

(1874) 04 CAL CK 0002

Calcutta High Court

Case No: Regular Appeal No. 242 of 1872

A.B. Mackintosh

APPELLANT

Vs

Kashinath Biswas and
OthersRESPONDENT

Date of Decision: April 22, 1874

Judgement

Sir Richard Couch, Kt., C.J.

When this regular appeal came before us for decision, after hearing the argument on both sides, we considered it necessary to refer for decision by a Full Bench the question whether, under s. 20 of Beng. Act VI of 1862, a suit under that Act and Act X of 1859 may be preferred in the Revenue Office of the district where a sub-division of a district has been placed under the jurisdiction of a Deputy Collector; or can only be preferred in the Revenue Office of the sub-division in which the cause of action has arisen; and whether, when a suit has been preferred, not in the Revenue Office of the sub-division in which the cause of action arose, but in the Revenue Office of the district, and was referred by the Collector to another Deputy Collector, the decree in such a suit is void for want of jurisdiction? A decision upon these questions-- [C. Macarthur Vs. Purna Chandra Chatterjee](#) --was quoted, with which at the time we were not prepared to agree. I propose now, in the first place, to deliver the judgment of the Full Bench upon the questions referred. They have been considered by the learned Judges who sat in the Full Bench, and what I now say is on behalf of the whole Court, it not being convenient that all the Judges should meet merely for the purpose of delivering the judgment.

2. The answer to the questions depends upon the construction of s. 20 of Beng. Act VI of 1862. (The learned Judge read s. 20, and continued):--The words "or when a sub-division of a district has been placed under the jurisdiction of a Deputy Collector" might possibly be construed so as to give to a person an option of preferring the suit either in the Revenue Office of the district or in the Revenue Office of the sub-division. The section might have been more clearly worded; but although the words are capable of that construction, we think that the more reasonable construction is, that where there is a sub-division of a district placed under the jurisdiction of a Deputy Collector, it was

intended that the suit should be brought in the Revenue Office of the sub-division, and the person bringing the suit was not to have an option of bringing it in the Revenue Office of the district or of the sub-division. And any inconvenience, either public or to the suitor, might be prevented by the exercise of the power that is given in the proviso, which follows; that the Collector may withdraw any suit from any Deputy Collector and try it himself or refer it to another Deputy Collector. It is more reasonable to suppose that the Legislature, with this power given to the Collector, did not intend to give a discretion to the person bringing the suit as to which Office or Court he should bring it in. It prescribed a fixed rule for him. There might be some inconvenience in leaving it to the person bringing the suit arbitrarily to select in which Court it should be brought. Although the words may admit of that meaning, we think, upon the whole, that the other is a more reasonable construction, and more convenient, having regard to the power which I have noticed of withdrawing the suit. So far we concur with the decision in [C. Macarthur Vs. Purna Chandra Chatterjee](#), and would say that the suit cannot be preferred in the Revenue Office of the district where there is a sub-division under the jurisdiction of the Deputy Collector.

3. Then the other part of the question has to be considered, namely, whether, when a suit has not been preferred in the Revenue Office of the sub-division in which the cause of action arose, but has been preferred in the Revenue Office of the district, and been referred by the Collector to another Deputy Collector, the decree in the suit is void for want of jurisdiction? This is a very different question, and in considering it we must look at the facts of the case in which it arose.

4. The case of the plaintiff in the suit in which this regular appeal is brought, is that he was a mortgagee of certain property, and that he had foreclosed his mortgage, and so became entitled to the mortgaged property. But he alleged that a suit had been brought in the Court of the Deputy Collector of Alipore, and a decree obtained in the suit collusively, as he apparently alleged, and the property had been sold under decree and purchased by some of the defendants, the zemindars. And in that way his rights under the decree of foreclosure had been interfered with, and he had not been able to enforce it. And he prayed the Court to declare his right to the mortgaged property which he had under the foreclosure, and to award possession. It having been found by the Judge of the District Court that there was no collusion in bringing the suit in the Court of the Deputy Collector of Alipore, he made in appeal an objection, which had not been prominently put forward in the first Court, that the decree of the Deputy Collector was void for want of jurisdiction, and consequently no title could be made through the sale under it. So the question which we have to decide is, whether the decree is void for want of jurisdiction? In considering this, it is important to keep in mind that the Revenue Courts have a general jurisdiction to entertain suits of this description. This section of Act VI of 1862 is not one which gives the jurisdiction, but it is rather one which directs how it shall be exercised by the different Courts. Looking at it in that light, it may be that the defendant in a suit for rent, or a suit brought under Act X, can, if the suit is brought in the Revenue Office or Court of the

district, when it ought to be brought in the Revenue Office of the sub-division, object to it, and claim to have the directions of s. 20 obeyed and the suit brought in the proper Court; and he may take that objection even in a special appeal, although it may not have been raised in either of the lower Courts. For, from the facts found by the lower Courts, it would appear that the suit had been brought in the wrong Court. Perhaps it might not be right to allow it to be taken if it had not been raised before. But it is one thing to say that the defendant may take the objection, that the decree was obtained in the wrong Revenue Court, and that it is voidable on appeal; and another, that a person not a party to the suit, and who seeks, as this plaintiff did, to altogether avoid the decree and the title derived from it, should be able to take it and to say that the proceedings are absolutely void. I think, considering that the Revenue Courts have a general jurisdiction, that a person not a party to the suit cannot be allowed to say that the proceedings are absolutely void because the direction of s. 20 of Act VI of 1862 has not been followed. We should answer the second part of this question by saying that the decree in such a suit is not void for want of jurisdiction, but is voidable only at the instance of the defendant. This will make the decision in [C. Macarthur Vs. Purna Chandra Chatterjee](#) consistent with our opinion. There the objection was taken in special appeal and by the defendant in the suit. It would be carrying the doctrine very much further to hold that the proceeding is entirely void, and the consequences would be very serious; for it appears that in 24-Pergunnas, and probably in other districts, suits have been brought in this manner--honestly and bona fide brought--and decrees have been obtained in them. No doubt many titles depend on the validity of sales under such decrees.

(¹) Beng. Act VI of 1862, s. 20.--Suits under this Act, or under Act X of 1859, shall be preferred in the Revenue Office of the district, or when a sub-division of a district has been placed under the jurisdiction of a Deputy Collector, or the Revenue Office of the sub-division in which the cause of action shall have arisen, or when the cause of action shall have arisen within the limits of the local jurisdiction of any Deputy Collector not in charge of a sub-division, but who has been specially authorized by Government to receive such suits, then in the office of such last-mentioned Deputy Collector. Provided always that the Collector may withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector.