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rule made to the bridegroom and are accepted without demur. But the Madras case was not decided only on the ground of caste custom.

An endeavour has been made to show that there are some texts in some commentaries which indicate that a gift such as that which was made by the widow in the present case is invalid according to Hindu law. I have had the advantage of reading the judgment of my learned brother upon this somewhat intricate question and I agree entirely with the views which he has expressed thereon. I may, however, say that so far as I myself was able to form any opinion at all satisfactory to my own judgment, I thought that it could, at any rate, be stated with confidence that no authoritative texts had been placed before us which forbade or declared illegal a gift such as that made by the widow in this case.

In my view, therefore, the decision of the learned District Judge was correct and this appeal must be dismissed.

*Appeal dismissed.*

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## APPELLATE CIVIL.

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*Before Das and Foster, J.J.*

UPENDRA CHANDRA SINGH

v.

SARDAR CHRANJIT SINGH.\*

1926.

Jan., 27;  
May, 3.

*Santal Parganas Settlement Regulation, 1872 (Bengal Regulation III of 1872), sections 5 and 9—"Suit" whether includes execution proceeding—suit, institution of, under Code of Civil Procedure—decree, execution of, by the court which passed the decree—jurisdiction—notification under section 9—execution, whether can be transferred to special*

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\*Miscellaneous Appeal no. 241 of 1925, from an order of Najabat Hussain, Subordinate Judge of Bhagalpur, dated the 22nd August, 1925.

*court in Santal Parganas—sections 38 and 39(2), Code of Civil Procedure, 1908.*

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Section 5, Santal Parganas Regulation, 1872 provides :

(1) From the date on which under section 9 the Lieutenant-Governor declares by a notification in the *Calcutta Gazette* that a settlement shall be made of the whole or any part of the Santal Parganas until the date on which such settlement is declared by a like notification to have been completed, no suit shall lie in any civil court established under the Bengal, Agra, and Assam Civil Courts Act, 1887, in regard to—

- (a) any land or any interest in, or arising out of, land, or
- (b) the rent or profits of any land, or
- (c) any village headship or other office connected with any land, in the area covered by such first-mentioned notification nor shall any civil court proceed with the hearing of any such suit which may be pending before it.

“(2) Between the dates referred to in sub-section (1), all suits of the nature therein described shall be filed before or transferred to an officer appointed by the Lieutenant-Governor under section 2 of the Santal Parganas Act, 1855, or section 10 of this Regulation, according as the Lieutenant-Governor may from time to time direct, and such officer shall hear and, even though during the hearing the settlement may be declared to have been completed, determine them.”

*Held*, that the term “suit” in this section does not include a proceeding in execution.

*Ram Kripal v. Rup Kuari* (1), followed.

*Bajjulal Marwari v. Thakur Prasad Marwari* (2), not followed.

*Maha Prasad Singh v. Ramani Mohan Singh* (3), referred to.

Where, therefore, a decree was passed by the Bhagalpur court long before the notification directing a settlement to be made under section 9 of the Regulation had been published,

(1) (1884) I. L. R. 6 All. 269 (274), P. C.

(2) Civil Revision 60 of 1925.

(3) (1916) I. L. R. 42 Cal. 116, 143, P. C.

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but the execution application for the sale of one of the properties situate in the Santal Parganas was filed in the court which passed the decree after the publication of the notification, and the judgment-debtor objected to the execution on the ground that the Bhagalpur court's jurisdiction was barred by section 5 of the Regulation,

*Held*, (i) that section 5 did not bar the institution of the execution proceeding in the Bhagalpur court, and

(ii) that the suit having been instituted under the Code of Civil Procedure, the decree-holder was bound to take out execution in the court which passed the decree, and that court could transfer the decree to another court for execution only on an application by the decree-holder under section 39(1) of the Code or, *suo motu*, to a subordinate court, under section 39(2) of the Code; but that the decree could not be transferred by the Bhagalpur court, under section 39(2) of the Code, to the officer referred to in section 5(2) of the Regulation, inasmuch as that officer was not subordinate to the Bhagalpur court.

Appeal by the judgment-debtor.

The facts of the case material to this report are stated in the judgment of Das, J.

