

arrangement between the co-sharers and the tenants as to the mode in which the entire rent shall be collected, but which preserves intact the original tenancy both as regards the area of the holding and the rent paid. We cannot, therefore, see the analogy, which both the Munsiff and the Subordinate Judge find to exist, between a suit for rent and a suit for additional rent when the parties suing are some only of several co-sharers.

For the reasons stated we think the suit is not maintainable by the plaintiffs, and it is unnecessary, therefore, to determine the remaining point, viz. whether the question of area is *res judicata*, by reason of the former decision. We therefore decree the appeal, reverse the decision of the Subordinate Judge, and dismiss the suit with costs in all Courts.

*Appeal allowed.*

C. D. P.

### FULL BENCH.

*Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Prinsep, Mr. Justice Pigot, Mr. Justice O'Keefe, and Mr. Justice Ghose.*

PREM CHAND DEY (DECREE-HOLDER) v. MOKHODA DEBI  
(JUDGMENT-DEBTOR).\*

1890

June 18.

*Jurisdiction—Sale in execution of a decree—Property outside jurisdiction of Court executing decree—Code of Civil Procedure (Act XIV of 1882, ss. 16, 223, 649).*

A Court has no jurisdiction, in execution of a decree, to sell property over which it had no territorial jurisdiction at the time it passed the order of sale.

The decree-holder at a sale under a mortgage decree purchased the mortgaged property with leave of the Court. Before the order of sale was passed the mortgaged property had been transferred by an order of Government to the jurisdiction of another Court. *Held* by the Full Bench:—That the sale must be set aside as being without jurisdiction.

*Kamini Soondari Chowdhurani v. Kali Prasanno Ghose* (1) followed.

In this case one Prem Chand Dey, an assignee of a mortgage over certain properties at that time within the jurisdiction

\* Full Bench on appeal from order No. 92 of 1889, from an order of Babu Brojendro Kumar Seal, District Judge of Bankura, dated the 14th December 1888, confirming the order of Babu Shoshi Bhusan Chatterji, Munsiff of Bishenpur, dated the 18th September 1888.

(1) L. R., 12 I. A., 215; I. L. R., 12 Calc., 225.

1890  
 PREM  
 CHAND  
 DEY  
 v.  
 МОКШОНА  
 ДИЛ.

of the Moonsiff of Bishenpur, obtained in the Court of the Moonsiff of Bishenpur by consent a decree under section 88 of the Transfer of Property Act against the mortgagor. This decree provided that the judgment-debtor should pay the sum due under the mortgage by the 12th April 1887, and in default the mortgaged property should be sold. Execution of this decree was taken out in 1887 against the judgment-debtor, and in 1888 the mortgaged property was sold, the decree-holder himself, with leave of the Court, being the purchaser thereof. An objection was then raised by the judgment-debtor that inasmuch as the property was not within the jurisdiction of the Moonsiff of Bishenpur, but had by an order of Government been transferred with other lands to the jurisdiction of another Moonsiff, the sale was invalid. This transfer from one jurisdiction to another took place about two months before the institution of the suit on this mortgage. The objection raised by the judgment-debtor was allowed by both the Lower Courts. The decree-holder appealed to the High Court, and the case came on for hearing before Mr. Justice Prinsep and Mr. Justice Hill, who passed the following order:—"Two questions arise for our decision in this second appeal: first, whether in the course of proceedings in execution to set aside a sale held in execution of a decree it is competent to the debtor to raise for the first time an objection going to the jurisdiction of the Court which passed the decree, even to the validity of the decree itself. Next, whether, supposing that an objection to the validity of the decree itself is untenable in the proceedings in execution of that decree, the sale could properly be held by the Court which admittedly had not jurisdiction at the time that the sale took place over the lands which were to be sold. Our inclination is to disallow the first objection, and to hold that in the course of proceedings in execution of a decree it is not competent to a judgment-debtor for the first time to dispute the jurisdiction of the Court to try the suit, and to ask to have the particular decree declared to be inoperative, although he has not objected to it in the appeal allowed by law. This, no doubt, is a point of great importance, on which it is necessary to have the decisions of the Lower Courts uniform. But if we were to hold, as we are inclined to do, that this objection could not properly be raised in the present stage of the proceedings, we

should feel bound to refer the matter for consideration by a Full Bench of this Court, because we are not disposed to agree with the view of the law expressed by another Division Bench in the case of *Kartik Nath Pandey v. Tilukdhari Lall* (1). In our opinion a Court of Execution is not competent to sell properties under an order for sale passed under section 88 of the Transfer of Property Act, if at the time when that sale is held that Court has no longer jurisdiction over the lands which it is proposed to sell. We think rather that, having regard to the terms of section 223, clause (c) of the Code of Civil Procedure, execution should be transferred to a Court having jurisdiction over the immovable property, and therefore alone competent to hold such sale. We therefore desire to have the opinion of a Full Bench of this Court on both the points in this case."

