

CIVIL RULE

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Doss.*

1910

March 18.

SHAMSUNDAR SAHA

v.

ANATH BANDHU SAHA.*

*Execution of Decree—Transfer of execution-proceedings—Jurisdiction of executing Court—Presidency Small Cause Courts Act (XV of 1882) s. 31, cl. (b)
—Civil Procedure Code (V of 1908) s. 24.*

The meaning of section 31, cl. (b) of the Presidency Small Cause Courts Act is that the Civil Court to which a decree may be transferred for execution is the Civil Court competent to deal with it under the provisions of Act XIV of 1882, and so also the Court which, under the provisions of the present Code, is competent to deal with it.

Proceedings which are without jurisdiction are not proceedings that can be transferred under the provisions of the old Code, and are equally incapable of transfer under the new Code.

CIVIL RULE.

This was a rule issued in favour of the plaintiffs, Shamsundar Saha and others, to show cause why the order of the Munsif of Tangail should not be set aside.

The petitioners obtained a money-decree in the Court of Small Causes at Calcutta, on the 25th March 1909, against one Anathbandhu Saha, for self and as the only son of Dinabandhu Saha deceased, for the balance of certain sums due to them on account of goods sold. Thereupon, on the application of the petitioners, the decree was transferred to the Court of the Munsif at Tangail for execution. On the 12th May the petitioners applied to the 1st Munsif at Tangail, in whose file the matter had been placed, for attachment and sale of the moveable properties of the judgment-debtors and for his arrest and imprisonment for the realization of the said decretal amount. Process for attachment of the judgment-

* Civil Rule No. 246 of 1910, against the order of Unesh Chandra Sen, Munsif of Tangail, dated Nov. 20, 1909.

debtor's moveables was ordered to be issued, fixing the 7th June 1909 as the date for disposing of the execution case. Later on the petitioners applied for attachment of the judgment-debtor's immoveables, and processes were issued to the effect, again fixing the 7th June 1909 for disposal of the case. On the 7th June 1909, the learned Munsif ordered notice under order XXI, rule 66 of the new Code, to be issued, declaring that the judgment-debtor's immoveables have been actually attached, and that the 12th July had been fixed for the disposal of the case. Thereupon, one Kadambini Dasee, the natural mother and guardian of the minor brother of the judgment-debtor, preferred a claim to the attachment of the moveable and immoveable properties to the extent of his one-half share. On the 20th November last, the Munsif allowed the claim and released one-half from the attachment as belonging to the minor. On the 6th January 1910, one Brajendra Kumar Saha Mandal and others attached the moveable properties of the judgment-debtors that were deposited in Court, and filed an objection to the sale of the judgment-debtor's moveables. On the 8th January 1910, the judgment-debtor and the last-mentioned judgment-creditors objected to the jurisdiction of the Court of the 1st Munsif to the execution of the decree, as it was for a sum above Rs. 1,000. The Munsif considered the objection valid and allowed it, holding that the decree of the petitioner be returned to the Court which sent it for execution and making other orders in connection with it. The plaintiffs decree-holders, thereupon, moved the High Court against the order of the Munsif, contending that the said Munsif had jurisdiction to execute the decree, and that, if the Court had really no jurisdiction, all its previous orders in the matter were also without jurisdiction.

Mr. A. Rasul (with him *Babu Harendrakrishna Mukherji*), for the petitioners. Section 31 of the Presidency Small Cause Courts Act authorizes transfer to any Court. Such a Court need not necessarily have jurisdiction in making such a decree. At any rate, the case may be transferred now to a Court of competent jurisdiction, either on application or by

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this Court of its own motion: section 24 of the new Code referred to. Section 24 is not governed by section 6, the latter section referring only to suits, while the former to suits as well as proceedings.

Babu Rajendra Chandra Guha, for the opposite party. The rule was not issued on the ground of jurisdiction. The provisions of the Presidency Small Cause Courts Act and the Code of Civil Procedure cannot be contradictory and are not. The only difference is that the Small Cause Court can send a decree for execution to another Court directly. Order XXI, rule 8 of the new Code is clear. So was the old Code, section 226: *Gokul Kristo Chunder v. Aukhil Chunder Chatterjee* (1), *Mungul Pershad Dichit v. Grija Kant Lahiri* (2).

