

buying *bonâ fide*, if he is in any way acting in collusion with the heir, and knows, or has reason to believe, that the money paid by him will not be duly applied for the purpose of the estate, the purchase would be liable to be set aside.

Owing to the view which the lower Courts took of the law, the present case has not been properly or fully tried, and it must be remanded for re-trial on the following issues:

1st—Under what circumstances, and why, the zuripeshgi leases in question were granted to the defendants by the heirs of Momtaz Ali.

2nd.—Did the defendants act *bonâ fide* and pay full consideration for the leases, which they obtained; and had the defendants at the time they advanced the money any (and if any, what) notice of outstanding claims against the estate of Momtaz Ali.

These issues not having been tried or determined in either Court, the Judge will refer them to the Subordinate Judge for trial, who will try the issues, and return to the lower appellate Court its finding thereon, together with the evidence.

The appellants are entitled to their costs of this appeal.

Before Mr. Justice Phear and Mr Justice Hobhouse.

MADHAB CHANDRA PAL v. A. HILLS.*

Jurisdiction—Act X. of 1859, s. 27—Act VIII. of 1859, s. 1.

The right given by section 27 of Act X. of 1859 to the transferee of a permanent transferable interest in land, to have his name registered in the sherista of the zemindar in the place of that of his vendor, is a right of a civil nature; and, therefore, the Civil Courts have cognizance of all suits necessary for the purpose of enforcing such right. The jurisdiction of the Collector is not exclusive, but concurrent.

This was a suit instituted in the Court of the Moonsiff of Chooadanga, in the district of Nuddea, to have the names of the plaintiffs registered in the zemindar's sherista, under section 27 of Act X. of 1859. The defendant, A. Hills, contended that, under that section, the Civil Court had no jurisdiction to

* Special Appeal, No. 3078, of 1867, from a decree of the Principal Sudder Ameen of Nuddea, reversing a decree of a Moonsiff of that district.

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entertain the suit. The Moonsiff held that the plaintiffs being cultivators, and the relationship of landlord and tenant not having come into existence, section 27 of Act X. of 1859, did not apply: *Maharaja Satish Chandra Roy v. Madhusudan Pal Chowdry* (1). The Moonsiff gave a decree for the plaintiffs.

On appeal, the Principal Sudder Ameen of Nuddea reversed the decision of the Moonsiff, on the ground that the suit was properly cognizable by the Revenue Court, and that section 27 of Act X. of 1859 did not give the Civil Court jurisdiction to entertain the suit. He relied on *Munshi Mohammed Nur Baksh v. Mohan Chandra Poddar* (2).

Against this decision of the Principal Sudder Ameen, the plaintiffs appealed to the High Court, on the ground that he was wrong in holding that the Civil Court had no jurisdiction under section 27 of Act X. of 1859.

Baboo *Ananda Gopal Palit* for appellants.

The respondent was not represented.

The judgment of the Court was delivered by

PHEAR, J.—We think the Principal Sudder Ameen is wrong in holding that the Civil Court had no jurisdiction to entertain the subject of the suit. Section 27, Act X. of 1859, gives to the transferee of a permanent transferable interest in land, the right to have his name registered in the sherista of the zemindar in the place of that of his vendor; and every zemindar is by the same section required to admit to registry and otherwise give effect to all such transfers when made in good faith. There can be no doubt that if the section stopped there, the transferee would be entitled to come into a Civil Court to enforce the right, if necessary, which the section gives him. But the section goes on to say that if any zemindar refuses to admit to registry, and so on, the transferee may make application to the Collector, and the Collector shall enquire into the case and pass the requisite orders. The Principal Sudder Ameen is of opinion that these words have the effect of giving

(1) Spl. W. R., (Act X. Rul.), 91. (2) 6 W. R. (Act X. Rul.), 67.

jurisdiction to the Collector, and to the Collector exclusively, to entertain the question of right arising under this section; and has upon that ground dismissed the plaintiffs' suit. But the first section of the Civil Procedure Code enacts that the Civil Courts should take cognizance of all suits of a Civil nature, with the exception of suits of which their cognizance is barred by any Act of Parliament, &c. Now the right given by section 27 is, undoubtedly, a right of a Civil nature; and, therefore, the Civil Courts have cognizance of all suits necessary for the purpose of enforcing such a right, unless that cognizance is barred expressly. But the words of section 27 which give power to the Collector to entertain suits of this kind, and to determine them, do not bar the jurisdiction of the Civil Courts, in this respect differing from other parts of Act X., as for instance section 23, in which exclusive jurisdiction is in certain cases given to the Collector, and agreeing with sections of the same Act in which the jurisdiction to be given to the Collector, is not exclusive but concurrent.

We think, therefore, that the decision of the Principal Sudder Ameen must be reversed, and as the Principal Sudder Ameen has found all the facts necessary for a determination of the case in favor of the plaintiff, we direct that the plaintiff's suit be decreed. The plaintiff must have his costs both in this Court and in the lower appellate Court.

Before Mr. Justice Phear and Mr. Justice Hobhouse.

CHANDRAKANT BHATTACHARJI v JADUPATI CHATTERJI*
Jurisdiction—Powers of Revenue Courts to sell Property in Execution of Decrees under Act X, of 1859—Rights of Suits—Act X of 1859, ss. 86, 105, & 109.

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A Collector has power, under Act X. of 1859, to sell in execution of a decree for the payment of money under the Act, not being money due as arrears of rent of a saleable under-tenure, only such movable property as is capable of being manually seized; and he can issue process against immovable property only when recourse cannot be had to the person or to the movable property capable of being manually seized.

* Special Appeal, No 911 of 1863, from a decree of the Principal Sudder Ameen of Nuddea, reversing a decree of the Sudder Ameen of that district.

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