Baboo *Rash Behari Ghose* (with him Baboo *Nolini Ranjan Chatterji*) for the appellant:—The objection to jurisdiction was not raised until the execution proceedings, and in that stage it comes too late; *Sadasiva Pillai v. Ramalinga Pillai* (2). You cannot raise jurisdiction at a late stage of proceedings; *Kandoth Mammi v. Neelancherayil Abdu Kalandan* (3), *Manohar Bhiera v. Potanis* (4). No consent even can give jurisdiction—*Meenakshi Naidoo v. Subramaniya Sastri* (5), *Ledgard v. Bull* (6).

The order must be accepted as valid and binding. The following cases show that you cannot raise the plea of jurisdiction at a late stage of the proceedings:—*Modun Mohun Ghose Hazra v. Baroda Soondari Dasia* (7), *Bishenmun Singh v. Land Mortgage Bank of India* (8), *Ooma Soondaree Dossee v. Bepin Behary Roy* (9), *Radha Gobind Gossami v. Ooma Soondaree Dossee* (10), *Naro Hari v. Anpurnabai* (11). A somewhat similar case to the last is that of *Revell v. Blake* (12). I say that the jurisdiction of the Moonsiff is derived from the Civil Courts Act; he may try cases under

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| (1) I. L. R., 15 Calc., 667.             | (6) L. R., 13 I. A., 134; I. L. R. 9 |
| (2) 15 B. L. R., 382.                    | All. 191.                            |
| (3) 8 Mad. H. C., 14.                    | (7) 8 C. L. R., 261.                 |
| (4) 2 Bom. H. C., 396.                   | (8) I. L. R., 11 Calc., 244 (245).   |
| (5) I. R., 14 I. A., 160; I. L. R. 11    | (9) 13 W. R., 292.                   |
| Mad. 26.                                 | (10) 24 W. R., 363.                  |
| (11) I. L. R., 11 Bom., 160 (note), 170. |                                      |
| (12) L. R., 7 C. P., 309 (304).          |                                      |

1890  
 PRAM  
 CHAND DEY  
 v.  
 MOKHODA  
 DEVI.

Rs. 1,000, but he cannot try a case of a person whose land is outside his jurisdiction. When the matter of jurisdiction is a question of fact, the Moonsiff will have jurisdiction, for the superior Courts will not interfere with the findings. See *Brown v. Cocking* (1). There is also a distinction between a voluntary and an involuntary submission to jurisdiction; you cannot after a voluntary submission turn round and question it. *Ex parte Pratt* (2). Where it is a voluntary submission it cannot be objected to. *The Queen v. Judge of County Court of Shropshire* (3), *Broad v. Perkins* (4), *Lalchaman Pundeh v. Modden Mohun Shye* (5), and *Maseyk v. Steel* (6).

Baboo Srinath Dass, Baboo Sharoda Churn Mitter, and Baboo Shaumbhu Chunder Dey for the respondents, were not called upon.

The opinions of the Full Bench (PETILERAM, C.J., PRINSEP, PIGOT, O'KINEALY, and GHOSE, JJ.) were as follows:—

PETILERAM, C.J. (PRINSEP, PIGOT, and O'KINEALY, JJ., concurring).—This was a suit brought on a mortgage of 130 bighas of land forming part of mouzah Bouridanga Gopinathpur. It was brought in the Court of the Moonsiff of Bishenpur, and by consent it was decreed that the debtor should pay the mortgaged debt by the end of Choit 1293, and, in default, that the mortgaged property should be sold. Execution was taken out in 1887, and on the debtor paying Rs. 60 the execution proceedings were struck off. Execution was again sued out in 1888, when the property was sold and purchased on the 21st May by the decree-holder for Rs. 50. It has been found by both Courts that at the time the suit was brought, and when the order for sale was passed, the mortgaged property was wholly within the jurisdiction of the Moonsiff of Bankura, and not within the territorial jurisdiction of the Moonsiff of Bishenpur, who executed the decree.

Both Courts have refused to confirm the sale; and the Division Bench of this Court, which heard the case in appeal, has asked our opinion on the following question, viz. whether a Court in execution of decree is competent to sell property, if, at the time the sale

(1) L. R., 3 Q. B., 672.

