

whether, as there held, an estate having once vested in Ram Sahye as a member of a joint Hindu family, he can be deprived of his rights in it, because at the time of the determination of his specific right, title and interest by partition he happened to be a lunatic.

It is, however, unnecessary for the purposes of this appeal to determine this point, because the decision of this suit can be properly arrived at otherwise.

The two appeals are dismissed with costs.

s. c. c.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

JAGERNATH SAHAI AND ANOTHER (JUDGMENT-DEBTORS) v. DIP RANI KOER (DECREE-HOLDER) AND OTHERS (AUCTION-PURCHASERS.)*

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June 4.

Jurisdiction—Bengal, N. W. P. and Assam Civil Courts' Act (XII of 1887), section 13, clause (3)—Civil Procedure Code (XIV of 1882), section 25—Sale in execution of decree for sale.

A suit on a mortgage bond, praying for a decree for sale, was transferred under section 25 of the Civil Procedure Code from the Court of the Second Subordinate Judge to that of the Third Subordinate Judge in the district for trial in that Court. The suit was decreed, and an order for sale was passed by the Third Subordinate Judge. After the sale, an application was made to set it aside on the ground, *inter alia*, that the Court of the Third Subordinate Judge had no jurisdiction to sell the property, it being within the local jurisdiction of the Second Subordinate Judge's Court. The jurisdiction of the Third Subordinate Judge to try the *suit* was not questioned.

Held, that section 13, clause (3) of the Bengal, North-Western Provinces and Assam Civil Courts' Act (XII of 1887) dealt with matters of this description, and the Court which passed the decree and the order for sale had jurisdiction to hold the sale.

Frem Chandi Dey v. Mohkoda Debi (1) distinguished; *Gopi Mohan Roy v. Doybaki Nundun Sen* (2) and *Tinocuri Delia v. Shih Chunder Pal* (3) referred to.

THIS was an appeal relating to an application to set aside a sale in execution of decree. The suit, which was one for sale under section 88 of the Transfer of Property Act, was originally instituted in the Court of the Subordinate Judge, Second

*Appeal from Order No. 198 of 1894, against the order of Babu Amrita Lal Chatterjee, Subordinate Judge of Tirthoot, dated the 9th of March 1894.

(1) I. L. R., 17 Calc., 699.

(2) I. L. R., 19 Calc., 13.

(3) I. L. R., 21 Calc., 639.

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Court, of the district of Mozufferpore. It was transferred to the Court of the Additional or Third Subordinate Judge under section 25 of the Code of Civil Procedure by the District Court of Tirhoot. A decree was passed by the Third Subordinate Judge in terms of section 88 of the Transfer of Property Act, and an order absolute under section 89 for sale of the mortgaged properties was duly made. In execution of the decree the mortgaged properties were sold by the Court of the Third Subordinate Judge. The present application raised various objections to the sale, but the only objection which is material for this report was that the Third Subordinate Judge had no jurisdiction to make the sale, as the properties sold lay within the jurisdiction of the Court of the Second Subordinate Judge. The objection was overruled in the lower Court.

The judgment-debtors appealed to the High Court.

Babu *Mahabir Sahai* for the appellant.—The properties in question were wholly within the local jurisdiction of the Second Subordinate Judge; the Third Subordinate Judge had therefore no jurisdiction to sell them. It was argued in the Court below on the authority of *Maseyk v. Steel & Co.* (1), *Kartick Nath Pandey v. Tilukdhari Lall* (2), and *Gopi Mohan Roy v. Doybaki Nundun Sen* (3) that the Court of the Third Subordinate Judge having passed the decree had power to sell the properties, but those cases, as well as other cases on the same point, are distinguishable from the present. In those cases the Court had under ordinary circumstances jurisdiction to entertain the suit, and the question raised was whether, regard being had to section 223, clause (c), the jurisdiction to sell had been taken away; but in this case the Third Subordinate Judge's jurisdiction was conferred by an order of the District Judge under section 25 of the Code of Civil Procedure. He was authorized only to try the suit. The trial ended with the decree absolute, and the jurisdiction of the Third Subordinate Judge ended therewith.

Babu *Sarada Charan Mitra*, Babu *Roghunandan Prosad* and Babu *Lachminarain Singha* with him, for the respondent, contended.

(1) I. L. R., 14 Calc., 661.

(2) I. L. R., 15 Calc., 667.

(3) I. L. R., 19 Calc., 13.

that section 13, clause (3) of the Civil Courts Act of 1887 was an answer to the objection raised. The cases cited in the lower Court's judgment, especially the case of *Gopi Mohan Roy v. Joybaki Nundun Sen* (1), and another case *Tincouri Debia v. Shib Chunder Pal* (2) more recently decided, are in point. The Court which passes a decree for sale has no doubt a discretion either to sell properties out of its local limits itself or to send the application for sale to another Court within whose jurisdiction the properties lay, under section 223 clause (c); the Third Subordinate Judge, although he had that discretion, had full jurisdiction to sell.

Babu *Mahabir Sahai* was heard in reply.

