

Kunja Mohan Chakravarty and Another Vs Manindra Chandra Roy Chaudhury and Another

Court: Calcutta High Court

Date of Decision: July 20, 1922

Acts Referred: Bengal Tenancy Act, 1885 " Section 144
 Civil Procedure Code, 1908 (CPC) " Order 21 Rule 3, 16(4), 20, 21

Citation: AIR 1923 Cal 619 : 77 Ind. Cas. 253

Hon'ble Judges: Chotzner, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal by the defendants in a suit for recovery of possession or, in the alternative, for assessment of rent. The disputed tenure was

held by the defendants under the plaintiffs and fell into arrears. The plaintiffs thereupon instituted a suit for arrears of rent and obtained a decree. In

execution of that decree the tenure was sold on the 8th January 1907 and was purchased by the landlord decree-holders for the sum of Rs. 1. On

the 29th April 1918 the plaintiffs landlords instituted the present suit for ejectment on the allegation that the defendants were in unlawful occupation,

notwithstanding the sale of their tenure. The defendants urged that the decree had been made and the sale had been held without jurisdiction. So

that their interest in the tenure had not been affected thereby. The Trial Court accepted this contention as well founded and dismissed the claim for

ejectment. The Court, however, made a decree for arrears of rent. Upon appeal the District Judge has reversed that decision and made a decree

in ejectment with mesne profits. On the present appeal the view taken by the District Judge has been assailed as contrary to law.

2. It is not disputed that the tenure is situated within the jurisdiction of the Court of the Munsif at Kurigram within the district of Rangpur. The suit

for rent however, was instituted in the Court of the Munsif at the head-quarters of that district. The defendants did not appear, with the result that

the suit was decreed ex parte. The decree was then executed at the instance of the plaintiff and the tenure was brought to sale in the Court where

the decree had been passed. On these facts, the defendants contend that the decree was made and the sale was held without jurisdiction.

3. In support of the contention that the decree was made without jurisdiction, reliance has been placed upon Sub-section (1) of Section 144,

Bengal Tenancy Act, which is in these terms: ""The cause of action in all suits between landlord and tenant as such shall, for the purposes of the

Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to

entertain a suit or the possession of the tenure or holding in connection with which the suit is brought."" This provision, it will be observed, does not

specify the Court where the, suit is to be instituted. It merely defines the expression "cause of action" as applied to suits between landlord and

tenant for the purposes of the Code of Civil Procedure. That this is the true scope of the section is clear from the decision in Fazlur Rahim Abu

Ahmed v. Dwarka Nath Chowdhry 30 C. 453 : 7 C.W.N. 402. In that case, it was ruled that Section 144, Bengal Tenancy Act, was controlled

by, Sections 15 and 17 of the CPC of 1882, and that consequently a suit for rent was required to be instituted, subject to pecuniary limitations, in

the Court of the, lowest grade competent to try it. Sir Francis Maclean, C.J., pointed out that Section 144 merely lays down where the cause of

action in suits between landlord and tenant shall, for the purpose of the Code of Civil Procedure, be deemed to have arisen: it does not say in

which Court the suit is to be instituted. To ascertain this, we must go to Section 17 of the Code of Civil Procedure, 1882, which provides that all

other suits, chat is, other than those mentioned in Section 16, shall be instituted in a Court within the local limits of whose jurisdiction the cause of

action arises. This, in the case of suits between landlord and tenant, is controlled by Section 144, Bengal Tenancy Act which tells us where, in such

suits, the cause of action shall be deemed to have arisen: i.e., within the local limits of the jurisdiction of the Civil Court which would have

jurisdiction to entertain a suit for the possession of the holding or tenure in connection with which the suit is brought. We must consequently turn to

the provisions of Section 20 of the Code of 1908 which replaces Section 17 of the Code of 1882. Now Section 20, provides that subject to the

limitation aforesaid, that is the limitations set out in the preceding sections, every suit shall be instituted in a Court within the local limits of whose

jurisdiction (a) the defendant or each of the defendants, where there are more than one, at the time of the commencement of the suit, actually and

voluntarily resides or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of

the commencement of the suit, actually and voluntarily resides or carries on business or personally works for gain, provided that in such case, either

the I have of the Court is given, or the defendants who do not reside, or carry on business or personally work for gain as aforesaid, acquiesce in

such institution, or (c) the cause of action wholly or in part, arises. Consequently u/s 20(e) of the Code of 1908 read with Sub-section (1) of

Section 144, Bengal Tenancy Act, a suit for rent may be instituted in the Court within the local limits of the jurisdiction of which lies the property in

respect of which a suit for possession may have been brought. This, however, does not exhaust all the provisions of Section 20. Clauses (a) and

(b) of Section 20 allow a landlord to institute a suit for rent where the tenant resides. This must obviously be limited to cases where the landlord

seeks a decree for money. Where however, the landlord seeks a decree for rent as also ejectment u/s 66, Bengal Tenancy Act, the suit must be

treated as one for recovery of Immovable property within the meaning of Clause (4) of Section 16 and can consequently be instituted in the Court

within the local limits of whose jurisdiction the property is situate. In the case before us, there is evidence to show that at the time the suit for rent

was instituted, the defendants resided within the local limits of the Court of the Munsif at the headquarters of the District of Rungpur. The suit was

consequently brought in a Court which had jurisdiction and the decree cannot successfully be impeached on that ground. The view we take is

supported by the decision in Chintaman Narayan v. Madhavrav Venkatesh 6 B.H.C.R.A.C.J. 29 where it was ruled that a suit to recover the rents

of land situated in District may be brought in District S., where the defendant is residing, although in such suit the plaintiff's title to the land in

respect of which the rent is sought to be recovered may incidentally come in question.

