

1925.  
 JAGARNATH  
 THERANI  
 v.  
 COMMISSIONER OF  
 INCOME-TAX.  
 ROSS, J.

relating to appeals is enacted for the benefit of the subject and also, to the limited extent therein stated, for the benefit of the Crown. But the subject-matter of the appeal is the assessment and the scope of the appeal must in my opinion be limited by the subject-matter. The appellate authority has no power to travel beyond the subject-matter of the assessment and, for all the reasons advanced by the appellant, is in my opinion not entitled to assess new sources of income. To do so would not in reality be enhancing the assessment but adding a new assessment to the old, the subject-matter being different.

I would therefore answer the points stated by the Commissioner of Income-tax in the manner indicated above. The petitioner is entitled to his costs.

KULWANT SAHAY J.—I agree.

Jan., 25.

ROSS AND KULWANT SAHAY, JJ.—The petitioner is entitled to the cost of the printing of the paper books and to the refund of the deposit which he made before the Commissioner of Income-Tax.

## APPELLATE CIVIL.

1924.

Dec., 15, 16,  
 17, 18, 19,  
 22, 23.

*Before Jwala Prasad and Adami, J.J.*

MUSSAMMAT JASODA KUER

v.

JANAK MISSIR.\*

*Indian Registration Act, 1908 (Act XVI of 1908), section 28—scope of—conveyance of several parcels—title to one parcel defective, effect of.*

In a proceeding for registration of a document title to property cannot be gone into.

Section 28 of the Indian Registration Act, 1908, does not require anything more than the existence of a property

\* Appeal from Original Decree no. 58 of 1921, from a decision of B. Suresh Chandra Sen, Special Subordinate Judge of Palamau, dated the 6th December, 1920.

within the jurisdiction of a particular Sub-Registrar in order to entitle him to register a document in respect thereof.

*Mussammat Rem Dai v. Ramchandrabali Debi* (1), followed.

Where, therefore, *D* purported to sell a portion of a house by a registered *kabala* to *J* who forthwith conveyed the same, along with other properties, by another deed of sale, to the plaintiff, the motive for inserting the house being to confer jurisdiction on the Sub-Registrar within whose jurisdiction the house was situate,

*Held*, that the subsequent discovery that *D* had no title to the portion of the house which he had purported to sell could not invalidate the registration of *J*'s conveyance, inasmuch as the property, to which the vendor had an ostensible title, was in existence and was within the jurisdiction of the Sub-Registrar.

*Harendra Lal Roy v. Hari Dasi Devi* (2) and *Biswanath Prasad v. Chandra Narain Chowdhury* (3), distinguished.

Appeal by the plaintiff.

This appeal arose out of a suit in ejectment.

The plaintiff's case was that village *Keri asli* and *dakhli* including its *tola* *Bhagiya* was the ancestral *khairat* property of three brothers, *viz.*, *Kinu Misra*, *Gopal Misra* and *Rupan Misra*. *Tola Bhagiya* was one of the *dakhli* or dependent villages of *manza Keri*. It was let out in *mukarrari* by *Rupan Misra* and his co-sharers to one *Prabhu Narayan Singh* and others who granted a *zarpeshgi* lease, dated 7th April, 1887, of their *mukarrari* right in favour of *Bhawan Sahu* and others. Defendant no. 6 was in possession of *tola Bhagiya* as *zarpeshgidar* under a sale deed, dated the 18th March, 1909 (*Exhibit 13*). The three brothers *Kinu Misra*, *Gopal Misra* and *Rupan Misra* died before suit. Defendant no. 1 was the son of *Kinu Misra*, and defendants nos. 2 to 5 were the sons of *Gopal Misra*.

(1) (1919) 4 Pat. L. J. 433.

(2) (1914) I. L. R. 41 Cal. 972; 41 I. A. 110.

(3) (1921) I. L. R. 48 Cal. 509; L. R. 48 I. A. 127.

1924.

MUSSAMMAT

JASODA

KUER

v.

JANAK

MISSIR.

1924.

MUSSAMMAT  
JASODA  
KUR  
v.  
JANAK  
MISSIR.

