

1887 would not entitle the plaintiffs to claim the suits to be tried. The result is that the orders of the lower Courts must be set aside. The plaintiffs will be rejected and the plaintiffs will pay the costs throughout.

SUDHENDU  
MOHUN ROY  
v.  
DURGA DAS.

K. M. C.

*Remand order set aside.*

*Before Mr. Justice Prinsep and Mr. Justice Trevelyan.*

1886  
March 10.

BHOLANATH BANDYOPADHYA (PLAINTIFF) v. UMACHURN BANDYOPADHYA (DEFENDANT)

AND

UMA CHURN BANDYOPADHYA (DEFENDANT) v. BHOLANATH BANDYOPADHYA (PLAINTIFF).\*

*Sale for arrears of revenue—Act XI of 1859, ss. 37, 52—Sunderbund Estate—District of which portion only is permanently settled—District, Meaning of—Beng. Regs. IX of 1816 and III of 1828—Estate—Bengal Act VII of 1868.*

The plaintiff was the auction-purchaser at a sale under Act XI of 1859 by the Collector of the 24-Pergunnahs for arrears of revenue of an estate in the Sunderbunds on which the defendant was the holder of a *mokurari mauwasi jungleburi* tenure, under which he was to clear away the jungle and then to cultivate the land with paddy. The estate was one borne on the register of revenue-paying estates in the Collectorate of the 24-Pergunnahs, and therefore within that Collectorate with regard to the provisions of Bengal Act VII of 1868, s. 10. The district of the 24-Pergunnahs is a permanently-settled district, but the portion of it forming the Sunderbunds was declared by Reg. III of 1828, s. 13, not to be included in the permanent settlement. The Sunderbunds tract was moreover under Reg. IX of 1816 formed into a separate jurisdiction for settlement purposes under an officer styled the Commissioner of the Sunderbunds, who is subject to the direct control of the Board of Revenue, and independent of the Collector of the 24-Pergunnahs. In a suit after notice to quit to eject the defendant, and obtain possession of the land, or to have the defendant's tenure annulled: *Held* that, whether the term "district" was used with reference to the jurisdiction of the Civil Courts or the Revenue Collector, the plaintiff was the purchaser of an estate in a "permanently-settled district" within the meaning of s. 37 of Act XI of 1859, and not in a district "not permanently-settled" within s. 52 of that Act; and he was

\* Appeals from Appellate Decrees Nos. 826 and 992 of 1885, against the decrees of J. G. Charles, Esq., Judge of 24-Pergunnahs, dated the 28th of January and 17th of February, 1885, affirming the decrees of Baboo Bulloram Mullick, Subordinate Judge of that District, dated the 10th of September, 1883.

therefore entitled to eject the defendant. The position of the estate within the district of the 24-Pergunnahs was not affected by the appointment of the Commissioner of the Sunderbunds as an officer specially invested with the powers of the Collector within a certain portion of that district. *Held* also that the defendants' tenure was not protected as being one of "lands whereon plantations have been made" within the meaning of s. 52 of Act XI of 1859.

*Held*, further, that though there was no permanent settlement of the lands sold to the plaintiff, they fell within the definition of an "estate" as given in Beng. Act VII of 1868.

THE plaintiff as the purchaser at a sale for arrears of revenue held under Act XI of 1859 by the Collector of the 24-Pergunnahs on 20th June, 1881, of an estate in the Sunderbunds recorded in the Collectorate as No. 2368, brought this suit after serving a notice to quit to eject the defendant, a tenure-holder on the estate, and to obtain possession of the land held by him or to have his tenure annulled. The plaintiff claimed the rights of a purchaser under s. 37 of Act XI of 1859 to eject the defendant, or in the alternative, under s. 52, to annul his tenure. The defendant denied the plaintiff's right either to eject him and obtain possession or to annul his tenure, claiming to be protected under s. 52 of Act XI of 1859 by reason of his tenure being a "plantation" within the meaning of that section.

The Subordinate Judge held that the plaintiff was not entitled to the rights of a purchaser under s. 37, and could not therefore eject the defendant, but that the defendant's tenure was not protected under s. 52: he made a decree therefore for annulment of the defendant's tenure.

The defendant appealed, and the plaintiff filed cross objections to the effect that he was entitled, whether the case fell under s. 37 or s. 52 of Act XI of 1859, to eject the defendant.

On appeal as to these points the Judge gave the following judgment:—

It seems to be admitted that the plaintiff purchased Sunderbunds estate No. 2368 at an auction sale held by the Collector of the 24-Pergunnahs on the 20th of June, 1881, under Act XI of 1859.

The rights of auction-purchasers at such sales in the lower provinces of Bengal are regulated by ss. 37 and 52 of that Act, and one of the chief grounds for contention in the present suit is which of these sections is applicable to the case.

