

the policy approved. Again the grant of postponement to the defendant is in the discretion of the Court and will be exercised upon consideration of the materials placed before the Court by the pleader empowered by the defendant to appear and act on his behalf.

It falls to be added that communications to the Court by letter or otherwise from third parties being improper, however laudable the motive may be, should not form part of the record. It goes without saying that under no circumstances should action be taken upon such a communication unless and until the Court has drawn to them the attention of the party who might be adversely affected and has heard such party, ordinarily in open Court.

Let the record be sent down forthwith so that the suit may be determined with the least possible delay.

Rule made absolute.

PRIVY COUNCIL.

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On Appeal from the High Court at Patna.

Sonthal Parganas Settlement (Amendment) Regulation (III of 1908), sections 5 and 5A—Mortgage suit—Mortgaged lands situated partly in Sonthal Parganas and partly in the Gaya District—Suit instituted in Court of Settlement Officer—Transfer of suit by Settlement Officer to District Judge, Gaya—Transfer by District Judge to Subordinate Judge of Gaya—authority of Settlement Officer to transfer—Jurisdiction of Subordinate Judge of Gaya.

A suit was instituted in the Court of the Settlement Officer of the Sonthal Parganas to enforce two mortgages. The major portion of the mortgaged properties was situated in the Sonthal Parganas and the remainder in the Gaya district.

* PRESENT: Lord Alness, Lord Roche and Sir Shadi Lal.

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On the application of the plaintiff, the Settlement Officer transferred the suit to the District Judge of Gaya who transferred it for trial to the Subordinate Judge of Gaya within whose jurisdiction a portion of the suit lands were situated.

The defendants contended that the Settlement Officer had no authority to transfer the suit to the District Judge of Gaya, the District Judge had no jurisdiction to transfer the suit to the Subordinate Judge of Gaya and the Subordinate Judge had no jurisdiction to try it.

Held, that the Settlement Officer was empowered under section 5A of the Sonthal Parganas Settlement (Amendment) Regulation III of 1908 to transfer the suit to the District Judge of Gaya and the Subordinate Judge of Gaya had jurisdiction to try the suit.

Raja Setrucherla Ramabhadraju v. Maharaja of Jey-pore(1), referred to.

Appeal (no. 37 of 1935) from a judgment of the High Court (February 9, 1934) which affirmed an order of the Subordinate Judge of Gaya (November 18, 1932).

The material facts are stated in the judgment of the Judicial Committee.

1936, March 31, April 2.—*Dunne, K. C. and Wallach*, for the appellant: The Subordinate Judge of Gaya had no jurisdiction to entertain the suit. The amendment made by Regulation III of 1908 did not extend jurisdiction to Courts outside the Sonthal Parganas. In *Sourendra Mohan Sinha v. Hari Prasad*(2) it was assumed that the Court had jurisdiction. The question was not argued. There has been no break in the Sonthal Parganas jurisdiction as fixed by Act XXXVII of 1855. On its proper construction section 5A of Regulation III of 1908 provided for a special area. It introduced the Code of Civil Procedure for the trial of suits. Special Courts were created and for the trial of suits by those

(1) (1919) I. L. R. 42. Mad. 813; L. R. 46 I. A. 151.

(2) (1923) I. L. R. 5 Pat. 135; 52 I. A. 418.

courts the Code was made applicable. The Settlement Officer could transfer a suit to a Civil Court in the Sonthal Parganas. Regulations V of 1893 and III of 1908 are dealing only with legislation for the Sonthal Parganas. To find jurisdiction in Courts outside the Sonthal Parganas it is necessary to go to the Sonthal Parganas Regulations to see if any jurisdiction is conferred. The Act of 1855 deprived the Gaya Court of jurisdiction over land in the Sonthal Parganas. No general Acts, except those specially mentioned, apply to the Sonthal Parganas. Section 17 of the Code of Civil Procedure is not brought in. All that section 5A of Regulation III of 1908 does is to provide for procedure in the trial of suits. Courts established under the Bengal, Agra and Assam Civil Courts Act, 1887 means, in the section, established for the Sonthal Parganas. Reference was made to the Sonthal Parganas Justice Regulation of 1893, section 9. It would not have been necessary to say 'subject to the provisions of section 15' if the whole Code applied.

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In *Maha Prasad Singh v. Ramani Mohan Singh*(¹) the Board said it was not necessary to decide the effect of the notification applying the Code to the Sonthal Parganas. *Sourendra Mohan Sinha v. Hari Prasad*(²) was decided on the assumption that the Court in Bhagalpur had jurisdiction to deal with property in the Sonthal Parganas. If the amendment made in section 5A has the effect of removing the bar and bringing in the Code of Civil Procedure, someone may have power to transfer the suit to Gaya, but the Settlement Officer has not. *Ledgard v. Bull*(³) was referred to. *Kusum Kumari v. Devi Prasad Dhandhania*(⁴) does not help.

