

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.

1895
April 3.

RAM RATAN AND OTHERS (DEFENDANTS) *v.* LALTA PRASAD (PLAINTIFF).*

Regulation No. IV of 1876 Act No. IV of 1882 (Transfer of Property Act), s. 88—Civil Procedure Code, ss. 1, 2, 19, 24—Jurisdiction—Mortgage—Mortgaged property situated partly in district of Moradabad and partly in the Taráí—Suit for sale in Moradabad Court.

Held that the Courts of the Moradabad district had no jurisdiction to pass a decree, in a suit for sale on a mortgage, for sale of land situated in the Taráí, to which at the time of the mortgage and of the suit thereon Regulation No. IV of 1876 applied, by reason merely of a portion of the property mortgaged being situate in the Moradabad district.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. T. Conlan and Pandit Sundar Lal for the appellants.

Mr. D. N. Banerji, Babu Jogindro Nath Chaudhri and Babu Ratan Chand for the respondent.

EDGE, C. J., and BANERJI, J.—The suit in which this appeal has arisen was brought in the Court of the Subordinate Judge of Moradabad. It was a suit for sale under s. 88 of Act No. IV of 1882. A very small portion of the property mortgaged, *viz.*, 50 square yards, was situate in the district of Moradabad. It is said, but we need not decide the point, that those 50 yards only existed in imagination, and were entered in the bond to give the Court of Moradabad jurisdiction and to allow of registration in that district. The other portion of the property mortgaged by that bond was in the Taráí district under the Government of the Lieutenant-Governor of these Provinces and within the district to which, at the time when the mortgage was made and this suit was brought, Regulation No. IV of 1876 applied. The Subordinate Judge passed a decree for sale, not only of the Moradabad property, but also of that portion which was in the district of the Taráí.

The defendants who have appealed here were purchasers subsequent to the mortgage of the mortgaged property in the Taráí

*First Appeal No. 263 of 1893, from a decree of Pandit Rajuath, Subordinate Judge of Moradabad, dated the 22nd May 1893.

1895

RAM RATAN

v.

LALTA
PRASAD.Edge, C. J.,
Banerji, J.

district. The other defendants have not appealed. Pandit *Sundar Lal*, on behalf of these defendants-appellants, has contended that the Court of Moradabad had no jurisdiction to entertain the suit, so far as it related to the property in the Tarái district. He also contended that so far as the property in the Tarái district is concerned the suit is barred by twelve years' limitation by rule 3 of Chapter I of the schedule to Regulation No. IV of 1876. On the other hand Mr. *D. N. Banerji*, for the plaintiff-respondent, contended that s. 19 of Act No. XIV of 1882 gave the Court of Moradabad jurisdiction to entertain the suit as brought.

By s. 3 of Regulation No. IV of 1876 it is enacted that the Tarái district shall not be subject (a) to the jurisdiction of the Courts of civil judicature constituted by the Regulations of the Bengal Code and by the Acts passed by the Governor-General in Council.

* * * * *

(c) to the system of procedure prescribed by the said Regulations and Acts for the said Courts of civil judicature.

(d) to the civil jurisdiction of the High Court for the North-Western Provinces.

By s. 1 of Act No. XIV of 1882 the application of Act No. XIV of 1882 is excluded from the scheduled districts as defined in Act No. XIV of 1874. The Tarái district in question is one of those scheduled districts. Now the only section which could have given the Court at Moradabad jurisdiction to entertain the suit so far as it related to the property in the Tarái district, if it had not been for s. 1, was s. 19 or s. 24; but as s. 19 only applies where the immovable property is situate within the limits of different districts, we have to see whether "district" has a special meaning when used in that section. For that purpose we must turn to s. 2 of Act No. XIV of 1882, and there we find "district" defined; but that section is one of the sections which by s. 1 are excluded from consideration when dealing with a question in a scheduled district. Consequently in our opinion s. 19

could not give the Court at Moradabad any jurisdiction to entertain a suit relating to immovable property in the Taráí district.

We do not intend to decide the question of limitation, but we merely say this, that if the Court at Moradabad had jurisdiction to decree a sale of this property in the Taráí, this anomaly would arise; it might be that so far as the Court at Moradabad was concerned the limitation in that Court for a sale of property would, under art. 147 of sch. ii of Act No. XV of 1877, be sixty years, whereas if the suit had been brought in the Court of the Taráí district, the limitation would, by reason of rule 3 of Chapter I of the schedule of Regulation No. IV of 1876, be twelve years. We say we do not decide what would be the limitation applicable in the Court of Moradabad so far as it relates to the property in the Taráí. That is by no means an easy question, but we are not called on to decide it.

We decree this appeal in so far as the decree of the Court below was a decree for sale of the property in the Taráí and in so far as these appellants are concerned; and in so far as these defendants-appellants and the property in the Taráí are concerned, we dismiss the suit with costs.

Appeal decreed in part.

FULL BENCH.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Banerji and Mr. Justice Burkitt.

IN THE MATTER OF THE PETITION OF RAHMAT-ULLAH.

Magistrate of the District, powers of—Criminal Procedure Code, s. 144—Executive powers of Magistrate—Order which might have the effect of interfering with the execution of a decree of a Civil Court.

A District Magistrate has no power either under s. 144 of the Code of Civil Procedure or in his executive capacity to make an order for the re-building of a structure on private land which has fallen into disrepair or been pulled down, neither has he power to make any order which would have the direct effect of interfering with the execution of a decree of a Civil Court.

1895

RAM RATAN

v.

LALTA
PRASAD.*Edge, C. J.,
Banerji, J.*

1895

April 5.