4. We have next to consider whether the sale was held with jurisdiction. As we have already stated the sale was held by the Court which had made

the decree. That Court had jurisdiction over the person of the defendants but not over the disputed property. In these circumstances, it is plain that

the Court was not competent to bring the property to sale. The only case in which a Court is entitled to sell Immovable property beyond the local

limits of its jurisdiction is that provided in Order XXI, Rule 3 of the Code of 1908 which provides as follows: "Where Immovable property forms

one estate or tenure situate within the local limits of the jurisdiction of two or more Courts any one of such Courts may attach and sell the entire

estate or tenure." This provision was inserted for the first time in the Code of 1908 and gave effect to the decision of this Court in Ram Lall Moitra

v. Bama Sundari Dabia. 12 C. 307 pc : 6 Ind Dec. (N.S.) 209 pc. We must hold accordingly that the sale was held without jurisdiction.

5. This brings us to the question of the effect of such sale. In our opinion, there is no room for controversy, that the sale was a nullity. In support of

this conclusion reference may be made to the decision in *Rajlaashmi Dasee v. Katyayani Dasee* 12 Ind. Cas. 464 : 38 C. 639 pc It is an

elementary principle of law that if a Court has no jurisdiction over the subject-matter, its judgments and orders are mere nullities, and may not only

be set aside at any time by the Court in which they are rendered, but be declared void by every Court in which they are presented. If a Court has

no jurisdiction its judgment is not merely voidable but void and it is wholly unimportant how precise, certain and technically correct its proceedings

and decisions may have been; if it has no power to bear and determine the cause, its authority is wholly usurped and its judgments and orders are

the exercise of arbitrary power under the forms, but without the sanction of the law. These principles apply, not only to Original Courts but also to

Courts of appeal. Accordingly where an Appellate Court does not possess Jurisdiction to review the act ion of the Court below, jurisdiction

cannot be conferred upon it by consent of the parties; and any waiver on their part cannot make up for the lack or defect of jurisdiction. This view

has been recognised by the Judicial Committee in *Legdard v. Bull* 9 A. 191 : 13 I.A. 134 : 4 Sar. P.C.J. 741 : 5 Ind. Dec. (N.S.) 561 (P.C.) and

Minadshi Naidu v. Subramanya Sastri 11 M. 26 : 14 I.A. 160 : 5 Sar. P.C.J. 54 : 11 Ind. Jur. 393 : 4 Ind. Dec. (N.S.) 18 (P.C.). Reference may

also be made to the decision of this Court in *Gurdeo Singh v. Chandrika Singh* 1 Ind. Cas. 913 pc : 36 C. 193 pc : 5 C.L.J. 611 where the

authorities on the subject are reviewed.

6. It was contended, however, on behalf of the respondents that although the sale was held without jurisdiction, and although. the proceedings

could not be validated on the ground of acquiescence, still the proceedings might be deemed as those of an arbitrator chosen by the parties. In

support of this proposition reliance was placed upon a passage from the judgment of the Judicial Committee in *Legdard v. Bull* 9 A. 191 : 13 I.A.

134 : 4 Sar. P.C.J. 741 : 5 Ind. Dec. (N.S.) 561 (P.C.) where Lord Watson observed that when, in proceeding spending before the Court, the

parties agree to accept the Judge"s decision as final even though the Court may not have jurisdiction, they thereby constitute the Judge a quasi-

arbitrator. The effect of such agreement is that the decision of the Judge is not appealable and cannot be questioned in any way. But though the

Judge may be considered as an arbitrator, his decision is not, and does not, in any way resemble, an award; *Burgess v. Morton* (1896) A.C. 136 :

65 L.J.Q.B. 321 : 73. This principle, however, has 11,0 application to the circumstances of the present litigation. The decree was made ex parte;

the sale was held ex parte; and consequently it cannot be assumed that the parties, that is, the decree-holder and the judgment-debtor, agreed to

constitute the Judge as their arbitrator and to abide by the sale held by him.

7. Finally, reference has been made, in the course of the argument, to Section 21 of the Civil Procedure Code, which forms the basis of the view

taken by the District Judge. That section provides that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court

unless, such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or

before such settlement; and unless there has been a consequent failure of justice. That provision was inserted for the first time in the Code of 1908

and is framed on the analogy of Section 11 of the Suits Valuation Act of 1884. The provision is an exception to the well-established rule that

where the Court has no inherent jurisdiction over the subject-matter of the suit, its decree is a nullity even though the parties may have consented to

the jurisdiction of the Court. This exception cannot obviously be so interpreted as to have a wider application than what is justified by its terms. It is

possible for us to hold that Section 21 debars the defendants from questioning the validity of the execution sale which is the root of the title of the

plaintiff's. "When the Judge has no inherent jurisdiction over the subject matter of a suit, the parties cannot, by their mutual consent, convert it into

a proper judicial process, although they may constitute the Judge their arbitrator and be bound by his decision on the merits when these are

submitted to him. This, however, can be accomplished, only when the parties have expressly consented to such a procedure.

8. The result is that this appeal is allowed, the decree of the District Judge is set aside and that of the Court of first instance restored, with costs

both here and in the lower Appellate Court.