

1928.

SYED ALI
ZAMINv.
SYEDMUHAMMAD
AKBAR
ALI KHAN.DAWSON
MILLER, C.J.

was a benami transaction. I hold, therefore, that the house, no. 68, Dharamtalla Street, belongs to the defendant Bibi Zainia and the plaintiff is not entitled to any interest therein.

A further small matter remains to be dealt with. By the decree appealed from the plaintiff is declared entitled to a third share in the immoveable properties and a fourth share in the moveable properties. Under Shia law, however, a childless widow is entitled to one-fourth share in the moveables including household effects and the value of trees and buildings forming part of her husband's estate. The plaintiff's share in such property will be subject to the right of the defendant no. 2 to her one-fourth share therein.

The decree of the trial Court will be varied by declaring that the plaintiff is not entitled to any share in the house, no. 68, Dharamtalla Street, Calcutta, which belongs to the defendant no. 2 and that the plaintiff's share in the moveable and immoveable properties is subject to the one-fourth share of the defendant no. 2 in the moveables including household effects and the value of buildings and trees forming part of the estate of the late Badshah Nawab.

ADAMI, J.—I agree.

APPELLATE CIVIL.

Before Das and Ross, JJ.

BUDEHANATH PRIDA

v.

RADHABINODE NAIK.*

1928.

Feb. 2.

Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), section 31—Collector, refusal of, to register transfer—Revenue Courts, exclusive jurisdiction of—Civil Court, power of, to interfere.

* Circuit Court, Cuttack. Appeal from Appellate Decree nos. 135 of 1925 and 14 of 1926, from a decision of S. B. Dhavle, Esq., i.c.s., District Judge of Cuttack, dated the 13th November 1925, modifying a decision of Babu Ramesh Chandra Mitra, Munsif, 1st Court of Puri, dated the 8th September, 1924.

Section 31 of the Orissa Tenancy Act, 1913, confers exclusive jurisdiction on the Revenue Courts to decide whether the landlord had good and sufficient reason to refuse his consent to the transfer of raiyati lands by the tenant; and unless the Civil Court is satisfied that the Revenue Courts had no jurisdiction to deal with the matter, it has no power to entertain the question at all.

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The jurisdiction of the Civil Courts and the jurisdiction of the Revenue Courts are mutually exclusive and the Revenue Courts are in no sense under the supervision of the High Court.

The Civil Court has no power, independently of section 31, to go into the question and decide whether the landlord had good and sufficient cause to refuse his consent to the transfer.

Giridhari Naik v. Kashi Tindi (1), distinguished.

Appeal by the defendants.

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

B. K. Roy, for the appellants.

J. N. Bose, S. C. Chatterji and *S. N. Sen Gupta*, for the respondents.

DAS, J.—The plaintiffs are the landlords and the suits are for recovery of khas possession of certain raiyati lands. Defendant no. 7 was recorded as a tenant in respect of these lands and one Achutananda represented in these litigations by defendants 1 to 6 was recorded as an under-raiyat. It appears that defendant no. 7 sold his raiyati interest to Achutananda and the plaintiffs contend that in the events which have happened they are entitled to khas possession of the disputed lands. Achutananda tried to get the consent of the landlord to the transfer. Having failed he adopted the procedure laid down in section 31 of the Orissa Tenancy Act and applied to the Collector for the registration of the transfer in his favour. The Collector considered the matter and refused to register the transfer. Thereupon Achutananda

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appealed to the Commissioner and the Commissioner affirmed the order of the Collector.

It is contended before us that the order of the Collector was without jurisdiction and that we should therefore hold that the transfer in favour of Achutananda was binding upon the landlord. Section 31 of the Orissa Tenancy Act gives an exclusive jurisdiction to the Revenue Courts to consider whether the landlord had good and sufficient reason to refuse his consent to the transfer. The explanation to paragraph 3 lays down the circumstances to which the Collector "shall have regard" in considering the question; and paragraph 6 provides that the applicant has a right to carry the matter up to the Commissioner and that "the order of the Commissioner on appeal shall be final." It has been contended before us that the order of the Commissioner proceeded on an erroneous assumption of facts and that, therefore, we should regard his final order as being made without jurisdiction. I cannot assent to this proposition. The section gives an exclusive jurisdiction in the matter to the Revenue Courts and unless we are satisfied that the Revenue Courts had no jurisdiction to deal with the matter, we have no power to enter upon the question at all. The Revenue Courts were the only Courts that could deal with the matter. They did in fact deal with the matter. In assuming jurisdiction to deal with the matter, they were acting strictly within the statute and not outside it. It may possibly be that in deciding the point in the way in which they have done, they have made mistakes; but it is impossible to hold that because the Revenue Courts may possibly have made mistakes in this matter, the Civil Court can enter upon the question and correct the decision of the Revenue Courts. It may be pointed out that the two jurisdictions, namely, the jurisdiction of the Civil Courts and the jurisdiction of the Revenue Courts, are mutually exclusive and that the Revenue Courts are in no sense under the supervision of the High Court. It seems to me that it is quite

impossible to give effect to the argument of the learned Vakil. 1928.

It was next contended that although the Revenue Courts may have failed to give him relief, the Civil Court independently of section 31 has power to go into the question and to hold that the landlord did not have good and sufficient cause to refuse his consent to the transfer and for this proposition a decision of this Court in *Giridhari Naik v. Kashi Tindi* (1) was cited. All that was laid down in that decision was that "it is fallacious to say that occupancy rights are not transferable in Orissa without the consent of the landlord. They are transferable without the landlord's consent unless it can be shown to the satisfaction of the Collector that the landlord has good reason for his objection." I entirely fail to see how this decision has bearing on the question which is before us.

I would dismiss these appeals with costs.

Ross, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Das and Ross, JJ.

RICHHARAM

v.

PASUPATI BANERJI.*

1928.

Feb. 9.

Execution of decree—Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 22, issue of notice under—execution dismissed for default of decree-holder—limitation, objection as to, whether can be taken at a later stage of the proceeding.

* Circuit Court, Cuttack. Appeal from Appellate Order no. 13 of 1927, from a decision of G. J. Monahan, Esq., I.C.S., District Judge of Cuttack, dated the 9th of July, 1927, confirming a decision of Babu Rangalal Chatterji, Munsif, 2nd Court of Cuttack, dated the 10th of January, 1927.

(1) (1917) 2 Pat. L. J. 476.