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specially allowed. Nothing of the kind has been brought to our notice. It appears to me, therefore, that, so far as our present information extends, we have no jurisdiction to entertain an appeal, and that the appeal must be disallowed. Considering first our want of jurisdiction, and in the next place that the objection which has been taken was suggested by the Court, we think the dismissal of the appeal should carry no costs.

WHITE, J.—It appears to me that we have no jurisdiction in this case. Under Act XV of 1874, the Sonthal Pergannas is one of the Scheduled Districts to which Act VIII of 1859, viz., the Civil Procedure Code, does not extend. Looking to the exceptions mentioned in s. 8 of Act XV of 1874, it is possible that, notwithstanding this, Act VIII of 1859 may, prior to Act XV of 1874 coming into force, or subsequent thereto, have been extended to, or declared to be in force in, the Sonthal Pergannas by the Governor-General in Council or the Local Government. But it is for the appellant to satisfy the Court on these points, which he has not done. *Primâ facie*, therefore, the jurisdiction of this Court is taken away, and the appellant not having shown that Act VIII of 1859 was, before or after 1874, extended to the Sonthal Pergannas, we must hold that we have no jurisdiction.

*Appeal dismissed.*

*Before Mr. Justice Birch and Mr. Justice R. C. Mitter.*

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 July 6.

BHOOBUN CHUNDER SEN (ONE OF THE DEFENDANTS) v. RAM  
 SOONDER SURMA MOZOOMDAR AND OTHERS (PLAINTIFFS).\*

*Sale for arrear of Revenue—Suit to set aside—Fraud—Act XI of 1859—Limitation—Agent—Contract Act (IX of 1872), ss. 182 and 185—Form of Decree.*

When one of several co-sharers fraudulently contrived to have an estate brought to sale for arrears under Act XI of 1859, and purchased it in the *benami* of his son,—*Held*, that another co-sharer aggrieved by the sale could maintain a suit to have the property reconveyed, though the period limited by

\* Regular Appeal, No. 139 of 1876, against the decree of Baboo Nobin Chunder Ghose Roy Bahadoor, Second Subordinate Judge of Zilla Mymensingh, dated the 17th of March 1876.

s. 33 of Act XI of 1859, and art. 14 of the second schedule to Act IX of 1871, for a suit to set aside the sale, had expired.

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SUIT to set aside an auction-sale held under the provisions of Act XI of 1859 on the ground of fraud.

The plaintiffs alleged that they jointly with the second defendant were owners of a certain settled mehal; that the second defendant, who was also their agent, they being purdahnushin ladies, fraudulently allowed the Government revenue of their portion of the estate to fall into arrears; that he led the other co-sharers, who were ready to make the payment on their (the plaintiffs') behalf to suppose he was going to save the estate from sale; but that instead of doing so, he allowed the estate to be put up for sale without notice to the plaintiffs, and on the day of sale, the 30th December 1872, after making false representations to those present as to the condition of the estate, purchased in the name of his son, the third defendant, for a small consideration. The plaint was filed on the 31st March 1875. The second and third defendants pleaded, *inter alia*, that the suit, being to set aside a sale for arrears of Government revenue, should have been brought within one year from the date on which the sale was confirmed by the Commissioner, and that, not having been so brought, it was liable to be summarily dismissed. The plaintiffs obtained a decree in the first Court.

The third party defendant appealed to the High Court.

Baboo *Kally Mohun Dass*, Baboo *Bhoobun Mohun Dass*, and Baboo *Jogesh Chunder Dey* for the appellant.

Baboo *Mohini Mohun Roy* and Baboo *Nullit Chunder Sen* for the respondents.

The following judgments were delivered—

BIRCH, J. (after stating the facts, continued as follows):—I do not treat the suit as one brought to annul the sale on the ground of its having been made contrary to the provisions of Act

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XI of 1859. What the plaintiff seeks to establish in this suit is, that by the fraud of the defendant they have been deprived of their property, and they ask to be relieved from the effect of that fraud and to be placed in the position in which they were before the auction-sale took place. To such a suit the provisions of Act XI of 1859 in restriction of suits to annul sales cannot, in my opinion, be extended. We have to look to the general law of limitation, and treating this as a case for relief on the ground of fraud, the suit is clearly within time. [His Lordship then proceeded to deal with the facts of the case.]

The Subordinate Judge has decreed the suit and ordered that the plaintiffs obtain possession of the share claimed with costs and interest thereon from defendants 2 and 3. He has also made the said defendants liable for the costs of Government with interest.

I take the same view of the evidence as the Subordinate Judge has. But I think that the form of the decree must be different. Our order will be, that the defendant No. 3 do reconvey to the plaintiffs the property which is the subject of this suit, upon receiving from them the sum of Rs. 220 with interest thereon at 4 per cent. from the date of payment thereof; that the cost of the stamp for conveyance and the registration thereof be borne by the defendant No. 3; that in default of the conveyance being executed within two months from the date of this decree, the conveyance be executed by the Court, the costs of the transaction being added to the costs of this appeal. The order of the lower Court is modified. The costs in this Court to be borne by defendant No. 3 with interest at 6 per cent. The order of the Subordinate Judge as to costs in the lower Court will stand.

MITTER, J.—I am also of opinion that the plaintiffs in this case upon the facts, which appear to me to have been satisfactorily established by the evidence, are entitled to recover possession of the share of the zemindary for which this suit has been brought, and to obtain a conveyance of the same from the defendant, appellant.

Although in the plaint there is also a prayer for the reversal

of the auction-sale, I do not think that, under the circumstances of this case, that prayer can be granted.

