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and the decree of the High Court of the 18th November, 1929, should be affirmed, subject to the exclusion of plot no. 2139, as above mentioned.

Solicitors for appellants: *Callingham, Ormond and Maddox.*

Solicitors for respondents: *W. W. Box and Company.*

LORD  
THANKER-  
TON.

### APPELLATE CIVIL.

*Before Courtney Terrell, C. J., and Varma, J.*

BHUBANESHWARI DASÍ

v.

PULIN KRISTA RAI.\*

1934.

April, 5.  
July, 18.  
October, 6.  
November,  
9.

*Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887), section 14—Sontal Parganas Act, 1885 (Act XXXVII of 1885), section 2—Sontal Parganas Justice Regulation, 1893 (Reg. V of 1893), sections 5 and 11—suit valued at more than Rs. 1,000—Court in Sontal Parganas, whether should take up and dispose of such cases at a place different from headquarters.*

A court in the Sontal Parganas should not take up and dispose of a suit valued at more than Rs. 1,000 at a place different from the headquarters.

Appeal by the judgment-debtor.

The facts of the case material to this report are set out in the judgment of the Court.

*S. N. Bose*, for the appellant.

*B. N. Mitter and N. N. Roy*, for the respondents.

COURTNEY TERRELL, C. J. and VARMA, J.—This is an appeal against an order of the Subordinate

\* Appeal from Original Order no. 321 of 1933, from an order of Mr. C. E. Walze, Subordinate Judge of Deoghar, dated the 24th day of November, 1933.

Judge of Deoghar in the Santal Parganas refusing to set aside a sale under Order XXI, rule 90, of the Code of Civil Procedure.

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On the 14th of September, 1929, the appellant borrowed a sum of Rs. 6,100 by executing a mortgage bond in favour of the respondent hypothecating a house at Deoghar. On the 31st of October, 1930, the appellant executed another mortgage bond in favour of one Jatindra Mohan Pal for a sum of Rs. 1,200 and under this bond also the same house was hypothecated. On the 12th of February, 1931, the respondent instituted a suit on the first mortgage bond claiming Rs. 7,114-4-0. A preliminary decree was passed in the suit on the 10th of February, 1932, and it was made final on the 28th of September, 1932, for a sum of Rs. 8,920 and odd. On the 26th of November, 1932, the decree-holder respondent started execution proceedings but the judgment-debtor objected to the valuation put on the mortgaged property which was to be sold. An amin was, therefore, deputed to inquire into the valuation and he valued the property at Rs. 6,100. Against this valuation, the judgment-debtor came up to the High Court but her application was rejected summarily. The property was eventually sold on the 14th of September, 1933, for a sum of Rs. 6,200. On the 23rd of October, 1933, a petition was filed by the judgment-debtor-appellant under Order XXI, rule 90, to set aside the sale, and 24th of November, 1933, was fixed for the hearing of the application. The Subordinate Judge took up the matter on the 24th of November, 1933, at camp Sarath, a place which appears to be 23 to 25 miles from headquarters (Deoghar). Although the lawyers of the parties were present, it appears that the parties themselves were not present before the Court on that date at camp Sarath. The learned Subordinate Judge after hearing the lawyers rejected the petition to set aside the sale.

It is not necessary at this stage to express any opinion on the propriety or otherwise of the order

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under appeal in view of the important point of law raised by the learned Advocate for the appellant. He contends that in cases where the valuation of a suit was more than Rs. 1,000 the Court had no jurisdiction to take up and dispose of such cases at a place different from the headquarters. In order to appreciate the force of this argument one has to refer to the various enactments from time to time affecting the jurisdiction of the courts in the Santal Parganas. The earliest Regulation is Act XXXVII of 1855, which introduced important changes in the administration of justice in the Santal Parganas. Section 2 of that Regulation makes it clear by its first proviso 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 had not been passed.”

