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 SHAHA.

The decree of the lower Appellate Court is, therefore, reversed, and the case remanded to that Court for disposal on the merits. Costs of this appeal will follow the result.

Case remanded.

Before Mr. Justice Ainslie and Mr. Justice McDonell.

1877
 July 17;
 1878
 Feby. 12
 and
 May 11.

KALIPROSAD RAI (PLAINTIFF) v. MEHER CHANDRO ROY
 AND OTHERS (DEFENDANTS).*

Sanction of High Court—Act VIII of 1859, ss. 12, 385 and 386—Sonthal Districts—Act XXXVII of 1855, ss. 1, 2, 4—Jurisdiction—Act XXIII of 1861, s. 39—Notification, 19th August 1867, extending Act VIII of 1859 and Act XXIII of 1861 to Sonthal Pargannas—Beng. Reg. III of 1872—Notification, 4th August 1873.

Act VIII of 1859 was in force in 1876 in the Sonthal Pargannas under s. 2, Beng. Reg. III of 1872, as regards suits triable in Courts constituted under Act VI of 1871. Section 4 of that Regulation (read with the notification of the Lieutenant-Governor dated 4th August 1873) vesting the Deputy Commissioner of the district of the Sonthal Pargannas with the powers of a District Judge as described in Act VI of 1871, has the effect of making the Sonthal Pargannas a district as defined by s. 386 of Act VIII of 1859; and, therefore, under s. 12 of Act VIII of 1859, the High Court has power to sanction the trial of a suit for land situated in the Sonthal Pargannas, in which the value of the subject-matter exceeds Rs. 1,000, in the Civil Court competent to try it.

THE plaintiff, in the year 1876, brought in the Court of the Subordinate Judge of Moorshedabad a suit against the defendants (some of whom resided in Moorshedabad and others in Dumka in the Sonthal Pargannas) to recover a sum of Rs. 6,197, secured by the mortgage of certain properties situated partly in Moorshedabad and partly in Dumka.

The Subordinate Judge, however, having doubts as to whether he had jurisdiction to try the case, on the motion of the plaintiff, referred the matter (under s. 12 of Act VIII of 1859) to obtain the sanction of the High Court to his proceeding with the suit.

* Rule No. 830 of 1877, calling on the opposite party to show cause why the decision of the Subordinate Judge of Moorshedabad, dated 21st April 1877, should not be set aside.

The High Court, on the 17th April 1877, declined to give its sanction, on the grounds (1) that the High Court had no jurisdiction in Dumka; (2) that Act VIII of 1859 did not apply there.

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Thereupon the Subordinate Judge, by an order dated 21st April 1877, rejected the plaint.

The plaintiff, on the 17th February 1878, applied through the District Court to the High Court, by petition, and succeeded in obtaining a rule calling on the defendants to show cause why the Court of Moorshedabad should not be authorized to determine whether the lands situated in the district of Dumka were liable for the debts secured by the bond on which the plaintiffs sued.

Baboo *Harimohun Chuckerbutty* in support of the rule contended that the High Court has jurisdiction over the Sonthal provinces, including Dumka, and that the general laws and regulations of the Bengal Presidency (and amongst them Act VIII of 1859) applied in all civil suits in which the matter in dispute exceeded the value of Rs. 1,000, citing Act XXXVII of 1855, s. 2; s. 2 of Reg. III of the Sonthal Regulations of 1872; *Calcutta Gazette* of 8th May 1872, p. 2056; Notification of the Lieutenant-Governor, dated 4th August 1872; *Calcutta Gazette* 6th August 1873, Part I, p. 935: and that, inasmuch as the matter in dispute in this suit was valued at more than Rs. 1,000, the High Court had jurisdiction to order the suit to be tried either by the Judge of Moorshedabad or the Deputy Commissioner of Dumka.

No one appeared to show cause against the rule.

The judgment of the Court was delivered by

AINSLIE, J. (McDONELL, J., concurring).—The question raised by this application is whether, in 1876, s. 12, Act VIII of 1859, applied to the Sonthal Pargannas in respect of suits in which the subject of dispute exceeds Rs. 1,000 in value.

The petitioner instituted a suit valued at Rs. 6,197-9 on a mortgage bond, by which certain properties lying partly within

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the jurisdiction of the Civil Court at Moorshedabad and partly within that of the Court at Dumka in the Sonthal Pargannas were pledged, and sought to get a decree specially declaring the liability of those properties in respect of the debt covered by the bond. This suit was instituted in the Court of the Subordinate Judge of Moorshedabad, who made a reference to obtain sanction from the High Court under s. 12, Act VIII of 1859, to his proceeding with the suit.