In this view of the case, it does not fall within the provisions of art. 14 of the second schedule of the Limitation Act, or s. 33 of the Revenue Sale Law. It should be considered simply a suit to obtain a certain relief on the ground of fraud, and consequently art. 95 is applicable to it. Putting the case, therefore, in the most favorable position as regards the defendants, the knowledge of the fraud cannot possibly date back further than the date of the auction-sale. The present suit having been brought within three years from that date is, therefore, not barred by limitation.

The mehal seems to have been sold for an arrear of five annas of the revenue kist of September 1872. It is stated by the plaintiffs that Bhim Narain, second defendant, father of Bhubun Chunder, defendant No. 3, the appellant before us, was entrusted by all the co-sharers with the entire management of the estate; and that it was his duty, therefore, to see that the whole of the revenue due in that kist was paid. But upon the evidence I am not prepared to say that this part of the plaintiffs' case has been established. I am inclined to believe that it was not a premeditated default on the part of any one of the co-sharers to further a fraudulent scheme. It was merely the result of an accidental negligence on the part of some one of the co-sharers. It is deposed to by the plaintiffs' witnesses themselves that one Hurry Dass Chuckerbutty was employed by some of the co-sharers, for instance, Wooma Soondery and Bissessuri, two of the plaintiffs in this suit, to deposit in the Collectorate their proportionate shares of the revenue. The evidence as to the whole mehal being in the possession of Bhim Narain on behalf of the rest of the co-sharers is neither clear nor satisfactory. But upon the evidence I am satisfied that, shortly before the day of the sale, the defendant Bhim Narain undertook to make an attempt to save the mehal from the impending auction-sale by putting in an application to the Collector under s. 6 of the Revenue Sale Act on behalf of all the co-sharers.

The learned Pleader for the appellant has drawn our attention to several discrepancies in the depositions of the plaintiffs'

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witnesses upon this point, but these discrepancies, far from affecting their credibility, appear to me to be such as would naturally occur in the statements of truthful witnesses speaking to events which had happened some time before.

I am of opinion, therefore, that it has been well established in this case that before the auction-sale Bhim Narain undertook to make an application on behalf of all the co-sharers under s. 6 of Act XI of 1859. He was employed for this purpose by one of the co-sharers, *viz.*, Radha Kissen Surma Mozoomdar, a witness in this case, and Haranund Nundi, another witness of the plaintiffs, who came to Nusseerabad on their behalf to protect their interests after the mehal had fallen into arrears. Bhim Sein, I think, having accepted this engagement, became an "agent" of the plaintiffs for this special purpose within the meaning of s. 182 of the Contract Act. It is said that this was a mere gratuitous offer on the part of Bhim Sein, and there was no consideration for it. But that circumstance would not take away from him the character of an "agent;" see s. 185.

Now it is clear from the evidence that Bhim Sein intentionally, and with a view to cause wrongful loss to the plaintiffs and equally wrongful gain to himself, neglected to perform his duties as an "agent." He not only omitted to make an application to the Collector as he undertook to do, but by fraudulent misrepresentations prevented others from making a similar application on behalf of the plaintiffs. I entirely concur with the lower Court in its opinion that the statements of the plaintiffs' witnesses, Chunder Nath Dey, Ram Gopal Nag, and Brojnath Bose, are fully reliable upon this point; they prove beyond doubt that, on the day of auction-sale, Bhim Sein in the Collector's cutcherry showed them a petition which he said he would present to the Collector as soon as he would come to Court. They went away with this assurance.

It is evident from the deposition of the plaintiffs' witness No. 4, Juggobnndhoo Bose, that these representations were falsely made by Bhim Sein to successfully carry out a fraudulent scheme of purchasing this mehal in the *benami* of his son. He had with him at that time a muktarnamah executed by his son, who was not at Nusseerabad, but at his house, which was at some

distance from that place, empowering the witness Juggobundhoo to bid for the property at the impending auction-sale. Then we have the fact clearly established that when the Collector came to Court, he did not make even any show of attempt to save the property. These facts leave no reasonable doubt in my mind that Bhim Sein accepted the agency on behalf of the plaintiffs to make an application under s. 6 of Act XI of 1859 with a view that he might with more facility carry out his intention of purchasing the property himself. This was clearly a fraud against the plaintiffs, and under these circumstances, it seems to me just and equitable that Bhim Sein should not be allowed to reap the benefit of his fraud. The plaintiffs are therefore entitled to the relief proposed to be given by my learned colleague.

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*Appeal dismissed.*

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*Before Mr. Justice Kemp and Mr. Justice Lawford.*

KUDOMEË DOSSEE AND OTHERS (DEFENDANTS) v. JOTEERAM  
 KOLITA (PLAINTIFF).\*

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 August 27.

*Hindu Law—Divorce—Established Custom.*

Where a Hindu husband sued his wife for restitution of conjugal rights, and the defendant pleaded divorce, it was *held*, that though the Hindu law does not contemplate divorce, still in those districts where it is recognized as an established custom, it would have the force of law.

THE plaintiff in this case, who was a Hindu inhabitant of Assam, sued the female defendant, one of the special appellants in the High Court, for restitution of conjugal rights. The defendant, among other pleas, averred that the plaintiff had divorced her, and had executed a deed to that effect, and that he, consequently, was not entitled to maintain this action.

\* Special Appeal, No. 2812 of 1876, against the decree of W. E. Ward, Esq., Officiating Judge of Assam, dated the 6th September 1876, reversing a decree of Baboo Huro Kanto Surma, the Munsif of Gowhatty, dated the 30th March 1876.