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Section 37, Act XI of 1859, explains the rights of purchasers of entire estates in the "permanently-settled" districts of Bengal, Behar, and Orissa, while s. 52 of that Act provides for purchasers of estates in a district "not permanently settled." The distinction drawn by the Act itself is thus most clearly between *permanently settled* and *non-permanently settled* districts. The Subordinate Judge, observing that the word "district" is nowhere defined in the Act, has held, with reference to the marginal references to these two sections, that the word "district" is equivalent to the word "estate." In my opinion this finding of the lower Court is quite indefensible, not only with regard to the common acceptance of the word "district" but especially with regard to the definition of the word "estate" in Beng. Act VII of 1868, as that definition is declared to be also applicable to Act XI of 1859. The use of the word "estate" in the two sections under review may be more intelligible than the use of the word "district," and might even put an end to all difficulties; but it is contrary to all the canons of construction that the obvious meaning of words contained in the body of a Statute should be entirely altered in order to bring the context into harmony with a mere marginal reference.

The question then arises, what is the correct definition of the word "district" in Act XI of 1859. From a comparison of the Codes of Civil and Criminal Procedure, Bengal Act IX of 1880, and other Acts passed by the Indian Legislatures, it appears to be clear that "districts" for civil, criminal and revenue purposes respectively are equivalent to the jurisdictions of the Chief Local Civil, Criminal and Revenue authorities.

Under ordinary circumstances, in regulation districts the Collector, and in non-regulation districts the Commissioner, is the local administrative head in the revenue matters, so that generally speaking the local jurisdiction of a Collector in the regulation districts of Bengal is a district for revenue purposes. This definition of the word "district" is in accordance with the definition of the word "jurisdiction" in Bengal Act VII of 1868, s. 1, which is also applicable to Act XI of 1859. Under ordinary circumstances the whole jurisdiction of a Collector in Lower Bengal is subject to permanent settlement, but the four districts of the 24-Pergunnahs, Nuddea, Jessore and Backergunge, include portions of a jungle tract denominated the Sunderbunds, which tract is declared by s. 13, Regulation III of 1828, not to be included in any way in the arrangements of the permanent settlement. The district of the 24-Pergunnahs, as above defined, is therefore what may be called a composite district, consisting partly of a permanently-settled tract of country and partly of a temporarily settled tract. Moreover, this Sunderbunds tract was under Regulation IX of 1816 separated from the four revenue districts, within which it is still included for civil, criminal and fiscal purposes; and formed into a separate jurisdiction for settlement purposes under an officer styled the Commissioner of the Sunderbunds, who is subject to the direct control of the Board of Revenue, and is independent of the Collectors of the parent districts.

Under these peculiar circumstances, and in the absence of any definition of a "permanently-settled district," I hold that these words are applicable to that portion of the jurisdiction of the Collector of 24-Pergunnahs, where the permanent settlement has been introduced, while the words "district not permanently settled" is applicable to that portion of the commonly called district of the 24-Pergunnahs which falls within the jurisdiction of the Commissioner of the Sunderbunds.

In accordance with this finding, I hold that s. 52, and not s. 37, Act XI of 1859, is applicable to the tenure in suit, which is admittedly contained within an estate situated in the Sunderbunds.

The second contention of the plaintiff's pleader is that the defendant is liable to ejection even under s. 52 of the Revenue Sale Act. With regard to this contention I concur with the Subordinate Judge in the opinion that, while s. 52, Act XI of 1859, entitles auction-purchasers of estates in a district not permanently settled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, it does not enable such purchasers forthwith to eject under tenants, and this seems to be an important distinction between ss. 37 and 52 of the Revenue Sale Act.

The second contention raised in connection with the defendant's appeal is also, in my opinion, quite untenable. The defendant's pleader urges that the word "plantation" includes the plantation of paddy, which is the chief crop on the defendant's tenure of 1,000 bighas; but it seems to me to be quite clear, not only with reference to the ordinary signification of the word, but from the context of ss. 37 and 52, Act XI of 1859, that the word "plantation" used in these sections applies only to the planting of timber trees and not to the planting of paddy or other crops of a temporary nature.

The appeal was consequently dismissed and both parties appealed to the High Court.

Baboo *Mohesh Chunder Chowdhry*, Baboo *Grish Chunder Chowdhry* and Baboo *Baikant Nath Doss* for the appellant in the plaintiff's appeal (No. 826) and for the respondent in the defendant's appeal (No. 992).

Baboo *Srinath Doss* and Baboo *Guru Das Banerji* for the respondent in No. 826 and for the appellant in No. 992.

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

The plaintiff as an auction-purchaser at a sale for arrears of Government revenue of what is known as a Sunderbunds estate sues to eject defendant as holding without any valid title.

Defendant states that he obtained a *mowasi mokurari jungle-buri* lease from plaintiff's predecessor, which plaintiff cannot avoid.

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The first objection raised is that, inasmuch as there has been no permanent settlement of the lands sold to plaintiff, it cannot be regarded as an estate. The definition of the word "estate" is given in Bengal Act VII of 1868, and that Act declares that this shall be applied to the Revenue Sale Law of 1859. The property purchased by plaintiff clearly falls within that definition.