The judgment of the High Court (PRINSEP and GHOSH, JJ.) was as follows:—

This appeal arises out of a suit on a mortgage bond in which a decree for sale was applied for under section 88 of the Transfer of Property Act. The suit was instituted in the Second Court of the Subordinate Judge of Mozufferpore. Owing to pressure of work in that district, an Additional Subordinate Judge or a Third Subordinate Judge was appointed, and by an order passed under section 25 of the Civil Procedure Code, the suit was transferred to that officer for trial. There is no question that the *Additional Subordinate Judge had jurisdiction to try the suit*. The order for sale being passed and the sale being hold, an objection was raised at the last moment by the judgment-debtor (mortgagor) that the Additional Subordinate Judge had no jurisdiction, inasmuch as the properties which were brought to sale were within the local jurisdiction of the Second Subordinate Judge. We may take it that the Additional Subordinate Judge had no special local jurisdiction over the area within which these mortgaged properties were situated, although this is by no means clear. However, the judgment of the Additional Subordinate Judge now before us in appeal proceeds on that ground. The objection was disallowed. There was another objection raised that the sale should be set aside by reason of an irregularity in the publication of the notification of sale, in consequence of which

(1) I. L. R., 19 Calc., 13.

(2) I. L. R., 21 Calc., 639.

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an inadequate price was realized on one of the mortgaged properties. Both these points are taken before us in appeal.

There is no question that the Additional Subordinate Judge had complete jurisdiction to try the suit. The objection raised relates to his jurisdiction to effectuate the order passed by bringing the properties to sale within the terms of section 88 of the Transfer of Property Act. *Primâ facie* every Court, having jurisdiction to try a suit, has jurisdiction to execute its decree in that suit. It is contended on behalf of the appellant that the jurisdiction conferred on the Court of first instance in this case by the order of the District Judge under section 25 of the Code of Civil Procedure transferring the suit for trial terminated as soon as he had passed an order absolute for sale, and that his jurisdiction in regard to execution of that order is limited by any order that may have been passed by the District Judge under section 18 of the Civil Courts Act (XII of 1887). There are no cases expressly in support of this contention. The judgment of the Full Bench in the case of *Prem Chand Dey v. Mokhoda Debi* (1) is not in point. In that case any jurisdiction, which the Court might have had, ceased by reason of an order of Government re-adjusting the local jurisdictions and transferring this particular local jurisdiction to another Court, and this transfer, we may observe on the report, took place before the institution of the suit. There are no doubt some cases which have been decided by this Court, in which it has been held that where a local jurisdiction has, by an order under the Civil Courts Act, been divided between two officers of co-ordinate jurisdiction, such as two Munsifs or two Subordinate Judges in the same district, the jurisdiction of one of these Courts in respect of execution is limited by the area assigned to him by such order. All those cases, however, were decided under the Bengal Civil Courts Act (VI of 1871). That law has now been repealed by Act XII of 1887, and in re-enacting section 18 of the Act of 1871, the Act of 1887 has added a clause (3) which apparently is designed to deal with matters of this description. It declares that where civil business in any local area is assigned by the District Judge

(1) I. L. R., 17 Cal., 699.

under sub-section (2) to one of two or more Subordinate Judges, or to one of two or more Munsifs, a decree or order passed by the Subordinate Judge or Munsif shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area of that place, or within the local limits fixed by the local Government under sub-section (1). It cannot be disputed that under the orders of his appointment by the local Government this Subordinate Judge had jurisdiction over the entire district; if he had no such jurisdiction he would not have been competent to try the suit.

We may also observe that in the case of *Gopi Mohan Roy v. Doybaki Nundun Sen* (1), and in the case of *Tincouri Debia v. Shib Chunder Pal* (2) it was pointed out that in a suit to enforce a mortgage under the Transfer of Property Act it would be impossible to carry out the object of the Legislature if the Court which had jurisdiction to try the suit was not competent to carry out its order within the terms of that Act, and if it were necessary to transfer the decree or order which might be passed making the sale absolute to the various Courts having local jurisdiction over the particular mortgaged properties in order that they might hold the sales. It seems to us that this course was not contemplated by the Legislature and would defeat the object of the Legislature to ensure sale to a mortgagee who might obtain an order under section 88 of the Transfer of Property Act. We do not mean to be understood as holding that that Court is alone competent to hold the sale in execution of such an order, for in many cases it would no doubt be more convenient and proper that sales of various lots of the immoveable properties mortgaged should be held in the districts in which they are situate. But we think that the sales may also be held by the Court which passed the particular decree and order for sale. No doubt, as has been pointed out by Mr. Justice Ghose in the case of *Gopi Mohan Roy v. Doybaki Nundun Sen* (1) that section 223, clause (c) of the Civil Procedure Code leaves it to the discretion of the Court to send the decree for execution to another Court having

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local jurisdiction, but that is a power which is discretionary and does not affect the jurisdiction of the Court which passed the original order. On these grounds also we think that this appeal must be dismissed.

As regards the second point it is objected that, inasmuch as two of the mortgaged properties are two separate *putties* comprising two separate estates on partition of the parent estate, and the two notifications of sale were published at the same place, those notifications were not affixed on the particular lands as required by law. The appellants' pleader, however, does not contend that neither of these notifications was properly made on one of the *putties* under order of sale. He merely argues on the fact that they were both made at the same place, from which he maintains that one of the notifications was not properly made. But he is unable to tell us to which particular *putty* or estate this objection would apply. Even if we conceded that this was sufficient ground for setting aside the sale, it would not justify an order setting aside the sales of both the *putties*, and as there is no evidence to show to which this objection would apply, it cannot be allowed. Moreover it would amount only to an irregularity, and unless it were found to which *putty* it related, it would be impossible to consider whatever evidence there might be in regard to any substantial injury caused thereby since the *putties* do not represent the same share of the parent estate, and therefore are of different values. It also appears that this objection was taken at a very late stage, and that when objection was taken to the proceeding in question the judgment-debtor did not urge that there was irregularity in the service of the sale proclamation, but referred to other irregularities. The appeal is therefore dismissed with costs.

S. C. C.

Appeal dismissed.