lay down the rules for the guidance of officers acting under the Civil Courts Act. If the Government wished to make those rules applicable, they must do so expressly under section 67 of the Code of Civil Procedure, but until that was done the Civil Courts remained subject to the jurisdiction of the High Court. Both sides were agreed that there was no question of *raiyyati* holding involving settlement operations. Such operations did not come before the Civil Courts. The Subdivisional Officer, therefore, as Subordinate Judge, was bound to carry out the sale under the directions of the High Court and he could not make enquiries in his capacity as Subdivisional Officer and then proceed under his authority as Subordinate Judge: *Dungaram Marwary v. Rajkishore Deo* (1), *Sorbojit Roy v. Gonesh Prosad Misser* (2) and *Kaliprosad Rai v. Meher Chandro Roy* (3). The two unreported cases referred to on

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(1) (1890) I.L.R. 18 Calo. 133.

(2) (1884) I.L.R. 10 Calo. 761.

(3) (1878) I.L.R. 4 Calo. 222.

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behalf of the Government were not applicable to the present case. In Civil Rule No. 4823 of 1912 (1) that point was raised and this Court followed the ruling laid down in the case of *Dungaram Marwary v. Rajkishore Deo* (2).

Mr. C. R. Das and *Babu Surendra Nath Ghosal*, for the opposite party, supported *Mr. Sultan Ahmed*.

Cur. adv. vult.

COXE J. The petitioner in this case obtained a decree for sale on a mortgage and the property was advertised for sale on the 18th April 1912. The opposite party, *Surajmal Marwari*, claims to be the landlord of the judgment-debtor and he objected to the description of the property as being the *mokar-rari maurusi* property of the judgment-debtor, inasmuch as he contends that the judgment-debtor is a mere tenant-at-will. Various references were made to the landlords and the executive authorities and ultimately the petitioner came up to this Court and obtained a Rule on the opposite party to show cause why the property should not be sold. The order ultimately passed on that Rule ran as follows:—

“After some discussion the decree-holder, petitioner has agreed that the objector zemindar shall be discharged from the record and that the property shall be put up for sale as described in the mortgage-decree.

Let the opposite party, *Surajmal Marwari*, be discharged from the record and the property sold as described in the mortgage-decree.

The opposite party is entitled to his costs throughout.

The property will of course be sold subject to the objection of the landlord, *Surajmal Marwari*, that it is

(1) Unreported.

(2) (1890) I.L.R., 18 Calc. 133.

not *maurusi mokarrari* and that it is a tenancy at will."

The case then went back to the Subordinate Judge. Thereupon, Surajmal applied to the executive authorities for a further enquiry. The Deputy Commissioner called for a report from the Subdivisional Officer, who happens to be also the Subordinate Judge. That officer accordingly, as Subordinate Judge, has adjourned the sale proceedings while he makes an enquiry as Subdivisional Officer. The petitioner accordingly came again to this Court and obtained this Rule on the opposite party to show cause why the mortgaged property should not be sold without further delay.

So far as the opposite party is concerned the Rule presents no difficulty. The former order was passed with his consent and he cannot be heard to say that the Subordinate Judge must again decide his objection before proceeding with the sale. His contention that he did not agree to the order and that it is not binding on him is childish.

But as I had grave doubts whether the matter was within our powers, and as the Deputy Commissioner, in submitting the records, reported that application had been made to Government to be represented at the hearing of the Rule, notice was given to the Government and we have heard the Deputy Legal Remembrancer against the Rule.