(1) (1914) I. L. R. 42 Cal. 116; L. R. 41 I. A. 197.

(2) (1925) I. L. R. 5 Pat. 135; L. R. 52 I. A. 418.

(3) (1886) I. L. R. 9 All. 191; 13 I. A. 194.

(4) (1935) I. L. R. 15 Pat. 210; 63 I. A. 114.

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De Gruyther, K.C. and Rashid, for the respondents: Referred to 33 Vict. c. 3. s. 1. Up to 1855 the Sonthal Parganas was divided. Part was in Bhagalpur and part was in Beerbhum. Then Regulation XXXVII of 1855 was enacted. This was the beginning of the Sonthal Parganas as a separate district. Administration of Civil Justice was, under section 1(2) in the Settlement Officer. A distinction is made between suits under and over Rs. 1,000 in value. In 1893 the Government appointed Civil Judges. Act V of 1893, sections 5, 7 and 12 were referred to. Section 10 now governs the procedure—*Maha Prasad v. Ramani Mohan Singh*⁽¹⁾. The Act of 1855 has been superseded by the Act of 1893 under which the Civil Courts are to apply the Code of Civil Procedure as in the Bhagalpur district. Regulation III of 1908 merely applied the new Code of Civil Procedure of 1908. Section 10 of the Sonthal Parganas Civil Justice Act was referred to. The limitation is not to sections of the Code but to suits over Rs. 1,000 in value. Reference was made to the Code of Civil Procedure, sections 16(d) and 17.

The result of the judgment in *Maha Prasad's case* (supra) is (1) where there is some of the suit property in the Sonthal Parganas, the suit must be instituted in the Court of the Settlement Officer, though some of the suit property is outside. (2) when instituted in the Court of the Settlement Officer, the Settlement Officer has power to transfer it, but he must transfer it to a Court established under the Bengal, Agra and Assam Civil Courts Act, and one that would have jurisdiction to try it but for the Sonthal Parganas Regulation. There is no territorial limit in transferring. The Settlement Officer has exclusive jurisdiction. In *Sourendra Mohan Sinha v. Hari Prasad* (supra) the Board decided that the Bhagalpur Court had jurisdiction. The point was

(1) (1914) I. L. R., 42 Cal. 116; 41 I. A. 197.

not argued. There was not much room for argument: Reference was also made to the Code of Civil Procedure, section 24.

Dunne, K.C., in reply: What was excluded by the Act of 1855 is not affected by the subsequent legislation. Every subsequent Act is limited in effect to the Sonthal Parganas. The whole question is whether general laws are excluded by the Act of 1855. The point was pointedly before the Board in *Maha Prasad's* case (*supra*).

The judgment of the Judicial Committee was delivered by—

SIR SHADI LAL. The suit, out of which this appeal arises, was instituted in the Court of the Settlement Officer of the Sonthal Parganas, to enforce two mortgages comprising landed property, the major portion of which was situated in the Sonthal Parganas, and the remainder in the Gaya district. The plaintiffs, who were the mortgagees, submitted with their plaint an application to the Settlement Officer asking him to transfer the suit for trial to the Court of the Subordinate Judge at Gaya; and on this application he transferred the suit to the District Judge of Gaya who transferred it to the Subordinate Judge of Gaya. When the case came on for hearing before the Subordinate Judge, the defendants challenged his jurisdiction to entertain the suit; but their objection was over-ruled, not only by the Trial Judge, but also by the High Court at Patna to whom the case was taken on revision. From the judgment delivered by the High Court, this appeal has, by special leave, been brought by one of the defendants; and the question of jurisdiction has again been debated by the learned counsel for the parties.

The Sonthal Parganas, which originally formed part of the Presidency of Bengal and are now included in the province of Bihar and Orissa, were considered to be a backward tract; and it was, therefore,

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deemed expedient that that territory should be governed, not by the general laws and regulations in force in the Presidency, but by such laws as may be specially enacted for, or extended to, it. To carry out this object a statute entitled the Sonthal Parganas Act, XXXVII of 1855, was passed by the Governor-General of India in Council, providing, *inter alia*, for the administration of civil and criminal justice by the officer or officers, under whose superintendence and jurisdiction the district of Sonthal Parganas was placed. The law as enacted by that statute was subsequently amended and supplemented by various Acts and Regulations, but their Lordships consider it unnecessary to enter upon an examination of the history of the legislation governing the constitution of the courts established for the administration of civil justice in the district, or of the laws to be followed by them. Their Lordships will deal only with the law which has a direct bearing upon the question of jurisdiction raised by the appeal.