On the 22nd May, 1895, corresponding to the 14th *Jeth* 1952 *Sambat*, defendant no. 1, Janak Misra, son of Kinu Misra, Gopal Misra, father of defendants 2 to 5, and Rupan Misra conveyed to plaintiff by a deed of sale (*Exhibit 3-a*) the whole of village Keri including *tola* Bhagiya and other appurtenant *tolas* for a consideration of Rs. 8,900 and, in pursuance of that *kabala*, delivered possession of the same to her. The plaintiff continued in peaceful possession of the disputed property and paid cesses to the *Kumar* of Tori, proprietor of the village. The plaintiff's husband, Bahadur Sahu, died in 1909, and she being a *pardah-nashin* lady there was nobody to look after her interest properly. The defendants, taking advantage of this, instigated the tenants of Keri to stop paying rent to the plaintiff, and contrived to have *tola* Bhagiya mapped and recorded as an independent village and to have some five hamlets or *tolas*, which really appertained to Keri proper, included in *tola* Bhagiya. They wrongfully and fraudulently had their names recorded in the settlement papers. The plaintiff coming to know of this, preferred an objection under section 83 of the Chota Nagpur Tenancy Act, which was however rejected. The record-of-rights was finally published in Keri on the 14th January, and in Bhagiya on the 21st January, 1916. After this publication the defendants dispossessed the plaintiff from the whole property in 1916. Upon these allegations the plaintiff claimed her title under the registered *kabala*, dated the 22nd May, 1895, and also by adverse possession to the whole of village Keri *asli mai dakhli*, including its hamlets. She further sought a declaration to the effect that Bhagiya was a mere *tola* (hamlet) which appertained to village Keri, and was not an independent *mauza*; that the real boundaries of Bhagiya were those contained in the *kabala* of defendant no. 6 (*Exhibit 13*), dated the 18th March 1909, and that the said defendant was entitled to hold only so much of the area of Bhagiya as was covered by his *kabala* and that the remaining portion, which had been mapped as part of Bhagiya by the

revenue authorities in course of the cadastral survey, appertained to Keri proper. The plaintiff, therefore, prayed for recovery of possession of Keri and its hamlets as detailed in the plaint, with the exception of certain trees mentioned in Schedule A, together with mesne profits of the value of Rs. 2,400, from December 1973 to 1975 and future mesne profits *pendente lite*.

1924.

MUSSAMMAT  
JASODA  
KUER  
v.  
JANAK  
MISSIR.

Three sets of written statements were filed in the case: (1) by defendant no. 1 Janak Misra, (2) by defendants 2 to 5 and (3) by defendant No. 6 the *zarpeshgidar*. The allegations in the first two pleadings were substantially the same. They pleaded *inter alia* that the suit was not maintainable by plaintiff, impugning the *kabala* of 1895 (*Exhibit 3-a*) set up by the plaintiff as a forged and fraudulent transaction; that the suit was bad for defect of parties and was barred by limitation. They denied that they had any property at Ranchi and alleged that registration had been obtained by fraud. They also alleged that defendant no. 1 was gained over by plaintiff's husband Bahadur Sahu, who was a notorious litigant, that they had incurred no debts and that the so-called creditors were creatures of Bahadur Sahu; that Bhagiya had been correctly surveyed and mapped; that plaintiff never held possession of the property nor collected any rents from the tenants. Defendant no. 1 further contended that Bahadur Sahu was his agent (*mukhtear-am*), that he was entirely under his influence and executed a document in favour of Bahadur Sahu and his brother Binda Sahu on the representation that he would not have to part with possession of the property and that it would protect his interest in the same. Defendant no. 6 alleged that the *mukarraridars* Sham Karan Bharathi and others should have been made parties to the suit, that Bhagiya had been correctly measured by the Revenue authorities as an independent *mauza*, that the *khairatdar* of Keri was only entitled to an annual rent of Rs. 5 from the *mukarraridar* of Bhagiya and that defendants nos. 1 to 5 had all along been in possession of Keri and that the plaintiff had

1924.