*S. M. Mullick* and *S. N. Palit*, for the appellant.

*Kailas Pati*, for the respondents.

*Cur. adv. vult.*

May, 2.

DAS, J.—This appeal is directed against the order of the learned Subordinate Judge of Bhagalpur dated the 22nd August, 1925, by which he has overruled certain objections to the execution proceedings instituted by the respondent against the appellant. Only one point has been taken before us, and it is this: that having regard to section 5 of Regulation 3 of 1872, the Bhagalpur court has no jurisdiction to entertain the application for execution or to sell the properties. One of the properties sought to be sold is in the Santal Parganas; and it is not disputed that a settlement is now being made of the Santal Parganas for the purpose of ascertaining and recording the various interests and rights in the land. That being the position, the appellant relies upon section 5 of Regulation 3 of 1872 [set out in the headnote, *supra*].

In order to understand the argument, it is necessary to remember that the notification under section 9 in regard to the settlement was published in the Gazette long after the pronouncement of the decree which is sought to be enforced in these execution proceedings, but before the presentation of the application for execution. It is accordingly argued on behalf of the respondent that section 5 of the Regulation has no application; and that the Civil Court in Bhagalpur has complete jurisdiction to entertain the application for execution and to proceed to sell the properties. On behalf of the appellant, it is contended that the term "suit" has not been used in the Regulation in its narrow sense as being terminated by the decree made by the first court but in a broad sense as including the proceedings in execution of the decree made in the suit; and reliance was placed on a decision of this Court in *Baijulal Marwari v. Thakur Prosad Marwari* (1).

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It may be conceded that the term "suit" has been used in a very broad sense in various statutes; but the question is in what sense that term has been used in the Regulation. The bar of jurisdiction is with respect to suits in regard to

- (a) any land or any interest in, or arising out of, land,
- (b) the rent or profits of any land, or
- (c) any village headship or other office connected with any land.

Paragraphs (b) and (c) have no application whatever. In order to bring the case within paragraph (a) it must be established that an execution proceeding which seeks to have immovable properties of the judgment-debtor sold in pursuance of the decree is a suit in regard to any land or any interest in, or arising out of, land. As was pointed out by the Judicial Committee in *Maha Prasad Singh v. Ramani*

(1) C. B. no. 60 of 1925.

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*Mohan Singh* (1), "the aim of the provision was to prevent any clash of jurisdiction between different courts in matters relating to land until such time as the Government proclaimed the settlement to be completed—a very intelligible policy when it is considered that on the results of such suits between individuals might depend the entries which must be made in the settlement records". But no clash of jurisdiction is to be apprehended after the decree has decided the rights of the parties. The object of an execution proceeding is to enforce the decree already passed; and, in my opinion, a careful consideration of the scope and the object of the Regulation does not suggest the interpretation that the term "suit" was used in the Regulation in a broad sense as including the proceeding in execution.

The position will be made abundantly clear on a reference to the provision of the Code relating to execution. Section 38 says:

"A decree may be executed either by the court which passed it or by the court to which it is sent for execution."

Now it seems to me that this provision was wholly unnecessary if proceedings in execution were regarded as proceedings in the suit. An application in the suit must obviously be made to the court in seisin of the suit; and the Legislature is not in the habit of making provisions as to matters which do not require legislation. The Legislature obviously took the view that it was necessary to make provision on this point; and, on grounds of convenience, it decided that the court which passed the decree should be the court to execute the decree, unless that court sends it for execution to another court. What I wish to emphasize in this connection is that, although an application for execution has to be presented to the court which passed the decree, it is only by Legislative sanction that that is so; which I think, must lead to the inference that an application for execution was not regarded by the Legislature as an application in the suit itself. For instance, the Legislature did not

(1) (1915) I. L. R. 42 Cal. 116, 148.

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think it necessary to provide that an application for the appointment of a receiver, or an application for the issue of an injunction, which are undoubtedly applications in the suit itself, should be made to the court in seisin of the suit. It assumed that position as obvious in the nature of things.

