

above, such a procedure would be opposed to the object of the Code."

These seem to be the authorities on the matter and they all point one way.

The result is that, in our opinion, the objection founded on s. 36 is not well founded. The appeal, therefore, fails on all points and will be dismissed with costs.

K. M. C.

Appeal dismissed.

1885

CHUNDR
KAMINY
DEBBA

v.
RANBUTTEN
PATUCK.

Before Mr. Justice Prinsep and Mr. Justice Grant.

RAM LALL MOITRA (DEFENDANT) v. BAMA SUNDARI DABIA AND
ANOTHER (PLAINTIFFS).*

1885.

August 18.

Sale in execution of decree—Power of Munsiff's Court to execute decree against property out of its local jurisdiction.

In execution of a decree, property situate in three Munsiffia, viz., Serajgunge, Pubna, and Nattore, all three being at that time portions of the District and subordinate to the Court of Rajshaye, was attached and sold by order of the Court of the Munsiff of Serajgunge. *Held*, by analogy to the principle on which the case of *Kally Prosunno Bose v. Dinonath Mullick* (1) was decided, that the sale was not necessarily limited only to the portion of the property situate in the Munsiff of Serajgunge, but that that Court might have jurisdiction to make a valid sale of the whole estate, although it might be more convenient in such a case that the sale should be held by a superior Court having jurisdiction over the entire District.

THIS was a suit for declaration of the plaintiffs' title to certain land, for possession of the said land, and to have declared their right to have their names registered as being entitled to it.

The plaintiff alleged that one Shama Churn Chowdhry was the proprietor of a share in towji 294 of the Collectorate of Pubna, which consisted of mouzah Koailberh in thana Ullapara, zilla Pubna, and mouzahs Suail, Panch Suail, Charibole and Kabuli in thana Chatmohur, zilla Pubna, and mouzah Kushmail in thana Baraigram, zillah Rajshaye, recorded at a sudder jumma of Rs 600-14 per annum on the rent roll of the Pubna Collec-

* Appeal from Appellate Decree No. 2223 of 1884, against the decree of F. McLaughlin, Esq., Judge of Pubna, dated the 23rd of August 1884, reversing the decree of Baboo Bepin Behari Mukherji, Sudder Munsiff of that District, dated the 23rd of June 1883.

(1) 11 B. L. R., 56; 19 W. R., 434.

1885

RAM LALL
MOYTRA
v.
BAMA
SUNDARI
DABIA.

torate. On the death of Shama Churn the said share came into the possession of his son Gopal Chunder, who sold all the mouzahs, except Koailberh, to the plaintiffs by a registered *kobala*, dated 18th Falgun 1287 (28th February 1881); that one Soniram Agurwalla had obtained a money-decree against Shama Churn Chowdhry in the Court of the Munsiff at Serajgunge, caused attachment and sale of a share of mouzah Koailberh in thana Ullapara and within the jurisdiction of that Court, and purchased it himself; that thereupon the defendant, taking advantage of Shama Churn's death, and Gopal Chunder's absence, and alleging purchase of the share bought at auction by Soniram Agurwalla, applied for registration of his name in respect of the share of Shama Churn in the towji and obtained such registration in 1878: that one Nilkomul Moozumdar, the purchaser of another decree, obtained by one Brojonath Bhuttacharjee against Shama Churn, applied for execution of the decree in the Court of the Munsiff of Pubna against the son Gopal Chunder, and caused attachment of all the mouzahs of towji 294, with the exception of Koailberh; that thereupon the defendant preferred a claim alleging that these mouzahs were covered by his purchase, but the claim was rejected on 29th December 1880; that it was in order to liquidate this and other debts that Gopal Chunder sold the property to the plaintiffs, who applied to have their names registered under Bengal Act VII of 1876, but were opposed by the defendant, and their application was rejected by an order of the Deputy Collector on 5th May 1883. They therefore brought this suit dating their cause of action from that order.

The plaintiffs' contentions were that the auction-purchase of Soniram Agurwalla, the defendant's vendor, covered only mouzah Koailberh, and that the other mouzahs situated within the jurisdiction of the Courts of the Munsiff of Pubna and the Munsiff of Nattore could not have been sold and were not sold by the Munsiff of Serajgunge, and that these mouzahs were never in the defendants' possession; and that the defendant not having attempted to have the order passed in his claim on 29th December 1880, set aside within the year, that order had become final against him.