MUSSAMMAT  
JASODA  
KUER  
v.  
JANAK  
MISSIR.

no manner of title in or possession of the property. He pleaded limitation and contended that the plaintiff had managed to get her name recorded in the course of the settlement proceeding in the district without being in possession of the property. He, however, did not appear to have taken any keen interest in the Court below and did not enter appearance in the High Court. The real disputants were defendants 1 to 5, and the two written statements filed by them were *mutatis mutandis* the same. The following issues were framed in the Court below:—

- (1) "Has the plaintiff any cause of action?"
- (2) "Is the court-fee paid insufficient?"
- (3) "Is the suit barred by limitation?"
- (4) "Is Bhagiya a *tola* of village Keri with boundaries as stated in the *kabala*, dated the 22nd May, 1895, or is it an independent village as stated by defendant no. 6?"
- (5) "Has the plaintiff acquired any right, title or interest in village Keri and *tola* Bhagiya and other *tolas* with the exception of the trees mentioned in the plaint by her alleged purchase?"
- (6) "Is the plaintiff entitled to get possession of the disputed property?"
- (7) "Is defendant no. 6 a mere *zarpeshgidar* of Bhagiya only?"
- (8) "Is the plaintiff entitled to get mesne profits? If so, how much?"
- (9) "To what relief, if any, is the plaintiff entitled?"
- (10) "Is the suit bad for defect of parties?"
- (11) "Is the suit maintainable by plaintiff?"
- (12) "Whether the *kabala* set up by the plaintiff is illegal? Does it affect the property conveyed thereby?"

(13) " Was plaintiff's husband a *mukhtear-am* of the defendant? Did he commit any breach of faith in taking the above *kabala*? Is it binding on the defendants?"

1924.

MUSSAMMAT  
JASODA  
KUER  
v.  
JANAK  
MISSIR.

Issue no. 2 was stated by the Subordinate Judge not to have been pressed by the defendants. Issue no. 10 was decided in favour of the plaintiff. The remaining issues were decided against the plaintiff. In the result the Subordinate Judge dismissed the plaintiff's suit.

*Hasan Imam* (with him *Khurshaid Husnain* and *Syed Ali Khan*), for the appellant.

*P. C. Roy* and *Narendra Nath Sen*, for the respondents.

JWALA PRASAD AND ADAMI, J.J.—[Their Lordships first stated the facts set out above and, on a consideration of the evidence, decided that the suit was not barred by limitation, that the plaintiff's husband had not committed any breach of faith in respect of the *kabala* and that, therefore, it was binding on the defendants.]

Dec., 24.

The next question would then naturally arise as is set forth in issue no. 6 :

" Is the plaintiff entitled to get possession of the disputed property?"

The answer to this would have been a very simple one after what has been said above had it not been for Issue no. 12 :

" Whether the *kabala* which has been set up by the plaintiff is illegal? Does it affect the property conveyed thereby?"

Therefore, before Issue no. 6 is answered, Issue no. 12 must be disposed of. Under this issue the learned Subordinate Judge has decided that the Sub-Registrar of Ranchi, who registered the document, acted without jurisdiction, inasmuch as the vendors Rupan, Gopal and Janak had no property within the jurisdiction of the Ranchi Sub-Registry. Now, the properties conveyed by the sale deed are the properties in dispute, *mauza Keri* and its *tolas* (dependent

1924.

MUSSAMMAT  
JASODA  
KUER  
v.  
JANAK  
MISRA.

hamlets) and a portion of a house situate in Ranchi. *Mauza* Keri appertains to Palamau district and is outside the Ranchi district. According to the finding of the Subordinate Judge village Keri is 85 miles from Daltonganj and 40 miles from Ranchi. The executants of the bonds are residents of *mauza* Keri. The vendee Mussammat Jasoda Kuer and her husband Bahadur Sahu were residents of *mauza* Harhanj in the district of Palamau, about 48 miles off. The house in question stood in the name of Liladhar Misra, *am-mukhtear* of Bahadur Sahu, and Ganpat Sahu, brother-in-law of Bahadur Sahu. The house originally belonged to a *kumhar*, who conveyed the same to Liladhar and Ganpat on the 25th of June, 1883. Deocharan, brother of Liladhar, executed a *kabala* (*Exhibit 3*) claiming half the share jointly with Liladhar in the house in question on the 22nd May, 1895, wherein he claimed that he along with his brother Liladhar had a half-share in the house which was purchased in the name of Liladhar and Ganpat, and he sold one of the rooms of that house roofed with tiles said to be in his possession for a sum of Rs. 10, to Janak Misra, one of the executants of the sale deed in question (*Exhibit 3-a*). The two sale deeds (*Exhibits 3* and *3-a*) were presented to the Sub-Registrar of Ranchi for registration almost simultaneously between 2 and 3 p.m. and they were registered. The sale deed (*Exhibit 3*) relating to the house bears no. 2630 for 1895 entered in Book I, Volume 19, at pages 87-88. The sale deed (*Exhibit 3-a*) relating to *mauza* Keri in dispute bears no. 2632 for 1895 entered in Book I, Volume 13, at pages 275-279. Janak Misra in whose favour a portion of the house in Ranchi was sold by *Exhibit 3* did not intend to keep the house to himself, for immediately he conveyed the same by means of the sale deed (*Exhibit 3-a*) to Mussammat Jasoda Kuer. Therefore the sale deed (*Exhibit 3*) was executed with a view to give him title to the house situate in Ranchi in order that the sale deed (*Exhibit 3-a*) with respect to *mauza* Keri, might be presented for registration and registered in Ranchi. Neither of the parties lived either at Ranchi or at