On consideration I do not think that we are debarred by anything in the local Acts and Regulations of the Sonthal Parganas from revising the Subordinate Judge's proceedings. The learned Deputy Legal Remembrancer has relied on rule 29 of the rules for the guidance of Civil Courts in Sonthal Parganas issued on the 18th August, 1905, which reproduced in a modified form earlier rules on the subject. This

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rule prescribes that the sale of tenants' rights shall be subject to the consent of the Deputy Commissioner, the landlord also being given an opportunity to object. These rules are issued "with reference to the provisions of section 1, clause (2), of the Sonthal Parganas Act, 1855, and section 27 of the Sonthal Parganas Justice Regulation, 1893, for the guidance of the officers appointed under section 2 of the said Act to administer Civil Justice." Section 27 of the Regulation need not detain us as it merely enacts that directions issued under the Act must be consistent with the Regulation. Under the Act officers are made subject to the directions of the Lieutenant-Governor, and the administration of civil justice among other things is vested in those officers. It may, therefore, seem to follow that officers administering civil justice are subject to the directions of the Lieutenant-Governor. Then, however, comes a proviso that all civil suits over Rs. 1,000 in value shall be tried and determined according to the general law in the same manner as if the Act had not been passed. Officers, therefore, trying such suits are independent of the Lieutenant-Governor's direction and have to try them as if the Act, from which alone the directions derive their validity, had not been passed. Can it, therefore, be said that this state of things lasts only up to decree and has no application to proceedings in execution, which are proceedings in suits? I think it clear that this was not the intention of the Legislature. Turning to the Sonthal Parganas Justice Regulation, 1893, I find the Civil Courts divided into (i) Courts established under the Courts Act, and (ii) Courts of officers appointed by the Lieutenant-Governor under section 2 of the Act. This surely justifies the inference that the Legislature not only did not regard Subordinate Judges as subject to directions under the Act of 1855 but did not even regard

them as officers appointed by the Lieutenant-Governor under that Act. That being so, I think it is impossible to hold that such Courts are subject to the directions of the Lieutenant-Governor under the Act of 1885. This seems to be in accordance with the decision in *Dungaram Marwary v. Rajkishore Deo* (1).

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Of course, we cannot interfere with an order of the Deputy Commissioner directing an enquiry, or with an enquiry by the Subdivisional Officer. But the Subordinate Judge is subject to our jurisdiction and an order by him adjourning a sale may be examined by us.

Reference has also been made to section 27 of the Sonthal Parganas Settlement Regulation. It is contended that this section binds all Courts whether trying suits over Rs. 1,000 or not. I see no reason to doubt that this is so, but the section has no application to the present case.

Assuming that it applies to execution sales at all, an assumption with which the words "every other contract or agreement," seem somewhat inconsistent, the section only applies to transfers by *raiyats*, and the learned pleader for the opposite party admits that the judgment debtor is not a *raiyat*.

I do not think that an order of this nature comes within section 115 of the Code. No case has yet been decided. But we have general power of superintendence over the subordinate Courts under the Charter, and I think that this is a case in which that power might fitly be exercised. Personally, I should be very loth to hold that we can alter wrong judicial orders under that power, and incline to the views stated in *Tej Ram v. Harsukh* (2). But here, though I do not for a moment suggest that the Subordinate Judge desires to be anything but entirely loyal to the orders

(1) (1890) I. L. R. 18 Calc. 132.

(2) (1875) I. L. R. 1 All. 101.

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of this Court, the practical effect of his action is that the orders of this Court, passed last July with the consent of the party, who is now endeavouring to obstruct their fulfilment, are still being disregarded while the gentleman who fills the office of Subordinate Judge, makes in another capacity an enquiry which, from the point of view of a Subordinate Judge, must be deemed wholly irrelevant and unnecessary. That is an evil which this Court, in my opinion, is entitled to remedy in the exercise of its power of superintendence, and we are entitled to direct that, whether the Subdivisional Officer holds an enquiry or not, the Subordinate Judge shall proceed with the sale at once.

The Rule is accordingly made absolute. The petitioner is entitled to his costs from the opposite party.

D. CHATTERJEE, J. As this case arises out of a suit in which the matter in dispute exceeds one thousand rupees, it is governed by the general laws and regulations in force in the province and our general power of superintendence under the Charter are in no way restricted by the Sonthal Parganas Regulations and Rules. I therefore agree in making the Rule absolute.

O.M.

Rule absolute.