

## APPELLATE CIVIL.

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*Before Das and James, JJ.*

MOHIT KUMAR MUKHARJI

v.

SURENDRA NATH GHOSH.\*

*Santal Parganas Justice Regulation, 1893 (Regulation V of 1893), sections 9, 10, 14 and 15—Santal Parganas Act, 1855 (Act XXXVII of 1855), section 2—Insolvency Act, 1920 (Act V of 1920), proceeding under, whether is a "suit", within the meaning of the Regulation—value of proceeding exceeding one thousand rupees—appeal whether lies to the High Court at Patna—Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887).*

By section 9, Santal Parganas Civil Justice Regulation, 1893, the Deputy Commissioner in trying *suits* of which the value exceeds one thousand rupees acts as the District Judge under the Bengal, Agra and Assam Civil Courts Act, 1887; and under section 10 appeals from his orders lie to the High Court at Patna.

By section 14 of the Regulation the Deputy Commissioner in trying *suits* of which the value does not exceed one thousand rupees and in trying miscellaneous proceedings without limit as regards the value, acts as a court under section 2 of the Santal Parganas Act, 1855 (Act XXXVII of 1855), and under section 15(1) of the Regulation appeals from his orders lie to the Commissioner of the Bhagalpur Division.

*Held*, that a proceeding under the Provincial Insolvency Act, 1920, is a "suit" within the meaning of the Regulation and that, therefore, an appeal from an order of the Deputy Commissioner in a proceeding under that Act of which the value exceeds one thousand rupees, lies to the High Court at Patna.

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\*Miscellaneous Appeal no. 103 of 1929, In the matter of.

*Hurro Chander Roy Chowdhury v. Shoorodhonee Debia*(1), *Bhupendro Narain Dutt v. Baroda Prasad Roy Chowdhury*(2), *Pitaram v. Jhujhar Singh*(3), *Abdulla Khan v. Kanhaya*(4) and *Venkata Chandrappa Nayaniwaru v. Venkarama Reddi*(5), followed.

*Bansidhar v. Kharagjit*(6), *Abdul Razak v. Basir-ud-din Ahmed*(7), *Arunagiri Mudaliar v. Kandaswami Mudaliar*(8) and *Ramaswami Chettiar v. Ramaswami Iyengar*(9), referred to.

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

*J. C. Sinha*, for the appellant.

*Sir Sultan Ahmad*, *Government Advocate*, for the respondent.

DAS, J.—We are asked in this case to consider the validity of an objection of the Deputy Commissioner, Santal Parganas, to the jurisdiction of this Court, to entertain an appeal from his order in a proceeding under the Provincial Insolvency Act. He says that the case was heard by him as Deputy Commissioner sitting as a District Court under section 15 of Regulation V of 1893 and that an appeal lies from his order to the Commissioner of the Bhagalpur Division, and not to the High Court at Patna. The objection raises a very serious question, and it is necessary for us to proceed with care.

As has been pointed out, the position of the Santal Parganas is very peculiar. They are under separate and special legislation which differs widely from the legislation applicable to the rest of the

1929.

MOHIT  
KUMAR  
MUFHARJI  
v.  
SURENDRA  
NATH  
GHOSH.

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- (1) (1868) 9 W. R. 402 (406).  
 (2) (1891) I. L. R. 18 Cal. 500.  
 (3) (1917) I. L. R. 39 All. 626.  
 (4) (1912) 14 Ind. Cas. 751.  
 (5) (1898) I. L. R. 22 Mad. 256.  
 (6) (1914) I. L. R. 37 All. 65.  
 (7) (1910) 11 Cal. L. J. 435.  
 (8) (1923) 83 Ind. Cas. 955.  
 (9) (1921) I. L. R. 45 Mad. 434.

1929.

MOHIT  
KUMAR  
MUKHARJI  
v.  
SURENDRA  
NATH  
GHOSH,  
DAS. J.

Province. As early as 1855, the Government had already made up its mind to remove "certain districts inhabited by Santals and others" from the operation of the general laws and regulations, and to place the same under the superintendence of an officer to be specially appointed for that purpose. But it made it clear that

"all civil suits in which the matter in dispute shall exceed the value of one thousand rupees shall be tried and determined according to the general laws and Regulations in the same manner as if this Act,"

that is to say Act XXXVII of 1855,

"had not been passed."