The next objection raised by defendant is that the plaintiff is a purchaser within the terms of s. 52, Act XI of 1859, and that he (the defendant) is accordingly protected, because he holds under a lease "of lands whereon plantations have been made." We have no doubt that no plantations have, in the proper interpretation of that word, been made by defendant, for it is admitted that the land was obtained for the cultivation of paddy after clearing away the jungle. We are unable to hold that such cultivation can be regarded as making a plantation.

The main point for decision in this case is whether the plaintiff is a purchaser within the terms of s. 37 or of s. 52 of the Revenue Sale Law, that is to say, whether he is the purchaser of an "estate in the permanently-settled districts of Bengal, Behar and Orissa," or of an "estate in a district not permanently settled." If the plaintiff is a purchaser of the former description, he might be entitled to eject the defendant; whereas in the other contingency he would be entitled only to a decree annulling the defendant's tenure, and to demand rent at a higher rate under certain specified conditions.

There is no special definition of the term "district" applicable to the Revenue Sale Law. The District Judge has held that "the local jurisdiction of a Collector in the regulation districts of Bengal is a district for revenue purposes;" but although the land in suit falls within the district of the 24-Pergunnahs, a permanently-settled district "for civil, criminal and fiscal purposes," the District Judge holds that the jurisdiction of the Collector, and therefore the district itself, "for revenue purposes," does not include the Sunderbunds and the lands in suit, because it was under Regulation IX of 1816 "formed into a separate jurisdiction for settlement purposes under an officer styled the Commissioner of the Sunderbunds, who is subject to the direct control of the Board of Revenue and is independent of the Collector." He con-

sequently holds that the plaintiff is a purchaser of an estate in a district not permanently settled, that is, under s. 52, because it falls within the jurisdiction of the Commissioner of the Sunderbunds, within which no permanent settlement of the revenue has been made.

It is immaterial for us to determine whether the term "district" is used with reference to the jurisdiction of the Civil Courts or the Revenue Collector, and whether it is merely the English equivalent of the term "zillah" used in the older Regulations, because, in our opinion, the plaintiff's estate falls within the district of the 24-Pergunnahs with reference to both of these jurisdictions. We observe that the validity of the sale under which plaintiff's title has been acquired has never been questioned, and that this sale was held by the Collector of the 24-Pergunnahs and not by the Commissioner of the Sunderbunds. We accordingly take it that it was within the jurisdiction of the Collector to hold this sale. It is not disputed that the estate is borne on the general register of revenue-paying estates in the Collectorate of the 24-Pergunnahs, so that it is clear that the estate must be deemed to be within that Collectorate in regard to the provisions of s. 10, Bengal Act VII of 1868. Under such circumstances the position of the estate within the district of the 24-Pergunnahs seems clear, and we think that this has not been affected by Regulation IX of 1816, and the appointment of an officer, the Commissioner of the Sunderbunds, specially invested with the powers of the Collector within a certain portion of that district. The Regulation does not provide that the Sunderbunds tracts should form a separate district, but it declares that it "has appeared advisable" to the Government "to appoint an officer for the performance of certain duties connected with the public resources in the tract of country ordinarily called the Sunderbunds." Consequently, even if the term "district" be interpreted to mean the jurisdiction of the Collector, it would in the present case put the land in suit within the jurisdiction of the Collector of the 24-Pergunnahs; and if the term "district" be regarded as the jurisdiction of the Civil Court—that of the District Judge—there is even less doubt on this point.

It is not disputed that the district of the 24-Pergunnahs is a

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permanently-settled district, and this has been found by both the lower Courts, and it is also admitted that the estate in suit like all lands within the Sunderbunds is only temporarily settled. But the fact that a portion of a district is not permanently settled would not affect the general character of the district itself. We think therefore that the plaintiff is within the terms of s. 37 the purchaser of an entire estate in the permanently-settled district of the 24-Pergunnahs, and that, unless defendant can bring himself under one of the exceptions to that section, he must be ejected. We have already held that he does not come within the fourth exception, as he does not hold a lease of lands whereon plantations have been made. That is the only exception pleaded by the defendant, and as he has failed to establish that ground, plaintiff's suit must be decreed with costs in all the Courts, the orders of the lower Courts being set aside.

J. V. W.

*Appeal No. 826 allowed.*

*Appeal No. 992 dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Beverley.*

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 March 15.

DHARMODAS DAS (ONE OF THE DEFENDANTS) v. NISTARINI DAS  
 (PLAINTIFF).<sup>a</sup>

*Hindu law—Gift—Delivery of Possession—Transfer of Property Act,  
 s. 123—Immoveable and moveable Property.*

Assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated by s. 123 of the Transfer of Property Act. The first para. of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary.

*Semble.*—The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer.

THIS was a suit for possession of certain land claimed under a deed of gift executed in favor of the plaintiff by her father on the 26th Pous 1289 (9th January, 1883). The father died shortly afterwards, viz., on the 4th Magh 1289 (20th January,

<sup>a</sup> Appeal from Appellate Decree No. 1575 of 1886, against the decree of J. G. Charles, Esq., Judge of 24-Pergunnahs, dated the 30th April, 1886, affirming the decree of Baboo Atul Chunder Ghose, Munsiff of Alipore, dated the 15th January, 1885.