The defendant alleged that Soniram Agurwalla's purchase covered not only the mouzah of Koailberh, but all the mouzahs included in the towji; that Soniram had sold his purchase to the defendant before taking the sale certificate or possession; and the defendant thereupon took out the sale certificate, and obtained possession through the Court. He contended, therefore, that the sale at which he purchased was not made without jurisdiction; that the plaintiffs had no cause of action as they did not allege they had been dispossessed; that no objection to the sale under his vendor's decree having been taken by Shama Churn or his heir, the present suit for setting it aside was barred by lapse of time; and that the order passed in the claim in no way interfered with his right or possession in the property, and he had no occasion to bring a suit to set aside that order. It appeared that the property attached and sold by the Munsiff's Court at Serajgunge was described as follows: "Kismut Koailberh lying in pergunna Sonabjee, thana Ullapara, Dewani Adalut, zilla Rajshaye which is entered in the Collectorate of zilla Pubna in the names of Radhamohun, Joy Chunder, Brojomohun and Bhugwan Chunder Chowdhry and Gour Sundari Debi, mother of Shama Churn, and Shibdyal Chowdhry in a sudder jumma of Rs. 397, the 1-1-1-1 krant share of the judgment-debtor in the said taluk." The sale certificate contained the same description and was granted on the 16th November 1876; the order for registration of the defendant's name being made on 27th September 1878.

The Munsiff held that the sale on which the title of the defendant was founded was a valid sale, and made with jurisdiction, and covered not only mouzah Koailberh but all the other mouzahs; that the defendant obtained possession of what he purchased; and that his possession was not disturbed by the order of 29th December 1880 rejecting his claim. He therefore dismissed the suit, mainly with reference to the case of *Kally Prosunno Bose v. Dinonath Mullick* (1).

The Judge on appeal held that the sale by the Serajgunge Court was void and inoperative, the land being outside the jurisdiction of that Court. He relied chiefly on the case of *Obhoy Churn Coondoo v. Golam Ali* (2).

(1) 11 B. L. R., 56; 19 W. R., 434.

(2) I. L. R., 7 Calc., 410.

1885

 RAM LALL
 MOITRA
 v.
 BAMA
 SUNDARI
 DABLA.

1885

RAM LALL
MOITRA
v.
BAMA
SUNDARI
DABIA.

The Judge also held with reference to the point raised by the defendant that the plaintiffs should have sued to set aside the sale, and not having done so they were barred by limitation, which point had been decided by the Munsiff in favor of the plaintiffs, that it was not open on appeal by the plaintiffs, no cross appeal having been preferred on that point. The Judge reversed the decision of the Munsiff and decreed the suit. From this decision the defendant appealed.

Baboo Guru Dass Banerjee, Baboo Iswar Chundra Chuckerbati, and Baboo Upendro Nath Mukerjee, for the appellant.

Baboo Mohini Mohan Rai and Baboo Baikant Nath Dass, for the respondents.

The judgment of the Court (PRINSEP and GRANT, JJ.) was as follows :—

In execution of decree the defendant in September 1876 purchased certain property belonging to Shama Churn Chowdhry. In execution of another decree against the same Shama Churn Chowdhry, the same estate which the defendant claims to have purchased was again attached, and the defendant objected but his objection was over-ruled. The execution apparently proceeded no further, for the judgment-debtor sold his estate privately to the plaintiff and satisfied this decree and other debts.

The dispute between the parties arose when proceedings were taken under the Bengal Land Registration Act. Plaintiffs' claim having been rejected, he brings this suit for possession of the property with a declaration of his right to get his name registered. Plaintiff objects to the title of the defendant on the ground that the sale was held by the Munsiff of Serajunge within whose local jurisdiction one of the six mouzahs forming this estate mouzah Koailberh is situated; that four of the other mouzahs are situated within the jurisdiction of the Munsiff of Pubna, and the remainder within the jurisdiction of the Munsiff of Nattore, all these three Munsiffs at that time being portions of the district of Rajshaye. In the appeal before us objections are also taken by each of the parties as to the matter of limitation. For the plaintiff it is contended that, as the defendant has not brought a suit under s. 283

of the Code of Civil Procedure of 1882, to get rid of the effect of the order rejecting his claim in the execution proceedings to which the plaintiff was no party, he has forfeited his title to the property purchased by him in 1876. But all that was then decided was that the property was liable to that attachment. No further proceedings were taken in the execution of that decree, and, therefore, the position of the defendant was not affected by that order, nor was it necessary for him to sue to have it removed. Plaintiff's title moreover does not depend upon that order.

Another objection on the point of limitation is raised on behalf of the defendant. It is contended that, as no suit has been brought to set aside the sale, under which the defendant acquired his title, within the term of one year from the date of its confirmation as provided by Art. 12 of the Limitation Act of 1877, the present suit is barred. This objection also appears to us untenable, because, if as contended for by the plaintiff the sale was held without jurisdiction, it would be unnecessary for her to bring a suit to set aside this sale; it would be sufficient to sue generally to establish her title by ejecting the defendant, or any one else who might be in possession, as having no valid title to the property. The main point before us is whether the sale under which the defendant derives his title was a good sale. That sale was held under the Code of 1859, the provisions of which in this respect are not altogether the same as those of the present Code.

