CIVIL REVISION.

Before Nasim Ali and Rau JJ.

KASHI NATH HALDAR

v.

KARNADHAR BAIDYA.*

Landlord and Tenant—*Revenue Officer ordering restoration of possession of occupancy holding subject to usufructuary mortgage, if a civil Court and amenable to the revisional jurisdiction of the High Court—Bengal Tenancy Act (VIII of 1885), s. 26G (6)—Code of Civil Procedure (Act V of 1908), s. 115.*

An order made by a Revenue Officer under s. 26G (6) of the Bengal Tenancy Act for restoration of possession of an occupancy holding subject to a usufructuary mortgage is not one passed by a civil Court and is not subject to revision by the High Court under s. 115 of the Code of Civil Procedure.

CIVIL RULE obtained by the mortgagee under s. 115 of the Civil Procedure Code.

The facts of the case sufficiently appear from the judgment.

Sarat Chandra Jana in Rule No. 1132 and *Saroj Kumar Maity* in Rule No. 1153 for the petitioner. The Subdivisional Officer exercised a jurisdiction not vested in him by s. 26G of the Bengal Tenancy Act as the disputed land was not subject to a usufructuary mortgage, but an anomalous mortgage, there being a provision in the deed that interest shall run in case of dispossession. The mortgagor having described the lands as *mourusi mokarrari* was estopped from maintaining before the Revenue Officer that his interest was an occupancy *rāiyati* interest. The Bengal Act VI of 1938 amending the Bengal Tenancy Act is *ultra vires* to the provisions of the

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*Civil Revision, Nos. 1153 and 1132 of 1939, against the order of H. P. Goodwyn, Revenue Officer of Diamond Harbour, dated July 12, 1939.

Transfer of Property Act. The Revenue Officer, therefore, had no jurisdiction to pass the order that he has made.

Apurba Charan Mukherji for the Opposite party in the Rule No. 1132. The Revenue Officer cannot be said to be a civil Court and he is not amenable to the revisional or appellate jurisdiction of the High Court. His orders under s. 26G, though treated as a decree for certain purposes, cannot change his character of a revenue officer and transform him into a civil Court. The condition in the deed that interest shall run in case of dispossession is a personal covenant which is not to be enforced by sale of the mortgaged property. It, therefore, does not change the character of the usufructuary mortgage. There is no estoppel against the mortgagor, as the mortgagee knew that the holding was recorded in settlement proceedings as occupancy tenancy and he took no steps to have the record corrected. The amendment of the Bengal Tenancy Act does not conflict with either s. 58 or 60 of the Transfer of Property Act.

Jana, in reply. By virtue of the amended s. 26G of the Bengal Tenancy Act, the order of the Revenue Officer has the effect of a decree of the civil Court. The High Court therefore has the same power of revision over it as over a decree or order of a civil Court.

Cur. adv. vult.

Nasim Ali J. The orders complained of in these two Rules are the orders of a Revenue Officer under s. 26G of the Bengal Tenancy Act. That section empowers a Court, as well as a Revenue Officer, to entertain applications. A Revenue Officer, on the plain language of the statute, is not, therefore, a Court. A Revenue Officer is not subject to the appellate jurisdiction of this Court. The mere fact

that his order might have the effect of a decree of civil Court does not make him a Court, far less, a Court subordinate to the High Court within the meaning of s. 115 of the Civil Procedure Code. Further, I am not satisfied that the decision of the Revenue Officer in these two cases is wrong on the merits.

I, therefore, discharge both the Rules.

There will be no order as to costs in these two Rules.

RAU J. The main question arising in these Rules is whether an order made by a Revenue Officer under s. 26G(*6*) of the Bengal Tenancy Act can be revised by the High Court under s. 115 of the Code of Civil Procedure.

This depends upon the precise implications of the words "such order shall have the effect of a decree of "a civil Court" occurring at the end of the sub-section. What the effect of a decree of a civil Court is is not stated in the Bengal Tenancy Act itself, but is to be gathered from the Code of Civil Procedure. But there are two initial difficulties, first, the decrees dealt with in the Code are adjudications in *suits* and, secondly, if they are to have any effect under the Code, they must be decrees passed by a Court of civil judicature within the meaning of the Code. If, therefore, we are to give any meaning to the words in question, we must hold that, besides what they expressly state, they necessarily imply : (1) that a proceeding under s. 26G shall be deemed to be a *suit* and (2) that a Revenue Officer, making an order under the section, shall be deemed to be a civil Court within the meaning of the Code of Civil Procedure. If we make these two assumptions, but not otherwise, it is possible to give the words some meaning, *e.g.*, the provisions of the Code of Civil Procedure regarding execution may then become applicable to the

Revenue Officer's order. Whether the legislature intended anything more it is not possible to say.

But even with the above assumption we cannot say that the Revenue Officer, when acting under the section, is a Court subordinate to the High Court, with the result that his order cannot be said to be subject to revision by the High Court under s. 115 of the Code of Civil Procedure.

I, therefore, agree that the Rules should be discharged, although the resulting position can hardly be regarded as satisfactory. Section 26G is a provision which extinguishes without compensation certain private rights. Orders thereunder, if made by a civil Court, are subject to the High Court's control. But it would seem that similar orders, if made by a Revenue Officer, are, as the law stands at present, subject neither to appeal nor to revision in any quarter.

Rules discharged.

A. A.