Daltonganj, and the distance from their respective residences to Daltonganj was almost double. Obviously they thought it convenient to have the document registered at Ranchi instead of at Daltonganj, as 45 miles in that part of the country is an inconvenient distance to travel for ordinary people not having good conveyances at their disposal, the country being covered by hills and jungle. This in itself is not a dishonest motive and might in the circumstances be a good motive to avoid going to Daltonganj. In the present case nothing has been shewn why the parties should avoid having the document registered at Daltonganj, except the one ground referred to above. No circumstance has been shewn to indicate that the parties wanted to avoid publicity of the registration to the sale deed (*Exhibit 3-a*) in the Daltonganj district. There is nothing to show that they wanted to defeat or defraud any creditor or that they had any other sinister motive. Therefore the fact that Janak got the sale deed executed in his favour by Deocharan with respect to the house in Ranchi would not in itself affect the registration of the document provided it was a *bonâ fide* deed executed with a view to carry out the intentions of the parties in executing and registering the sale deed (*Exhibit 3-a*) in Ranchi with respect to *maura* Keri. It is said that Deccharan had no interest in the house and that the house belonged to Bahadur Sahu and that he was the real purchaser under a sale deed, dated the 25th June, 1883, from a *kumhar* in the *farzi* name of his *am-mukhtear* Lildhar Misra and his brother-in-law Ganpat Sahu. In support of this reference is made to *Exhibit A*, a sale deed executed by Bahadur Sahu in favour of Akhouri Sundar Behari Lal, dated the 19th March, 1902, several years after the *kabala* in question (*Exhibit 3-a*). In that sale deed Bahadur Sahu recites that he had purchased the house in question under a registered sale deed, dated the 25th June, 1883, with his own funds *farzi* in the name of his *mukhtear-am* Lildhar Misra and his brother-in-law Ganpat Sahu, and that he disposed of it to Akhouri Sundar Behari Lal for

1924.

---

MUSSAMMAT  
JASODA  
KUER  
v.  
JANAK  
MISSIR.



1924.

MUSSAMMAT  
JASODA  
KUER  
v.  
JANAK  
MISRA.

Rs. 125. Deocharan Misra, brother of Liladhar Misra, on the other hand, in the sale deed (*Exhibit 3*), stated that he was a co-sharer with Liladhar in the house in question and that he owned and possessed one of the rooms of that house and that he sold that off to Janak Misra per sale deed (*Exhibit 3*) on the 22nd May, 1895. Bahadur Sahu took part in the execution of the sale deed (*Exhibit 3-a*) in favour of his wife, the plaintiff in the case. The deed confirmed the sale of the house by Deocharan to Janak by *Exhibit 3*. Bahadur Sahu, therefore, allowed the property to be sold by Deocharan Misra in favour of Janak Misra. The sale deed of the 25th June, 1883, in favour of Liladhar Misra and Gopal Sahu on the face of it shows that Liladhar Misra had an interest, and Deocharan is brother of Liladhar. Therefore, upon the document as it stands it cannot be said that Liladhar or Deocharan had no title to the house in question. According to the tenor of the document and the relationship that existed between Deocharan and Liladhar, the former would appear to have title to the house in question which he purported to convey by the sale deed (*Exhibit 3*) to Janak. In a proceeding for registration of a document title to property cannot be gone into. There was a property, namely, the house situate within the Ranchi district and the Sub-Registrar of Ranchi had jurisdiction to register the document relating to the house in question. Deocharan Misra purported by *kabala* (*Exhibit 3*) to sell a portion of that house to Janak Misra, and Janak Misra, therefore, under that sale deed, acquired an ostensible title which he forthwith conveyed by *Exhibit 3-a* to the plaintiff. Section 28 of the Indian Registration Act does not require anything more than the existence of a property within the jurisdiction of a particular Sub-Registrar in order to entitle him to register the same [*Mussammat Dai v. Ram Chandra-bali Debi* (1)]. The cases cited are distinguishable. In *Harendra Lal Roy v. Hari Dasi Deri* (2) the property mentioned in the mortgage bond in question was