On the 17th April 1877 an order was made by a Judge of this Court, before whom, in the ordinary course of business, such references were laid, declining to give the authority sought, on the grounds (1) that this Court does not exercise jurisdiction in Dumka, and (2) that Act VIII of 1859 was not in force there.

The petitioner has now appeared to ask for a re-consideration of this order, and obtained a rule calling upon the defendants in the suit to show cause why the Moorshedabad Court should not be authorized to determine the question of the liability of the lands situated within the jurisdiction of the Court of Dumka for the debt secured by the bond.

The defendants have not appeared to show cause.

By Act XXXVII of 1855, s. 1, the Sonthal Pargannas, as defined in the schedule to that Act (modified by Act X of 1857), were removed from the operation of the General Regulations and of the laws passed by the Governor-General of India in Council, except so far as thereafter provided; and it was further enacted that no law to be thereafter passed by the Governor-General of India in Council should be deemed to extend to any part of the said districts unless the same should be specially named therein.

The 2nd clause of the 1st section enacts "that the said districts shall be placed under the superintendence and jurisdiction of an officer or officers to be appointed in that behalf by the Lieutenant-Governor of Bengal, and such officer or officers shall be subject to the direction or control of the said Lieutenant-Governor."

The 2nd section runs thus, omitting portions not bearing on the question now before us: "The administration of civil

justice, &c., are hereby vested in the officer or officers to be so appointed, provided 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."

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The 4th section provides for a reference to the Sudder Dewany Adawlut in criminal trials in which sentence of death may be passed, and in any other class of criminal trials which the officers appointed under the Act might be directed by the Lieutenant-Governor to refer to that Court. In respect of civil suits, the first clause of this section makes the judgment of the officers to be appointed under the Act final to the extent of the powers from time to time conferred upon them respectively by the Lieutenant-Governor of Bengal, but with a proviso that it shall be lawful for the Lieutenant-Governor to direct that an appeal shall lie in any class of civil suits from any officers appointed under the Act to any other officer appointed under the same.

This was the state of the law in the Southal Pargannas when the Code of Civil Procedure was enacted.

By the 385th section it was enacted that the Act was not to take effect in any part of the territories not subject to the General Regulations until the same should be extended thereto by the Governor-General of India or by the Local Government to which such territory is subordinate and (the extension) notified in the Gazette.

Section 39 of Act XXIII of 1861 then provides, that "when under the provisions of s. 385 of the said Act (VIII of 1859) the Act is extended to any of the territories not subject to the General Regulations, it shall be lawful for the Government to which the territory is subordinate to declare that the Act shall take effect therein subject to any restriction, limitation, or proviso which it may think proper. In such case the restriction, limitation, or proviso shall be inserted in the notification of such extension. When the Act is extended by the Local Government to any territory subordinate to such Government, and such extension is made subject to any restriction, limitation, or

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proviso, the previous sanction of the Governor-General in Council shall be requisite.

By Notification of the 19th August 1867, *Calcutta Gazette*, p. 1369, the Lieutenant-Governor of Bengal notified under the provisions of s. 385, Act VIII of 1859, and s. 39, Act XXIII of 1861, that, from the 1st day of October 1867, Acts VIII of 1859 and XXIII of 1861 were extended to the Sonthal Pargannas, subject to certain provisions, restrictions, and exceptions which are immaterial for the present purpose.

We come now to Beng. Reg. III of 1872 made under the authority conferred by 33 Vict., c. 1, and which by s. 2 is to be read with Act XXXVII of 1855.

The first paragraph of the 3rd section runs thus: "Subject to the provisions of this Regulation, the Regulations and Acts mentioned in the schedule annexed to the Regulation, or such portions of them as are unrepealed, shall be deemed to be in force in the Sonthal Pargannas. No other Regulations or Acts shall be deemed to be in force in the Sonthal Pargannas except so far as regards the trial and determination of the civil suits mentioned in s. 2, Act XXXVII of 1855, in which the matter in dispute exceeds the value of Rs. 1,000, when such suits are tried in the Courts established under Act VI of 1871."