It may be mentioned at the outset that at the time of the institution of the suit a settlement was being made of the district of Sonthal Parganas; and, as the plaintiffs sought to enforce their claim by a sale of the mortgaged property including the land situated in that district, they filed their plaint before the officer making the settlement. This was done in compliance with section 5 of the Sonthal Parganas Settlement Regulation, III of 1872, which, as re-enacted in a modified form by the Sonthal Parganas Settlement (Amendment) Regulation III of 1908, reads as follows :—

“ 5.—(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 Sonthal 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 Sonthal 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.”

It must be observed that the civil courts referred to in sub-section (1) were competent to hear all civil suits in which the matter in dispute exceeded Rs. 1,000 in value; but they were deprived of their jurisdiction in respect of the suits relating to lands in the Sonthal Parganas pending the completion of the settlement. Such suits were, as enacted by sub-section (2), to be heard and determined by an officer appointed under section 2 of the Sonthal Parganas Act, 1855, or by an officer appointed under section 10 of the Regulation to make the settlement.

The officer thus invested with special jurisdiction may, however, consider it desirable that a suit of the description mentioned in sub-section (1) should be tried by an ordinary civil court; and he has, therefore, been authorised to transfer it to such court for trial. This authority is conferred by section 5A, which, so far as is material to the question before their Lordships, is in these terms:—

“5A.—(1) Notwithstanding anything contained in section 5, whenever it appears to any officer empowered thereby to try any such suit to be just and expedient that the suit or any issue arising therein should be tried by a Civil Court established under the Bengal, Agra and Assam Civil Courts Act, 1887, which but for that section would have had jurisdiction to try the suit, he may either on the prayer of the parties or of his own motion but subject to the control of the officers to whom he is subordinate, make a certificate to that effect and transfer the record, if any, to such Court.

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“(2) On receipt of any such certificate and on payment of such court-fees as would have been payable if the suit had been originally filed in such Court (if the said fees have not already been paid), the Court shall proceed to hear and determine such suit or issue as if the suit had been originally instituted therein.”

It was in exercise of the power conferred by sub-section (1) of section 5A that the Settlement Officer, before whom this suit was filed, recorded a certificate to the effect that it appeared to him just and expedient that it should be tried by a competent civil court in the Gaya district, and sent the record of the case to the District Judge, Gaya, who transferred it to the Subordinate Judge of that district.

There can be no doubt, and indeed it is not disputed, that the Settlement Officer was entitled to make an order that the suit should be heard, not by him, but by a competent civil court. The rule to determine the civil court competent to try it is laid down in the sub-section itself. That court must satisfy two conditions: (1) it must be a civil court established under the Bengal, Agra, and Assam Civil Courts Act, 1887 (which may be conveniently referred to hereinafter as the Civil Courts Act); and (2) it must be a court, which, but for section 5 of the Regulation, would have had jurisdiction to try the suit.

It is argued for the appellant that both these conditions are satisfied by the Court of the Subordinate Judge established under the Civil Courts Act within the Sonthal Parganas, but not by any court established outside that district. The first part of this argument is unassailable, but the second part which seeks to deny the jurisdiction of the Gaya Court, cannot be accepted. It is beyond dispute that the Court of the Subordinate Judge at Gaya has been established under the Civil Courts Act, and the crucial question is whether that court fulfils the second condition.

Now, the mortgage deeds include, as already stated, lands situated, not only in the Sonthal Parganas, but also in the Gaya district. What is the ordinary rule for determining the court which can take cognizance of a suit for immovable property situated within the local limits of two or more tribunals? The answer is furnished by section 17 of the Code of Civil Procedure, Act V of 1908, which provides that where a suit is to obtain relief respecting immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate.

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The plaintiffs maintain that, as a portion of the mortgaged property was situate in the district of Gaya, they could in the absence of section 5 of the Sonthal Parganas Settlement Regulation, institute their suit in the Court of the Subordinate Judge at Gaya, and were not bound to institute it in the Court of the Subordinate Judge in the Sonthal Parganas. But, as laid down in *Raja Setrucherla Ramabhadraju v. Maharaja of Jeypore*(¹), the choice given by section 17 can be utilised only if the Code applies to both the courts. It is incontrovertible that the whole of the Code is applicable to the Gaya court, but it is urged that the section in question has not been extended to the Court of the Subordinate Judge in the Sonthal Parganas. It is necessary to consider whether there is any justification for this contention.