(1) (1019) 4 Pat. L. J. 433.

(2) (1914) I. L. R. 41 Cal. 972; I. R. 41 I. A. 110.

a fictitious property. It had no existence in Calcutta, and, therefore, under section 28 the registration of the document was invalid. In the case of *Biswanath Prasad v. Chandra Narain Chowdhury* (1), the sale deed with respect to 2 *bighas*, 1 *katha*, in Kolhua in the district of Muzaffarpur, which purported to give title to a party to a mortgage in order to entitle the registration thereof in the district of Muzaffarpur was not produced nor was it shewn that there was delivery of possession by virtue of the sale deed. In that case it was found that to the knowledge of both parties the mortgagor had no title to that property and that he never intended to part with that property. In those circumstances the registration of the document in the district of Muzaffarpur was held to be inoperative having been registered outside the registration law. The circumstances of this case are quite different from any of those cases. The first case obviously does not apply, inasmuch as the house in the district of Ranchi is not a fictitious property. The second case does not apply, inasmuch as on the face of the previous sale deed on the 25th June, 1883, Liladhar Misra, brother of Deocharan Misra, had title to the property, and Bahadur Sahu, who took part in the execution of both the sale deeds (*Exhibits 3 and 3-a*), led Janak Misra to believe that Deocharan had title to the house and did not disclose his own title if any. Therefore, these decisions of their Lordships of the Judicial Committee do not apply to the present case. The vendees themselves took part in the transaction regarding the registration of the documents (*Exhibits 3 and 3-a*) and cannot be permitted to take this plea.

We, therefore, hold, in disagreement with the view taken by the learned Subordinate Judge, that the document in question is not illegal on account of its having been registered by the Sub-Registrar of Ranchi. Issue no. 12 having been thus answered, the answer to Issue no. 6 is obvious, and that answer is in the affirmative.

1924.

---

 MUSSANMAT  
 JASODA  
 KUER  
 v.  
 JANAK  
 MISSIR.

1924.

MUSSAMMAT  
JASODA  
KUER  
v.  
JANAK  
MISRA.

The plaintiff is entitled to get possession of the disputed property. The plaintiff's title is fortified in this case by the fact that she had been in possession of the property for over 12 years from 1895 to 1909. Her possession was to the knowledge of Janak Misra who had taken part in the exercise of right of possession by the plaintiff, some of the counterfoils having been signed by himself. She, therefore, acquired an absolute title to the property by adverse possession for over 12 years, having exercised it openly and adversely to the knowledge of the defendants. Therefore even if the registration of the document was illegal, the title acquired by her by adverse possession remains intact, and the defendants have no right to dispossess her in the manner in which they did in the year 1910 or thereafter.

The obvious result of these findings is that the plaintiff is entitled to succeed in the suit, and the suit must be decreed.

S. A. K.

*Suit decreed.*


---

## APPELLATE CIVIL.

---

*Before Dawson Miller C. J. and Foster, J.*

1924-25.

W. W. BROUCKE

v.

Nov., 21, 24,  
25, 26, 27,  
28; Jan., 5.

SRI PANCH RANI CHHATAR KUMARI DEVI.\*

*Bengal Tenancy Act, 1885 (Act VII B. C. of 1885), sections 3 and 74—abwabs, included in the total jama, whether recoverable—Bengal Decennial Settlement Regulation (Regulation VIII of 1793)—Bengal Land Revenue Sales Regulation (Regulation V of 1812), section 3—Agricultural lease, meaning of—Transfer of Property Act, 1882 (Act IV of 1882), section 117.*

---

\* First Appeal no. 42 of 1921, from a decision of B. Raj Narain, Officiating Subordinate Judge of Muzaffarpur, dated the 20th July, 1920.