

maintain the position that the purchaser at the revenue sale has acquired title to the chaukidari chakaran lands which were never put up to sale for realization of the arrears due from the remainder of the estate. We hold, accordingly, that the decree made by the Subordinate Judge is correct but not on the grounds set out in his judgment.

The result is that this appeal is dismissed with costs.

L. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

JADU NATH MANNA

v.

PRANKRISHNA DAS.*

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May 24.

Rent—Commutation—Bengal Tenancy Act (VIII of 1885) s 40, sub-ss. (1), (2), (3), s. 109—Order for commutation of rent—Jurisdiction.

Where under s. 40 of the Bengal Tenancy Act, an application by a tenant for commutation of rent was made to a Sub-divisional Officer, who transferred the same to a Settlement Officer, who in his turn transferred it to an Assistant Settlement Officer who heard and decided the application on its merits :

Held, that it was not competent for the Sub-divisional Officer to transfer the application to the Settlement Officer.

Held, further, that it was incumbent on the Court to satisfy itself that an order made on an application under s. 40 of the Bengal Tenancy Act was made with jurisdiction, though it was not competent to examine the propriety of an order so made

* Appeal from Appellate Decree, No. 83 of 1915, against the decree of C. Bartley, District Judge of Midnapore, dated Sep. 2, 1914, confirming the decree of Netai Charan Ghose, Munsif of Tamruk, dated Aug. 6, 1913.

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Lalla Saligram Singh v. Mohunt Ramgir (1), *Kali Krishna Biswas v. Ram Chandra Baidya* (2) followed.

SECOND APPEAL by Jadu Nath Manna and others, the plaintiffs.

The facts shortly are these. The plaintiffs on the 18th September, 1912, instituted a suit against the defendants, purporting to recover the price of produce rent payable by the defendants for the years 1909 to 1912 at the rate of 3 *bishis* of paddy. The defendants contended that on the 7th February, 1906, their predecessor in interest, one Udai Das had applied to the Sub-divisional Officer, for commutation of rent under s. 40 of the Bengal Tenancy Act. The Sub-divisional Officer, however, transferred the application to the Settlement Officer, who was then the officer making a settlement of rents in the district, under Chapter X of the Bengal Tenancy Act. On the 14th December, 1914, the said Settlement Officer transferred the application to an Assistant Settlement Officer, who made an order for commutation of rent after hearing both parties. The defendants pleaded that the plaintiffs were not entitled to recover the price of paddy having regard to the order of commutation of rent which was to have taken effect from the year 1912. Further, that the plaintiffs could not maintain the suit without having their names registered under the provisions of the Land Registration Act.

On the 6th August, 1913, the Court of first instance partially decreed the suit, holding that the order of commutation of rent was valid and binding on the parties. On appeal, the lower Appellate Court, on the 2nd September, 1914, dismissed the appeal holding that it was not competent for the Civil Court to declare that an order under s. 40 of the Bengal Tenancy Act passed

(1) (1897) 3 C. W. N. 311.

(2) (1915) 21 C. L. J. 487 ;

19 C. W. N. 823.

by a Revenue Court to be *ultra vires*. From this decision the plaintiffs appealed to the High Court.

Babu Dwarkanath Chackravarty, Babu Manmatha Nath Roy and Babu Sarada Charan Maity, for the appellants.

Babu Mahendra Nath Roy and Babu Mahesh Chandra Banerjee (for *Babu Jyotish Chandra Hazra*), for the respondents.

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MOOKERJEE AND WALMSLEY JJ. This is an appeal by the plaintiffs in a suit for arrears of rent. The plaintiffs allege that the rent is payable in kind, and claim to recover the price of the produce which has not been duly delivered. The defendants contend that the rent was commuted under section 40 of the Bengal Tenancy Act by an Assistant Settlement Officer on the 12th May, 1908, and that they are consequently liable to pay cash rent at the rate then determined. Thus, the question in controversy between the parties is, whether the order under section 40 was made with jurisdiction. The Courts below have held that it was beyond the competence of the Civil Court to examine this point. In our opinion, this view cannot possibly be sustained.

