

## REVISIONAL CIVIL.

Before Khaja Mohamad Noor and Saunders, JJ.

BABUI DINESHWARI KUER

v.

RAM NARAIN SINGH.\*

*Jurisdiction—notification of Government taking certain area out of the jurisdiction of existing court and transferring it to that of newly established court—jurisdiction over pending cases, whether automatically transferred—further proceedings in cases, where to be taken—Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887), section 17.*

Once a new court is established and the territorial limit of an existing court is curtailed by a notification of Government, and placed under the jurisdiction of the newly established court, the existing court ceases to have jurisdiction over such area; and all pending cases relating to that area are automatically placed under the jurisdiction of the new court.

Where, therefore, a preliminary decree for possession of land and mesne profits had been passed by a court which had at that time the territorial jurisdiction over the area to which the suit related, and after the notification of Government transferring the area to the territorial jurisdiction of a newly established court, an application for ascertainment of mesne profits was made to the latter court.

*Held*, that further proceedings in respect of all cases relating to that area must be taken in the newly established court and, therefore, that the application was rightly made to that court.

*Jhandu Mal v. Pirthi*(1), *Allah Dei Begam v. Kesri Mal*(2), *M. Subbaya v. M. Rachayya*(3), followed.

---

\* Civil Revision no. 76 of 1936, from an order of Babu R. N. Ghosh, Subordinate Judge of Gaya, dated the 30th November, 1935, reversing an order of Babu Jamini Mohan Mukherji, Munsif of Jehanabad, dated the 6th July, 1932.

(1) (1907) All. W. N. 53.

(2) (1905) I. L. R. 28 All. 93.

(3) (1914) I. L. R. 37 Mad. 477.

Application in revision by the plaintiffs.

The facts of the case material to this report are set out in the judgment of Khaja Mohamad Noor, J.

*Sir Sultan Ahmed* and *Janak Kishore*, for the petitioners.

*S. N. Ray* and *G. P. Singh*, for the opposite party.

KHAJA MOHAMAD NOOR, J.—This application, originally presented as an appeal from an order, is directed against an order of the Subordinate Judge of Gaya, directing that a petition for ascertainment of mesne profits presented before the Munsif of Jehanabad be transferred to the Munsif, Second Court, Gaya. The petitioners in this court instituted before the Munsif, Second Court, Gaya, a suit for possession with mesne profits of properties situated within thana Arwal in the district of Gaya which was then within the territorial jurisdiction of that court. The trial court dismissed the suit, but it was decreed with mesne profits by the first appellate court and this decree was upheld by this court. In the meantime, that is, since the decision of the suit by the trial court and before its disposal by this court, a new Munsifi was established at Jehanabad having territorial jurisdiction over the thana of Arwal. After the termination of the suit in this court the plaintiffs, namely the petitioners before us, filed an application for the ascertainment of mesne profits before the Munsif of Jehanabad who after hearing the parties passed a decree for a certain amount in their favour. No objection as to the jurisdiction of the Munsif of Jehanabad to ascertain the mesne profits was raised before him by the defendants. They, however, being dissatisfied with this decree preferred an appeal to the district court of Gaya which was heard by the Subordinate Judge who held that a proceeding for ascertainment of mesne profits was a proceeding in the suit, that the suit itself continued to be pending before the Munsif, Second Court, Gaya, that the Munsif of Jehanabad had no jurisdiction to ascertain

1936.

---

BABU  
DINESHWARI  
KUER  
v.  
RAM  
NARAIN  
SINGH.

1936.  
 BADI  
 DINESHWARI  
 KUER  
 v.  
 RAM  
 NABAIN  
 SINGH.  
  
 KHAJA  
 MOHAMAD  
 NOOR, J.

the mesne profits and pass a decree and that his decree was null and void for want of jurisdiction. He gave decisions on the merits of the plaintiffs' claim favourable to them, but in the end on the basis of his decision on the point of jurisdiction allowed the appeal and directed that the application for ascertainment of mesne profits be transferred from the Munsif of Jehanabad to the Munsif, Second Court of Gaya. The plaintiffs being dissatisfied with this order presented an appeal to this court which purported to be an appeal against an order returning the plaint for presentation to proper court. In view, however, of the decision of this court in *Sheikh Mohammad Abdul Ghafoor v. Mahtab Choudhury*<sup>(1)</sup> in which it was held that no appeal lay against an order returning petitions not being plaints, as Order VII, Rule 10, refers to the return of plaints only and not petitions, the petitioners sought the leave of this court to treat their appeal against the order as a petition in revision. This was allowed on the 13th February, 1936.

