

(1878) 05 CAL CK 0005

Calcutta High Court

Case No: None

Kaliprosad Rai

APPELLANT

Vs

Meher Chandro Roy
and Others

RESPONDENT

Date of Decision: May 11, 1878

Citation: (1879) ILR (Cal) 222

Hon'ble Judges: McDonell, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

The question raised by this application is whether, in 1876, Section 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.

2. The petitioner instituted a suit valued at Rs. 6,197-9 on a mortgage bond, by which certain properties lying partly within 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 u/s 12, Act VIII of 1859, to his proceeding with the suit.

3. 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.

4. 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.

5. The defendants have not appeared to show cause.

6. By Act XXXVII of 1852, Section 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.

7. 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."

8. 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."

9. 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 suit, 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.

10. This was the state of the law in the Sonthal Pargannas when the CPC was enacted.

11. 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.

12. Section 39 of Act XXIII of 1861 then provides that "when under the provisions of Section 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 proviso, the previous sanction of the Governor-General in Council shall be requisite.

13. By Notification of the 19th August 1867, Calcutta Gazette, p. 1369, the Lieutenant-Governor of Bengal notified under the provisions of Section 385, Act VIII of 1859, and Section 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.

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

15. The first paragraph of the 3rd section runs thus: "Subject to the provisions of this Regulation, the Regulation 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 Section 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."

16. By paragraph 2 power is given to the Lieutenant-Governor to add to the Regulation 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 Parganna from the jurisdiction of any of the Courts established under the said Act now having jurisdiction therein. Nothing in Sections 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.

17. 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 Court's 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 sub-divisions with the powers of Subordinate Judge under that Act for the purpose of administering civil justice in

suits exceeding Rs. 1,000 in value.

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

19. 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 Section 2, Act XXXVII of 1855, and Clause 1, Section 3 of the Regulation of 1872.

20. The effect of the provision in Section 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 Section 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 Section 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 Pargannas officers with the powers of such Courts.

21. 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.

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

23. 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.

24. The question then comes to this: When the Lieutenant-Governor in 1873, by notification, put an end to the jurisdiction of the Court 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?

25. 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 Section 4 of the

Regulation, the language of which exactly agrees with the language of Section 10 of Act VI; and these Courts, by Section 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 Section 386, Act VIII of 1859; and consequently the provisions of Section 12 apply to these pargannas in cases governed by Section 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.

26. 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.