Then there is another aspect of the case which I must not omit to consider. The suit itself was instituted in the Civil Court under the provision of the Civil Procedure Code. That being the position, where was the decree-holder to present his application for execution? Section 38 of the Code to which I have already referred says that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. It was contended before us on behalf of the appellant that here is a clear provision that the decree may be sent for execution to another court, and it was insisted that the Civil Court should have sent the decree for execution to the Special Court in the Santal Parganas. But such an argument is an impossible one, as I shall presently show. Section 38 of the Code read with section 39 shows that the court which passed the decree is primarily the court to execute the decree but that such a court may send the decree for execution to another court either on the application of the decree-holder or of its own motion, only if certain conditions are satisfied. Here the decree-holder did not ask the court to send the decree for execution to another court. But the court might of its own motion send the decree for execution to another court; but section 39(2) shows that it could only send it for execution

“ to any subordinate court of competent jurisdiction.”

Now the Special Court in the Santal Parganas is not a court subordinate to the Civil Court at Bhagalpur. In my opinion, there is no jurisdiction in the Civil Court at Bhagalpur to send the decree for execution to the Special Court in the Santal Parganas. Under the Civil Procedure Code (which governed the procedure in this case) the decree-holder was entitled, even

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bound to present his application for execution in the court which passed the decree. He did not apply for the transfer of the decree to the Special Court in the Santal Parganas, and the court of its own motion could not send the decree for execution to that court. In my opinion, the court which passed the decree has complete jurisdiction to execute the decree.

Reliance was, however, placed on the decision of this Court in *Baijural Marwari v. Thakur Prosad Marwari* (1). The decision of the learned Judges in that case was based, not on the construction of the Regulation, but on the view that proceedings in execution are proceedings in the suit. But this position cannot be maintained, having regard to the decision of the Judicial Committee in *Ram Kripal v. Rup Kuari* (2) which was not placed before the learned judges. The facts were these: The appellant had brought a suit against the respondent for certain reliefs including one for mesne profits. He obtained a decree in due course. He applied for the ascertainment of the mesne profits in the execution department, and this was resisted on the ground that the decree did not award any mesne profits to the appellant. The District Judge, Mr. Probyn, decided on the 20th December, 1867, that the decree did award mesne profits to the appellant. Proceedings with a view to obtaining execution were then taken by the appellant, and he applied for mesne profits estimated at a large sum of money. The judgment-debtor again objected that the mesne profits not having been awarded, were not claimable; and the question arose whether the order of Mr. Probyn, dated the 20th December, 1867, operated as *res judicata* so as to bar the right of the judgment-debtor to reargue the question involved in the decision. The Allahabad High Court decided that the order passed by Mr. Probyn in the execution department could not be regarded as an order passed in the suit itself and that the question

(1) C. R. no. 60 of 1925.

(2) (1884) I. L. R. 6 All. 269, 274, P. C.

of res judicata did not fall to be considered. The Judicial Committee accepted the first proposition, but not the second. They referred to their decision in *Mungul Pershad Dikhit v. Grija Kant Lahiri* (1) for the proposition that the binding force of a judgment or order depends, not upon the rule of res judicata as enunciated in the Code, but upon general principles of law; but they were of opinion that "the matter decided by Mr. Probyn was not decided in a former suit, but in a proceeding of which the application, in which the orders reversed by the High Court were made, was merely a continuation". Now a clear distinction is drawn by the Judicial Committee between a proceeding in the suit itself and a proceeding which is a continuation of the suit; and, in my opinion, we cannot ignore the distinction in considering whether proceedings in execution are comprehended within the term "suit" as used in the Regulation. In my opinion, they are not; and I must therefore affirm the order of the court below and dismiss the appeal with costs.

It follows that the application, which has been made in the appeal, must be refused.

FOSTER, J.—I concur in the final order.

*Appeal dismissed.*

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## REFERENCE UNDER THE COURT-FEES ACT, 1870.

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*Before Jwala Prasad, J.*

MADHO RAY

*v.*

MUSAMMAT BIBI MAHBUWAN NISA.\*

*Court-fees Act, 1870 (Act VII of 1870), section 7(1) and Schedule I, Article 1—appeal against final decree—ad valorem*

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\*Stamp Reference.

(1) 1871) I. L. R. 8 Cal. 51.

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