The critical Regulation which we have to consider in connection with this matter is Regulation V of 1893 which is described as

"A regulation to make further provision for the administration of criminal and civil justice in the Santal Parganas."

We are not concerned in this case with the question of the administration of criminal justice. Civil justice is dealt with in Chapter 3 of the Regulation. Section 5 enacts that

"besides the courts of settlement officers"

which were brought into existence by Regulation III of 1872,

"there shall be two classes of civil courts in the Santal Parganas, namely,

- (1) Courts established under the Bengal, Agra and Assam Civil Courts Act, 1887, and
- (2) courts of officers appointed by the Lieutenant Governor of Bengal under section 2 of Act 37 of 1855."

The rest of Chapter 3 is divided into two parts, part I dealing with the jurisdiction of Courts established under the former Act, and part II dealing with the jurisdiction of the Courts under the latter Act.

The question in these proceedings is whether the learned Deputy Commissioner, in trying the insolvency case in question, could have exercised his jurisdiction as a court under section 2 of Act XXXVII of

1855. If it appears on an interpretation of the critical statute in question that he could only have acted as a Court under the Bengal, Agra and Assam Civil Courts Act, and not as a Court under section 2 of Act XXXVII of 1855, then, it must follow that the Patna High Court is the only Court that can entertain an appeal from the order passed by him.

I have said that Chapter 3 of Regulation V of 1893 is divided into two parts, part I dealing with the courts established under the Bengal, Agra and Assam Civil Courts Act, and part II dealing with courts of officers appointed under section 2 of Act XXXVII of 1855. Sections 7 to 11 occur in part I. Section 8 provides that the Deputy Commissioner shall be the District Judge, and that the local Government may appoint any Subdivisional Officer to be a Subordinate Judge. Section 9 is important and defines the jurisdiction of the District Judge. It runs as follows :

“ The jurisdiction of the District Judge or a Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure, to suits of which the value exceeds one thousand rupees and which are not excluded from the cognizance by the Santal Parganas Settlement Regulation or by any other law for the time being in force : Provided that such jurisdiction shall not extend to any suit for money in which the amount claimed, exclusive of interest, does not exceed five hundred rupees.”

Section 10 makes it clear that appeals from the orders of the District Judge lie to the High Court at Patna.

Now it is obvious that suits of which the value exceeds one thousand rupees are triable by the Deputy Commissioner as a District Judge under the provisions of the Bengal, Agra and Assam Civil Courts Act and that appeals from his orders lie to the High Court at Patna. This is in accordance with the policy which the Legislature had already made up its mind to pursue and which it declared in unequivocal terms in the proviso to section 2 of Act XXXVII of 1855.

1929.

---

MOHIT  
KUMAR  
MUKHARJI  
v.  
SURENDRA  
NATH  
GHOSH.  
DAS, J.

1929.

I now come to section 14 upon which the Deputy Commissioner relies and which provides that

MOHTI  
KUMAR  
MURHARJI  
".  
SURENDRA  
NATH  
GHOSH.  
DAS, J.

" except as otherwise provided by any other enactment for the time being in force, jurisdiction with respect to suits which are not cognizable either by a Court established in the Santal Parganas under the Bengal, Agra and Assam Civil Courts Act, 1887, or by a Settlement-officer under the Santal Parganas Settlement Regulation shall be had—

- (a) up to the value of one hundred rupees or such other value not exceeding five hundred rupees as the local Government may, by notification in the official Gazette, prescribe, by the Court of a Deputy Collector not in charge of a subdivision, or Sub-Deputy Collector; and
- (b) without limit as regards the value, by the Court of a Sub-divisional Officer or the Court of the Deputy Commissioner."

It is clear that the Deputy Commissioner has no jurisdiction to proceed under section 14, if the matter were cognizable by him as a District Judge under the Bengal, Agra and Assam Civil Courts Act. Reading section 9 and section 14 together, it would appear that,

(1) in trying suits of which the value exceeds one thousand rupees, the Deputy Commissioner acts as the District Judge under the Bengal, Agra and Assam Civil Courts Act, and exercises jurisdiction under section 14 of Regulation V of 1893, and appeals from his orders lie to the High Court under section 10 read with the Bengal, Agra and Assam Civil Courts Act;

(2) in trying suits of which the value does not exceed one thousand rupees and in trying miscellaneous proceedings without limit as regards the value, the Deputy Commissioner acts as a court under section 2 of Act XXXVII of 1855 and exercises jurisdiction under section 9 of Regulation V of 1893, and appeals from his orders lie to the Commissioner of the Bhagalpur Division.