The Civil Court, it is well settled, is not competent to examine the propriety of an order of commutation made with jurisdiction under section 40; in other words, the Civil Court cannot determine whether, in the circumstances of the particular case, commutation was or was not properly directed; or, whether the amount assessed as cash rent is or is not adequate: *Lalla Saligram Singh v. Mohunt Ramgir* (1). But it is equally clear that if a question of jurisdiction arises, it is incumbent upon the Civil Court to satisfy

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itself that the order is made with jurisdiction; for an order made without jurisdiction is a nullity and does not affect the rights and obligations of the parties. In support of this proposition, reference may be made to the decision in *Kali Krishna Biswas v. Ram Chandra Baidya* (1). We must, accordingly, consider whether the order under section 40 was made with jurisdiction by the Assistant Settlement Officer.

On the 7th February, 1906, the tenant applied to the Sub-divisional Officer for commutation of his rent under section 40. The Sub-divisional Officer was undoubtedly competent to entertain the application and to decide the case on the merits. This is clear from sub-section (2) of section 40 as it stood at the time when the application was made. The sub-section ran in these terms: "An application" that is, application to have the rent commuted to a money rent, "may be made to the Collector or Sub-divisional Officer or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorised in this behalf by the Local Government". The Sub-divisional Officer, subsequently, transferred the application to the Settlement Officer, that is, the officer making settlements of rent under Chapter X. On the 14th December 1907, the Settlement Officer, to whom the application had been transferred, proceeded to transfer it to the Assistant Settlement Officer. The Assistant Settlement Officer heard the application on the merits and made an order for commutation. The question arises, whether the Sub-divisional Officer was competent to transfer the application to the Settlement Officer. If this is answered in the negative, it becomes unnecessary to consider whether the Settlement Officer was in his turn competent to transfer the application to the Assistant Settlement Officer. Upon a plain

(1) (1915) 21 C. L. J. 487 ; 19 C. W. N. 823.

reading of sub-sections (1), (2) and (3) of section 40, there is no room for doubt that the Legislature contemplated that the application should be entertained and determined on the merits by the officer to whom it was presented by the applicant. Sub-section (1) contemplates an application for commutation of produce rent by either the raiyat or his landlord. Sub-section (2) specifies the classes of officers to whom an application of this character may be made. Sub-section (3) then lays down that on receipt of the application, the officer may determine the sum to be paid as money rent and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined. It is clear that "the officer" mentioned in sub-section (3) is the officer who received the application from the applicant. It has been contended on behalf of the respondent that the power to transfer a judicial proceeding may be assumed to be inherent in the officer to whom the application has been presented, but no principle or authority has been invoked in support of this view. We hold accordingly that the Sub-divisional Officer was not competent to transfer the application to the Settlement Officer. In this view it is needless to consider whether it was competent to the Local Government to frame a rule under section 189, which authorises an officer of one of the four classes mentioned in sub-section (2) of section 40 to transfer the application he has received to an officer of another class specified in the section; nor is it necessary for us to determine whether this right of transfer can be claimed in succession by all officers of the classes mentioned in that sub-section. Our attention has not been drawn to any rule which authorises a Sub-divisional Officer to transfer an application received by him to a Settlement Officer. There is thus no escape from the conclusion that the order

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of the Assistant Settlement Officer was made without jurisdiction.

The result is that this appeal is allowed, the decree of the Court of Appeal below set aside and the case remitted to the Court of first instance for determination of the amount payable by the defendants to the plaintiffs in respect of the years in suit. Each party will pay his own costs in this Court as also in the lower Appellate Court.

L. R.

Appeal allowed.

APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

FANINDRA NARAIN ROY

v.

KACHEMAN BIBI.*

*Consideration—Mortgage—Legal consideration—Contract Act (IX of 1872)
 s. 2 cl. (d).*

Where A executed a mortgage in favour of X in 1884, and in consideration of X not enforcing the same and, in substitution therefor, A along with B, C, and D executed a fresh mortgage in 1893, in favour of X, and on X suing to enforce the later mortgage the Court of first instance dismissed the suit on the ground that there was no legal consideration :

Held, that the mortgage of 1893, which replaced that of 1884, was for legal consideration.

Held, further, that it was not necessary that the promisor should benefit by the consideration, it was sufficient if the promisee did some

* Appeal from Appellate Decree, No. 352 of 1912, against the decree of B. C. Mitter, District Judge of Birbhum, dated July 22, 1911, reversing the decree of Unes Chandra Sen, Subordinate Judge of Birbhum, dated Aug. 3, 1906.