By paragraph 2 power is given to the Lieutenant-Governor to add to the Regulations and Acts mentioned in the schedule, and to cancel or modify such addition. Section 4 then follows in these terms: "The Lieutenant-Governor of Bengal may, by notification in the *Calcutta Gazette*, invest any competent officer in the Sonthal Pargannas with the powers of any Civil Court established under Act VI of 1871, and may exclude the whole or any part of the said Pargannas from the jurisdiction of any of the Courts established under the said Act now having jurisdiction therein. Nothing in ss. 3 and 9 (inclusive), 32, 33, and 34 of the said Act applies to any officer invested with the powers of a Court under this section, but all the other provisions of the said Act apply *mutatis mutandis* to officers invested.

By a notification in the *Calcutta Gazette* of 1873, dated 4th August 1873 (Part I, p. 935), the Lieutenant-Governor terminated the jurisdiction exercised by the Courts of Beerbhoom

and Bhagalpore within the Sonthal Pargannas in respect of civil suits in which the matter in dispute exceeds the value of Rs. 1,000 (except as to pending cases), and vested the Deputy Commissioner for the time being in charge of the district of the Sonthal Pargannas with the powers of a District Judge as described in Act VI of 1871, and the officers in charge of subdivisions with the powers of Subordinate Judge under that Act for the purpose of administering civil justice in suits exceeding Rs. 1,000 in value.

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Acts VIII of 1859 and XXIII of 1861 are not included in the schedule of Reg. III of 1872.

Therefore the Notification of 19th August 1867 was superseded, and these Acts ceased to be in force in the Sonthal Pargannas unless they are in force in respect of suits in which the subject-matter exceeded Rs. 1,000 in value by virtue of s. 2, Act XXXVII of 1855, and cl. 1, s. 3 of the Regulation of 1872.

The effect of the provision in s. 2, Act XXXVII of 1855, appears to us to have been to leave all civil suits in which the value of the subject exceeds Rs. 1,000 to be tried by the Courts which would have tried them if this Act had not been passed, and not merely to make them triable by the specially appointed officers according to the General Laws and Regulations; and this view is established by the latter part of the first paragraph of s. 3, Reg. III of 1872, which distinctly refers to the trial of such suits in Courts already established under the Bengal Civil Courts Act (VI of 1871), and also by s. 4, by which the Lieutenant-Governor is empowered to exclude the whole or any part of the Sonthal Pargannas from the jurisdiction of Courts already established under Act VI of 1871, and to invest the Sonthal Parganna officers with the powers of such Courts.

In fact, we find that suits in respect of land within the Sonthal Pargannas have been tried in the ordinary District Courts, and that appeals in such suits have been heard in this Court.

Thus Regular Appeals Nos. 1, 2, 3, and 4 of 1860 were from decrees of the Subordinate Judge of Beerbhoom in respect of property (Talook Rohini) within the Sonthal Pargannas as

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stated in the plaint; and Nos. 16 to 19 of 1865 were regular appeals from the decree of the Judge of Beerbhoom, also in respect of the same talook.

There can be no doubt that the Act of 1855 was held to leave all civil suits above Rs. 1,000 in value to be tried by the ordinary Civil Courts under the law in force for the time being; and that Act VIII applied to such suits, at least up to the abolition by Government Notification of 1873 of the jurisdiction of such Courts within the Sonthal Pargannas.

The question then comes to this: When the Lieutenant-Governor in 1873, by notification, put an end to the jurisdiction of the Courts which up to that time had jurisdiction in suits of a greater value than Rs. 1,000, did he thereby terminate the operation within the Sonthal Pargannas of all Regulations and Acts not mentioned in the schedule of Reg. III of 1872, and consequently of Act VIII of 1859?

It seems to us that he did not do so, for while he terminated the jurisdiction of the Courts previously constituted under Act VI of 1871, he constituted a new set of Courts under that Act by virtue of the authority given to him by s. 4 of the Regulation, the language of which exactly agrees with the language of s. 10 of Act VI; and these Courts, by s. 11, are subject to the superintendence of the High Court. The notification vesting the Deputy Commissioner for the time being in charge of the district of the Sonthal Pargannas with the powers of a District Judge as described in Act VI of 1871, has the effect of making the Sonthal Pargannas a district as defined in s. 386, Act VIII of 1859; and consequently the provisions of s. 12 apply to these pargannas in cases governed by s. 2 of the Regulation of 1872, which preserves the operation of Act VIII of 1859 in suits in which the subject is above Rs. 1,000 in value, triable in Courts constituted under Act VI of 1871.

We, therefore, hold that this Court has authority to sanction the trial of this suit in the Court of the Subordinate Judge at Moorshedabad, and we, accordingly, direct that it be tried in that Court.

Rule absolute.