The learned counsel for the appellant argues that the Sonthal Parganas Act, XXXVII of 1855, which removed the district of the Sonthal Parganas from the operation of the general laws and regulations governing the Presidency of Bengal, specified only certain

(1) (1919) I. L. R. 42 Mad. 813; L. R. 46 I. A. 151.

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laws which were extended to that district, and that section 17 or its predecessor is not to be found in that list. It is true that that statute provided a complete code of the laws which then governed the district, but it did not prevent an addition to that list of other laws specially made applicable to the territory thereafter.

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Now, the Sonthal Parganas Justice Regulation, V of 1893, introduced important changes in the law relating to the administration of justice in that district. It added to the special courts already existing therein a new class of courts, namely, the Court of the District Judge and the Courts of Subordinate Judges which were established under the Civil Courts Act, and expressly provided by section 10 that the trial of the suits in those courts should be regulated by the Code of Civil Procedure as for the time being in force in the Bhagalpur district. The Code including section 17 is undoubtedly in force in the Bhagalpur district, and consequently its operation extends also to the courts established in the Sonthal Parganas under the Civil Courts Act. It is, however, said that only that portion of the Code, which regulates the *trial* of suits, has been extended to the Sonthal Parganas, and that the word "trial" does not include jurisdiction to take cognizance of the suit. There is in the opinion of their Lordships no foundation for this argument. In their view the provision that "trial" of suits is to be "regulated" by the Code includes all the essential matters governing the hearing of a cause, including the preliminary matter of the competence of the court to entertain it. The Code therefore supplies, not only what may be called procedural rules, but also the rules governing jurisdiction.

It follows that section 17 is applicable to the Court of the Subordinate Judge in the Sonthal Par-

ganas, as well as to the court at Gaya; and, if section 5 of the Regulation had not been enacted, the plaintiffs could have instituted this suit in the Gaya court, and that court would have been competent to try it. Both the conditions necessary for the exercise of the power of transfer conferred upon the Settlement Officer have, therefore, been satisfied.

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The argument is then advanced that it was not contemplated by the legislature that suits relating to lands in the district of Sonthal Parganas, while under settlement, should be heard and determined by a Civil Court established outside that district. The intention of the legislature must be gathered from a language used by it, and the expression "a civil court established under the Bengal, Agra and Assam Civil Courts Act, 1887" is wide enough to include a Civil Court established in the district of Gaya. The court, in which the suit is now pending, was established under that Act, and there is nothing in the language of section 5A of the Regulation to show that that court was excluded from its operation.

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Moreover, the phrase "civil court established under the Bengal, Agra and Assam Civil Courts Act, 1887" is used, not only in sub-section (1) of section 5A, but also in sub-section (1) of section 5; and it should have the same meaning in both the sub-sections. It cannot be disputed that that expression, as used in sub-section (1) of section 5 must include a court established under the Civil Courts Act outside the Sonthal Parganas; as it is the only law which has been invoked to deprive such a court of the jurisdiction which it might have under the Code of Civil Procedure to try a suit relating to land in the Sonthal Parganas during the pendency of the settlement. It follows that a court established outside that district must come within the ambit of the same expression as used in sub-section (1) of section

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5A. In other words, the latter sub-section is calculated to remove the ban imposed by the former sub-section.

Lastly, it is contended that, even if the Settlement Officer had removed the bar to the jurisdiction of the Subordinate Judge at Gaya by making a certificate under section 5A, sub-section (1), he had no authority to make an order binding upon the Subordinate Judge, who was, in no way, subordinate to him. But the language of the statute empowers the Settlement Officer to transfer the case to a competent civil court established under the Civil Courts Act, and the Court of the Subordinate Judge at Gaya is certainly such a court. It is true that that court is not subordinate to the Settlement Officer and may not be bound to obey his order. But this is a mere matter of comity between the two courts and cannot affect the jurisdiction of the Subordinate Judge. If the Gaya court had refused to receive the plaint, the plaintiffs could have moved the High Court, to which it was subordinate, to direct it, under section 22 read with section 23 of the Code of Civil Procedure, to entertain the suit. The fact, however, remains that the Subordinate Judge of Gaya has received the plaint, and in their Lordships' opinion he has jurisdiction to hear and determine the suit.

For the foregoing reasons their Lordships concur in the conclusion reached by the High Court. They will, therefore, humbly advise His Majesty that the appeal should be dismissed with costs.

Solicitors for the appellant: *Watkins and Hunter.*

Solicitors for respondents nos. 1 to 3: *Nehra and Company.*