I am clearly of opinion that the view taken by the learned Subordinate Judge on the question of jurisdiction is wrong. Once a new court is established and the territorial limit of an existing court is curtailed by notification of Government, the latter court ceases to have jurisdiction over the area which is taken away from its jurisdiction and placed under the jurisdiction of the newly established court. Similarly, if an area is taken out of the jurisdiction of one existing court and placed under that of another, the former court ceases to have jurisdiction over the cases of the area so taken out of its jurisdiction and the pending cases automatically placed under the jurisdiction of the latter court. It is not enough that a court should have jurisdiction over a suit at the time of its institution but that its jurisdiction must continue till the case is finally disposed of, subject of course to any order of transfer which may be passed by a competent authority. In order to enable a court to pass a decree in

(1) (1917) 2 Pat. L. J. 394.

a suit it must possess the basic jurisdiction which comes under four heads: (1) territorial, (2) pecuniary, (3) personal and (4) subject-matter. It is essential (barring those cases in which there are doubts about the territorial limits) that the court must possess all these jurisdiction at the time of the passing of the decree, otherwise it is void. Therefore, if a court loses the territorial jurisdiction it cannot proceed to pass the decree, though it had such jurisdiction when the suit was instituted. In this particular case it is true, as the learned Subordinate Judge has held, that the suit must be treated as pending for the purposes of ascertainment of mesne profits, as the decree in respect of it was preliminary and for certain purposes a suit remains pending between the preliminary and the final decrees; but the question is in which court did it remain pending. The simple answer is that it remained pending in the second court of the Munsif of Gaya up to the time when the court at Jehanabad was not established and then automatically became pending in the court of the Munsif of Jehanabad since that court was established. Section 17 of the Bengal, Agra and Assam Civil Courts Act of 1887 runs thus:—

“Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.”

It is obvious that the business of the second court of Munsif of Gaya in respect of thana Arwal was, on the establishment of the court at Jehanabad, transferred to that court by the operation of the notification of the local Government. Therefore, further proceeding in respect of the cases of that thana must be taken in the newly established court. This seems to me to be the view taken by the Allahabad High Court in the case of *Jhandu Mal v. Pirthi*<sup>(1)</sup> where during the pendency of an appeal before the District

1936.

BABU  
DINESHWARI  
KDER  
v.  
RAM  
NARAIN  
SINGH.

KHAJA  
MOHAMMAD  
NOOR, J.

(1) (1907) All. W. N. 53.

1936.

BABU  
DINESHWARI

KUER

v.

RAM  
NARAIN  
SINGH.KHAJA  
MOHAMAD  
NOOR, J.

Judge of Saharanpur the Munsifi of Kairana in Muzaffarnagar from where the appeal came was transferred from the judgeship of Saharanpur to that of Meerut. The District Judge of Saharanpur transferred the appeal to the District Judge of Meerut. It was held that the procedure adopted was correct, and that the Government notification transferring Muzaffarnagar from Saharanpur to Meerut was sufficient authority for the action of the District Judge of Saharanpur. The same principle may be deduced from the decision in the case of *Allah Dei Begam v. Kesri Mal*<sup>(1)</sup> which was followed in *Jhandu Mal's* case<sup>(2)</sup> I have just referred to and in the case of *M. Subbaya v. M. Rachayya*<sup>(3)</sup>. The finding of the learned Subordinate Judge is, therefore, erroneous and I would set it aside and also the order of transfer of the petition which is based upon it.

The next question is what consequential order should be passed in this case. In my opinion, the position after setting aside the order is that the appeal of the defendant remains undisposed of though a judgment up to a certain stage has been written. The position is as if the appeal is still sub judice. I would accordingly remand the case to the lower appellate court. If practicable, the same Subordinate Judge (Mr. R. N. Ghosh) who heard the appeal will finally dispose of it according to law, after giving the parties such further hearing (if any) as he may think fit. If, however, that learned Subordinate Judge be not available within a reasonable time, the appeal will be re-heard either by the learned District Judge himself or by some other competent court subordinate to him, as he directs. The application is allowed as stated above with costs: hearing fee five gold mohars.

SAUNDERS, J.—I agree.

*Rule made absolute.*

(1) (1905) I. L. R. 28 All. 93.

(2) (1907) All. W. N. 53.

(3) (1914) I. L. R. 37 Mad. 477.