The defendant apparently relies on the case of *Kully Prosunno Bose v. Dinonath Mullick* (1). In this case an estate situated partly in one district and partly in another was sold in execution of a decree by a Court having jurisdiction only in one district, and it was held that the sale conferred a valid title even to the land beyond the local jurisdiction of the Court holding the sale. The Court stated that for the purposes of attachment and sale in execution of a decree, it must be considered that the estate was wholly situated in the district over which the Court holding the sale had local jurisdiction. On the other hand the plaintiff relies on the case of *Unnocool Chandra Chowdhri v. Hurry Nath Kundu* (2). It seems to us, however, that the

1885

RAM LALL
MOITRA
V.
BAMA
SUNDARI
DABIA.

(1) 11 B. L. R. 56 : 19 W. R. 434,

(2) 2 C. L. R., 334.

1885.
 RAM LALL
 MOTTRA
 v.
 BAMA
 SUNDARI
 DABIA.

facts of that case are not altogether in point, and that that decision is not really in conflict with the decision first quoted. The property in the first case was an estate, and the judgment of the Court seems to have proceeded mainly on the ground that it was impossible to sell part of an estate, as well as on a consideration of the Code of 1859 in this respect. In the case of *Ummocool Chandra Chowdhri v. Hurry Nath Kundu* (1) the property was a taluk and the Court held that there was no reason why a portion of that taluk, a particular mouzah which alone fell within the local jurisdiction of one Munsiff, should not be sold. As between the two cases we should feel bound to follow that of *Kally Prosunno Bose v. Dinonath Mullick* (2). But in the case before us the estate is not situated in two different districts over which no one Court has jurisdiction without a special order, but within the local jurisdiction of three inferior Courts all in the same district, and it is therefore contended that, as the jurisdiction over this entire estate could be exercised by one superior local Court whose jurisdiction extends over the entire district of Rajshaye, therefore no one single Munsiff's Court would be competent to sell any land beyond its own local jurisdiction; and consequently if nothing short of the entire estate could be sold at the same time the decree should have been transferred to such superior Court. But we think that the principle on which the decision in *Kally Prosunno Bose v. Dinonath Mullick* proceeds is applicable to the present case, that is to say, the principle laid down for the larger jurisdiction of districts is applicable to the smaller jurisdiction of Munsiffs. It may be more convenient that the sale in such cases should be held by a superior Court, but we think that a Munsiff in whose local jurisdiction only a part of the property is situate, is not necessarily incompetent to sell the whole estate. With respect, therefore, to the points with which the judgment of the lower Appellate Court deals, we think that that judgment cannot be maintained. We therefore set it aside. We would point out to the Judge that it is competent for the respondent to support the judgment of the Court of first instance by showing that the case should have been decided in his favor on a ground which was given against him, and that in order to do this he is not bound

(1) 2 C. L. R., 334.

(2) 11 B. L. R., 26; 19 W. R., 434.

himself to appeal or to take objection by a written memorandum. The terms of s. 561 are clear in this respect.

The case must, however, be remanded to the lower Appellate Court to determine what was the subject of the sale in 1876, the entire estate or only mouzah Koailberh; next whether the defendant on confirmation of his title as auction-purchaser obtained possession of the property purchased by him.

Costs to abide the result.

J. V. W.

Appeal allowed and case remanded.

1885

BAM LALL
MOITRA
v.
BAMA
SUNDARI
DARIA.

Before Mr. Justice Wilson and Mr. Justice Beverley.

MOHESH CHUNDER CHATTERJEE (PLAINTIFF) v. KAMINI KUMARI
DABIA AND OTHERS (DEFENDANTS).*

1885.

August 16.

Document, Alteration of—Document not requiring attestation—Mortgage bond—Material alteration—Interpolation of name of witness, Effect of.

The interpolation of the name of a witness in a document which need not be attested is not a material alteration that would render the document void. *Suffell v. Bank of England* (1), explained; *Sitaram Krishna v. Dayi Davaji* (2) dissented from.

THIS suit was brought against a widow and heiress for money due from her husband on a mortgage bond. The Munsiff found the execution proved, and, upon a contention taken on behalf of the defendant, that the bond was inoperative, inasmuch as after its execution the names of two witnesses had been surreptitiously introduced into it, held that the defence was responsible for the alteration and decreed the claim. On appeal, the Subordinate Judge agreed with the Court of first instance on the subject of execution; but found it was the plaintiff who had made the interpolation, and, relying on *Sitaram Krishna v. Dayi Devaji* (2), held that such interpolation amounted to a material alteration of the document and dismissed the suit.

The plaintiff appealed to the High Court

Mr. Pugh, and Baboo Trailokhary Nath Mitter, for the appellants

* Appeal from Appellate Decree No. 877 of 1884, against the decree of Baboo Krishna Mohun Mukerjee, Third Subordinate Judge of Hooghly, dated the 18th of April 1884, reversing the decree of Baboo Jogendra Nath Rai, First Munsiff of Hooghly, dated the 13th of June 1883.

(1) 9 Q. B. D., 555.

(2) I. L. R., 7 Bom., 418.