[JENKINS C.J. Section 226 and section 6 are to be read together. Execution proceedings have been treated as suits. There is, however, nothing in the Small Cause Courts Act to control section 31.]

Section 6 applies to the Presidency Small Cause Courts. The executing Court must be a Court of competent jurisdiction. 'Court' means a Court having jurisdiction. Section 31 cannot give jurisdiction where there is none.

Mr. A. Rasul, in reply.

JENKINS C.J. In this case a rule has been issued on the opposite party to show cause why the order of the Munsif at Tangail, first Court, dated the 20th November 1909, should not be set aside, or why such other order should not be passed as to this Court might seem fit and proper. The occasion of this rule was that a decree was passed in this Presidency Small Cause Court in March 1909 for a sum in excess of a thousand rupees. There was an application for transfer of the execution proceedings, which resulted in their being transferred to the Munsif at Tangail, first Court. Certain orders were passed by that Munsif, and on the 20th of November he made an order of release, and it is this order that is named in

(1) (1889) I. L. R. 16 Calc. 457.

(2) (1881) I. L. R. 8 Calc. 51;

L. R. 8. I. A. 123.

the rule. Subsequently, an exception being taken to the proceedings, the Munsif, on the 8th of January, made an order to the effect that the proceedings before him were without jurisdiction. Though the rule only mentions the order of the 20th of November 1909, I notice that the application on which the rule was granted referred to the orders generally, and I think we can fairly treat this application as though the order of the 8th of January was called in question, so that what we have to decide is whether or not the Munsif had jurisdiction to entertain these execution proceedings. Now, his jurisdiction did not extend to suits in excess of a thousand rupees, so that, if the matter had to be determined by the terms of the Code, then under the present Code, as under the Code of 1882, the Munsif had not jurisdiction for the purposes of these execution proceedings. Nor do I think that jurisdiction was created by clause (b) of section 31 of the Presidency Small Cause Court Act. This Act is Act XV of 1882, and was passed on the same day as Act XIV of 1882, which was the Code of Civil Procedure of that year ; and I think it would be reading into the words of section 31, clause (b), a meaning of which they are not fairly susceptible, when regard is had to the circumstances, if we were to hold that a Civil Court, which was not competent for the purposes of the Code, would be competent by reason of the provisions in this section. I think the fair meaning of section 31, clause (b), must be that the Civil Court to which a decree might be sent for execution was the civil Court competent to deal with it under the provisions of Act XIV 1882, and now is the Court which, under the provisions of the present Code, is competent to deal with it. Therefore, I think the Munsif rightly held that he had no jurisdiction, and that being so, not only will the order of the 10th of November 1909 be of no avail, but the other orders must share the same fate, the order of the 8th of January 1910 being correct.

But then we have been asked to transfer this proceeding from the Court of the Munsif at Tangail to the Court of a Judge having jurisdiction in the matter. No rule has been

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granted which would permit of our making any such order ; but apart from that, proceedings that without jurisdiction were not proceedings that could be transferred under the provisions of the old Code, and I think they are equally incapable of transfer under the new Code. The broad result of this is that the applicant has failed, and I think it would be meaningless for us to say that we make the rule absolute so far as it relates to the order of the 20th of November 1909, for that has already come to nothing. I think the proper order for us to make is to discharge the rule with costs.

Doss J. I agree.

Rule discharged.

S. M.

CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Carnduff.

GUIRAM GHOSAL

v.

LAL BEHARI DAS.*

Criminal Procedure Code (Act V of 1898) s. 147—Dispute concerning the right to act as pujari, and not the right of use of land—Easements.

Section 147 of the Criminal Procedure Code is not limited in its terms to easements, but relates to any dispute concerning the right of use of land or water.

A dispute concerning merely the right to act as *pujari* in a temple, and not the right of use of the land on which it stands, is not within the scope of section 147 of the Code.

Kader Baicha v. Kader Batcher Rowthian (1) not followed.

THERE is a *mandir* or temple of the goddess Sitala at Chatra, near Serampore, belonging to the Satchasi community of the locality, who have been declared by the civil Courts to possess exclusive power of control over the temple officers. About 30 years ago one Rajnarain Ganguli was appointed by the leaders

* Criminal Revision No. 65 of 1910, against the order of W. N. Delevingne, Sessions Judge of Hooghly, dated Sept. 18, 1909.

(1) (1905) I. L. R., 29 Mad. 237.

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