This being the position, the problem resolves itself into this, namely, whether the insolvency proceeding which is the subject-matter of appeal to this

court can be regarded as a "suit" within the meaning of that term as used by the Legislature. So far as I know, the term "suit" has not been defined in any enactment; but it is a complete mistake to suppose that the term "suit" necessarily means a proceeding which commences with a plaint under the Civil Procedure Code and ends with execution. So far back as 1868, it was pointed out by Sir Barnes Peacock in *Hurro Chunder Roy Chowdhury v. Shoorodhonee Debia*(<sup>1</sup>) that "the word suit does not necessarily mean an action", and that "any proceeding in a court of justice to enforce a demand is a suit".

In *Blupendro Narain Dutt v. Baroda Prasad Roy Chowdhury*(<sup>2</sup>), the question as to the meaning of the word "suit" arose in this way: *H* instituted a suit and died before the suit was heard. *H*'s mother, *R*, claiming to have succeeded to the estate of *H* under a will, and having obtained probate thereof, proceeded with the suit and obtained a decree therein. Subsequently the will was set aside as a forgery. The estate passed to *B*, the son of *H*. *B* was a minor and his estate was taken charge of by the Court of Wards. After certain proceedings which proved infructuous, an application, which was the subject-matter of the appeal to the High Court, was made by the minor represented by the Collector to have the minor's name substituted in the record and to have the decree obtained by his father executed. A question arose as to whether the Collector was justified in making the application. Now section 51 of the Court of Wards Act (Bengal Act IX of 1879) provided that in every suit brought by or against the ward, the manager of such ward's property

"shall be named as next friend or guardian for the suit, and shall in such suit represent such ward."

(1) (1868) 9 W. R. 402, 406.

(2) (1891) I. L. R. 18 Cal. 500.

1929.

MOHPI  
KUMAR  
MUKHARJI  
".  
SURENDRA  
NATH  
GHOSH.  
DAS, J.

1929.

MOHIT  
KUMAR  
MUKHARJI  
v.  
SURENDRA  
NATH  
GHOSH.  
Das. J.

It was, therefore, contended on behalf of the judgment-debtor that the manager of the ward's property, and not the Collector, was the proper person to make the application. The reply was that section 51 applied in terms to a suit; and that it did not apply to the proceeding in which the application was made. Dealing with this contention, their Lordships of the Calcutta High Court, pointed out as follows: "It has been argued before us by the Counsel for the respondent that the word 'suit' in that part, i.e., part VII of Bengal Act IX of 1879, must mean what is usually called a 'regular suit', and cannot refer to proceedings of the nature now before us, in which the ward seeks to have his name substituted for that of his mother, and the decree obtained by his father executed. We regret that we are unable to accept this argument. The word 'suit' in this Act has not the narrow significance attached to the word 'action' in English Law; and as Sir Barnes Peacock pointed out in a Full Bench decision of this Court (*Huroo Chunder Roy Chowdhury v. Shoorodhonee Debia*,<sup>(1)</sup>) it embraces all contentious proceedings of an ordinary civil kind, whether they arise in a suit or miscellaneous proceedings".

Now it is quite true that there are numerous examples of litigious business in Court to which, it would, without an obvious misapplication of language, be improper to apply the term 'suit'. For instance, an application under section 83 of the Transfer of Property Act for leave to deposit the amount remaining due on the mortgage is not a suit. Other instances may be given; but speaking generally the term 'suit' ought certainly to be applied to such proceedings as are capable of determining the rights of the parties once for all, whether of title or of any nature whatsoever.

(1) (1868) 9 W. R. 402.

Now, applying this test, it is impossible to resist the conclusion that an insolvency proceeding is a suit. Section 4 of the Provincial Insolvency Act gives complete power to the Court in an insolvency proceeding

“to decide all questions whether of title or priority or of any nature whatsoever, and whether involving matters of law or of fact.”

Section 5 provides that, in regard to proceedings under the Insolvency Act,

“the court shall have the same power and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.”

