

expressly and clearly taken away, such jurisdiction will be presumed to continue. In the present case, the jurisdiction, which will be ousted if the Court of the District Judge is held to have exclusive jurisdiction in partnership matters, is the jurisdiction of Courts inferior to that of the District Judge; and, as far as we are aware, the presumption to which we have above referred, is not usually applied in the case of such inferior Court.

Having regard to all the circumstances of this case, and to the fact that the provisions of the section of the Contract Act are new, and of not unmistakably clear meaning, we think that the plaints in these cases should be returned for the purpose of being presented to the District Judge. The Subordinate Judge will follow the provisions of s. 57 of the Code of Civil Procedure in carrying out this order. The plaintiffs must pay the costs of the defendants in this and the Subordinate Courts.

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 MULLICK
 P.
 RUSNICK
 LALL
 MULLICK
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 PROSAD
 DOSS
 MULLICK
 P.
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 NATH
 MULLICK.

Cases remanded.

Before Mr. Justice Pontifex and Mr. Justice Field.

AZIZOONNESSA KHATOON (JUDGMENT-DEBTOR) v. GORA CHAND
 DASS AND OTHERS (DECREE-HOLDERS).*

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Sale of Undertenure — Setting aside Sale — Material Irregularities — Civil Procedure Code (Act X of 1877), chap. xix, ss. 311, 647 — Beng. Act VIII of 1869.

The procedure to be followed upon the sale of an undertenure is that prescribed by the Civil Procedure Code. Section 311 does not apply only to sales made under chap. xix of the Code, and the sale of an undertenure may be set aside upon any of the grounds mentioned in that section.

In this case the appellant, a judgment-debtor, sought to set aside the sale of certain undertenures in execution of a decree, on the ground of material irregularity in publishing and conducting the sale, and of resulting substantial injury.

* Appeal from Original Orders, Nos. 328 to 330 of 1880, against the order of Baboo Krishna Chunder Chatterjee, First Subordinate Judge of Backergunge, dated the 2nd September 1880.

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The Subordinate Judge dismissed the application, holding that the provisions of s. 311 of the Civil Procedure Code do not apply to the sale of an undertenure, and that the Rent Act does not contain any procedure for setting aside sales of this kind.

The judgment-debtor appealed to the High Court

Baboo *Baikant Nath Dass* for the appellant.

Moonshee *Serajul-ul-Islam* for the respondents.

The judgment of the Court (PONTIFEX and FIELD, JJ.) was delivered by

PONTIFEX, J.—We think that the order of the Subordinate Judge in these three cases is an erroneous one. It appears that a certain undertenure was sold in execution of a decree for rent, and after this sale, an application was made to the Subordinate Judge under s. 311 of the Code of Civil Procedure to have the sale set aside on the ground of material irregularity in publishing or conducting it, together with substantial injury caused by reason of such irregularity.

The Subordinate Judge was of opinion that the provisions of s. 311 of the Code of Civil Procedure did not apply to the sale of an undertenure, to a sale held, as he puts it, under the provisions of ss. 59 and 60 of the Rent Act. He says, that s. 311 of the Code of Civil Procedure can only apply to sales made under chap. xix of the same Code, and that, inasmuch as the sale of the undertenure was made under the provisions of the Rent Law, it was not a sale made under the provisions of chap. xix of the Code of Civil Procedure.

Now ss. 59 and 60 of Beng. Act VIII of 1869 do not contain any sale procedure. Section 59 provides that, when an undertenure is ordered to be sold, a notice of such sale shall be hung up in certain places and shall otherwise be notified in a particular manner. This mode of notification differs in some respects from the provisions of the Code of Civil Procedure on the same subject. Section 60 contains instructions as to the contents of such notice, and here also there is a difference between these provisions, and the corresponding provisions of the Code of Civil

Procedure. These two sections or any other portions of the Rent Act of 1869 do not, however, contain any provisions as to the manner in which the sale is to be conducted, the person by whom the property is to be sold, the manner in which the bid-dings are to be made, the amount to be deposited by the purchaser, and all those other matters which taken together constitute the sale procedure? The question then is, where are we to look for this sale-procedure? Before the passing of Beng. Act VIII of 1869, this sale procedure was contained in the Beng. Council's Act VIII of 1865. That Act has not been incorporated in Beng. Act VIII of 1869, and it appears to us that there can be no doubt that the sale procedure in the case of an undertenure must be sought for in the Code of Civil Procedure. This seems to follow from the provisions of s. 34 of Beng. Act VIII of 1869, which directs that, "save as in this Act is otherwise provided, suits of every description brought for any cause of action arising under this Act, and all proceedings thereon, shall be regulated by the Code of Civil Procedure." If there can be any possible doubt as to these words being sufficiently wide to include proceedings such as those in the case now before us, that doubt is removed by the provisions of s. 647 of the Code of Civil Procedure, which enacts, that "the procedure herein prescribed shall be followed in all proceedings in any Court of civil jurisdiction other than suits and appeals." It is, therefore, clear that the sale-procedure, under which an undertenure is sold, is to be sought for in the Code of Civil Procedure, and it follows with reference to the special language of s. 311, that an undertenure is really sold under chap. xix, that is, in accordance with those provisions as made applicable to rent suits by the sections above quoted. We think, therefore, that the order of the Subordinate Judge in these cases must be set aside, and that he must be directed to entertain and proceed with the petition of objection made under s. 311. Costs will abide the ultimate result of the proceedings.

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Case remanded.