(2) L. R., 12 Q. B. D., 334 (341).

(3) 20 Q. B. D., 242 (246).

(4) L. R., 21 Q. B. D., 533.

(5) I. L. R., 6 Calc., 513.

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

is held, the Court has no longer jurisdiction over the land which it is proposed to sell.

1890.

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PREM  
CHAND DRY  
v.  
MOKHODA  
DEBI.

We are of opinion that the Court has no such jurisdiction. By section 16 of the Code of Civil Procedure, suits for the recovery of immoveable property, or for the determination of any other right or interest in immoveable property, must be instituted in the Court within the local limits of whose jurisdiction the property is situate. This shows that the object of the Code is to limit the territorial jurisdiction of the Courts in regard to the property that they are entitled to deal with. The case of *Kamini Soondari Chowdhurani v. Kabi Prosunno Ghose* (1) strongly supports this opinion. In that litigation a suit for foreclosure relating to lands in the 24-Pergunnahs was dismissed in the 24-Pergunnahs Court, and an action upon a covenant in the mortgage deed relating to lands in Nuddea was also dismissed in the Nuddea Court. On appeal the High Court upheld the decision of the Nuddea Court, but decreed the appeal made from the Court of the 24-Pergunnahs, and, remanding the latter case, directed that Court to determine certain questions relating to the village of Alumpur, within the district of Nuddea. Against that decree there was an appeal to the Privy Council, and their Lordships set aside the decree on the broad ground that the High Court in its Appellate capacity was not in a position to give jurisdiction to the Court of the 24-Pergunnahs, so as to enable the latter Court to deal with a case commenced and prosecuted in Nuddea relating to lands in that district. It would seem, therefore, that the Courts in this country have no power to determine any right or interest in immoveable property lying wholly outside their local jurisdiction. Nor does the argument in favour of the extended jurisdiction of the Courts in the *mofussil* based on section 223 appear to us to be supported by that section. So far as the Procedure Code is concerned, execution of a decree is only a continuation of the suit, and there appears no legitimate reason why a Court in the later stage of a suit should have greater powers than it possessed at its institution. But however that may be, a comparison of section 223 with the last paragraph of section 649 seems to us to indicate that territorial jurisdiction is a condition precedent to a Court executing a decree.

(1) L. R., 12 I. A., 215 ; I. L. R., 12 Calc., 225.

1890

PREM  
CHAND DEY  
v.  
MOHODA  
DEBI.

We are, therefore, of opinion that the Court below not having, at the time it passed the order of sale, territorial jurisdiction over any portion of the property sold, and this being a suit between the decree-holder and the judgment-debtor, that the Judge was right in refusing to confirm the sale.

In the result the appeal will be dismissed with costs.

GHOSE, J.—I agree in holding that the Moonsiff of Bishenpur had no jurisdiction to sell the property, and that therefore he was right (and so also was the Judge of the Appellate Court) in refusing to confirm the sale. And this, I should think, he was bound and competent to do, when he found that he had no jurisdiction to hold the sale. I do not understand that the last portion of the judgment just delivered by the Chief Justice is intended to decide, or suggest, that if a third party, and not the decree-holder, were the purchaser, the Courts below would not be right in making the order they did, and it is therefore not necessary to discuss that matter in this case.

*Appeal dismissed.*

A. A. C.

## APPELLATE CIVIL.

*Before Mr. Justice Tottenham and Mr. Justice Ameer Ali.*

1890

March 7.

MOHINI MOHAN DAS (JUDGMENT-DEBTOR), PETITIONER, v. SATIS  
CHANDRA ROY AND OTHERS\* (DECREE-HOLDERS), OPPOSITE  
PARTY.

*Valuation of suit—Suit for possession and mesne profits—Value of the original suit—Act XII of 1887, s. 21.*

In a suit for possession and mesne profits, the value of the original suit for the purposes of section 21 of Act XIII of 1887 depends not merely upon the value of the property sought to be recovered, but also upon the value or amount of the profits recoverable.

SATIS CHANDRA ROY and others (the opposite party) brought a suit in the Court of the Subordinate Judge of Dacca against Mohini Mohan Das and Mary Pogose (the petitioners) and another for the recovery of possession of certain immoveable property and for mesne profits, but did not state the amount they

\* Civil Rule No. 1706 of 1889 against the order of Baboo Krishna Chandra Chatterjee, Subordinate Judge of Dacca, dated the 24th of August 1889.