It has been held in numerous cases that the Civil Procedure Code applies to an insolvency proceeding and that the Court is required by the Provincial Insolvency Act to follow the procedure of a civil court in a civil suit [see *Bansidhar v. Kharagjit*(<sup>1</sup>), *Abdul Razak v. Basir-ud-din Ahmed*(<sup>2</sup>), *Arumagiri Mudaliar v. Kandaswami Mudaliar*(<sup>3</sup>) and, *Ramaswami Chettiar v. Ramaswami Iyengar*(<sup>4</sup>)]. In the last mentioned case it was held that an Insolvency Court has complete power to execute its orders. In dealing with the point, the learned Judges said, “The Legislature having invested the Insolvency Courts with extensive powers under section 4, it would be, in our opinion, anomalous to hold that the courts are powerless to give effect to their judgments or orders”. Section 12 requires that every insolvency petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints: section 18 says that the procedure laid down in the Code with respect to the

1929.

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MOHIT  
KUMAR  
MURHARJI  
v.  
SURENDRA  
NATH  
GHOSH.  
Das, J.

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(1) (1914) I. L. R. 37 All. 65.

(2) (1910) 11 Cal. L. J. 435.

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1929.

MEHET  
KUMAR  
MUKHARJI  
v.  
SURENDRA  
NATH  
GHOSH.  
DAS, J.

admission of complaints shall, so far as it is applicable, be followed in the case of insolvency petitions. A complete system of appeals is provided for by section 75; and section 78 enacts that a decision under section 4 is a decree for the purpose of section 12 of the Limitation Act. Even if we were to give a very narrow construction to the term 'suit' as a proceeding to which the Civil Procedure Code applies, we must hold that an insolvency proceeding is a "suit" within the meaning of that term as used by the Legislature.

The question, however, does not rest on principle; it is concluded by authority. In *Pitaram v. Jhujhar Singh*<sup>(1)</sup> a question arose whether an order passed in the course of an insolvency proceeding operated as *res judicata* in a subsequent suit between the parties. The Court decided that it did; and in so deciding, it pointed out that "a proceeding which results from an application of the kind made by the present plaintiff, and in which a question of title is raised by both sides, although it is not originated by a plaint, has otherwise all the attributes of a suit". Now, it is to be observed that the order in an insolvency proceeding could not operate as *res judicata* under section 11 of the Code, unless the proceeding could be regarded as a suit. Dealing with this point, their Lordships of the Allahabad High Court said as follows: "There is no definition of the word 'suit', probably because it is not possible to frame one which will satisfactorily survive every test. But on the other hand it is not difficult to decide in the vast majority of cases whether a proceeding is in fact a suit or whether it is merely a summary or subsidiary application. The authorities show that judicial bodies have varied in their method of treating the question. But every case must turn upon its own circumstances. In the case of

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(1) (1917) I. L. R. 39 All. 626.

*Abdulla Khan v. Kanhaya*<sup>(1)</sup> a decision in an execution proceeding was held to be a bar to a subsequent suit. In the case of *Venkata Chandrappa Nayani-varu v. Venkatarama Reddi*<sup>(2)</sup> when the proceeding was held not to have been a suit it was said :—' Suit is a very comprehensive term. It includes any proceeding in a court of justice by which a party pursues the remedy which the law gives him. If a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a 'suit'. Applying this test, with which we see no reason to quarrel, to the proceeding now in question, we hold that it was a 'suit' within the meaning of section 11 of the Civil Procedure Code and that that section affords an answer to the present suit''. This is a decision directly in point and is one which the learned Deputy Commissioner might well have considered.

I have no doubt whatever that an insolvency proceeding is a suit; and that, as the value of the subject-matter of the proceeding exceeds the sum of rupees one thousand, it was cognizable by the Deputy Commissioner as the District Judge, and that an appeal from his order lies to this Court. It is idle to contend that by purporting to try the case under section 14 of Regulation V of 1893, the learned Deputy Commissioner could oust the jurisdiction of this Court from entertaining an appeal from his order in a case which he could only have tried as a District Judge under section 9 of the Regulation.

I must direct the learned Deputy Commissioner as the District Judge and, therefore, under the control of this Court to send the records of this case to this court without further delay.

JAMES, J.—I agree.

1929.

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MOHIT  
KUMAR  
MULHANJI  
v.  
SURENDRA  
NATH  
GHOSH.  
DAS. J.

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(1) (1912) 14 Ind. Cas. 751.

(2) (1898) I. L. R. 22 Mad. 256.