The Bengal, Agra and Assam Civil Courts Act (Act XII of 1887), originally known as the Bengal, the North-Western Provinces and Assam Civil Courts Act, was enacted in 1887. Section 14 of this Act lays down that

“ the local Government may, by notification in the official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held ”

and that

“ all places at which any such Courts are now held shall be deemed to have been fixed under this section.”

There is no evidence before us that a Court of the Subordinate Judge was held at any place other than headquarters prior to 1887. Then comes Regulation V of 1893 known as the Santal Parganas Justice Regulation. In section 5 of this Regulation two classes of Civil Courts have been recognized, 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 XXXVII of 1855. The Court of a Subordinate Judge is one of the four classes of courts

constituted under section 3 of Act XII of 1887; and it has been provided in section 11 of the Santal Parganas Justice Regulation, 1893 (Regulation V of 1893) that

“ nothing in sections 3, 5, 7 to 9 (both inclusive), 12, 18, 19, 22 to 25 (both inclusive), 27 to 36 (both inclusive) and 40 of the Bengal, Agra and Assam Civil Courts Act, 1887, shall apply to a Court established under that Act in the Santal Parganas.”

It is significant that in limiting the application of Act XII of 1887, section 11 of the Santal Parganas Justice Regulation (V of 1893) does not include section 14 of Act XII of 1887 under which the place of sitting of courts under the Act are to be fixed or altered. Now, the present proceeding related to a suit of more than Rs. 1,000 in value, and by section 2 of Act XXXVII of 1855 was triable according to the general laws and not by the special Regulations for administration of justice in the Santal Parganas. Therefore, whatever may be the position with regard to suits valued below Rs. 1,000, suits above that valuation in the Santal Parganas are governed by Act XII of 1887. At one stage of the case we called for the assistance of the learned Government Pleader and also for a report from the learned Subordinate Judge who disposed of the matter under appeal. The learned Subordinate Judge has reported relying chiefly upon the long established practice prevailing in that district that Subdivisional Officers invested with the powers of a Subordinate Judge often hold court away from their headquarters and that this practice has never been objected to. But in our opinion the practice is most irregular and is likely, as in this case, to lead to a failure of justice. The clear intention of the Legislature is that cases over the 1,000 Rs. limit should be governed by the ordinary law and practice applicable to the other parts of the province. The view taken of the matter may give rise to some inconvenience to the officers who are to administer justice in the Santal Parganas but, at the same time, we do not think that a wholesome provision of law

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should be ignored which might result in great hardships to the litigant public.

We, therefore, set aside the order of the learned Subordinate Judge and allow this appeal and direct that the application under Order XXI, rule 90, of the Code of Civil Procedure be disposed of according to law. The appellant is entitled to costs.

*Appeal allowed.*

### APPELLATE CIVIL.

*Before Macpherson and James, JJ.*

HAFIZ ZEAUDDIN

v.

NAKAL SINGH.\*

1934.

October, 31.  
November,  
12.

*Bengal Tenancy Act, 1885 (Act VIII of 1885), section 148A, requirements of—suit for rent—landlord, how should proceed—absence of exact information—landlord, whether required to prosecute the suit for anything beyond his share.*

A suit under section 148A of the Bengal Tenancy Act, 1885, must, in form, be for the whole rent, and in substance for the separate share of rent in arrears; the whole body of landlords must be impleaded, with the allegation that the plaintiff has not been able to ascertain what, if any, rents are due to the former.

The plaintiff must sue for the whole amount of arrears which he knows to be due, whether to himself or to any body else; but when he does not know the actual amount due to other co-sharers, he should pray that if rent should be found payable to the other co-sharers a decree in their favour should be passed after realisation of deficit court-fee.

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\* Appeals from Appellate decrees nos. 43 to 57 and 335 to 349 of 1931, from a decision of Rai Bahadur Surendra Nath Mukbarji, District Judge of Patna, dated the 19th June, 1930, reversing a decision of Maulavi Muhammad Abul Barkat, Subordinate Judge of Patna, dated the 29th June, 1929.