(1875) 04 CAL CK 0002

Calcutta High Court

Case No: None

Puddomoney Dossee and Others		APPELLANT
	Vs	
Juggodumba Dossee and Others		RESPONDENT

Date of Decision: April 13, 1875

Judgement

Markby, J.

As we intimated in the course of the argument we concur with the learned Judge in his finding upon the second and third issues. We think that this suit is not barred by the previous suit in the 24-Pergunnas, and that the plaintiffs have not forfeited their rights as co-sebaits. Upon the first issue the learned Judge has held that this suit is not a suit for land or other immoveable property, and therefore that, under cl. 12 of the Letters Patent of 1865, the parties being all personally subject to (i.e., resident within) the local limits of the original jurisdiction of this Court, the suit will lie. His view is that the deed of February 1861 gives no beneficial interest whatsoever to any of the parties, and that this position is not altered by the decree of the Court of the 24-Pergunnas; that the prayer for declaration that the plaintiffs are co-trustees and managers with the defendants of lands in the mofussil does not make this a suit for lands in the mofussil; and also that this Court has jurisdiction to order persons resident in Calcutta to render an account, although the moneys in respect of which the account is prayed may come from lands situated in the mofussil.

2. No leave having been obtained under cl. 12 to sue in this Court, the question turns entirely upon this, whether this is a suit "for land or other immoveable property." If it is, this Court had no jurisdiction.

3. Considerable difficulties have arisen upon the construction of this clause of the Letters Patent we think, however, that we must now consider it as the settled doctrine of this Court that at least one class of suits, besides suits directly for the possession of land situate in the mofussil,--namely, suits for foreclosure of a mortgage of lands so

situate,--are excluded by this section, as being "suits for land." No instance has been produced to us in which such a suit has been maintained. On the other hand there are several express decisions that such suits cannot be maintained; and the uniform practice of the Court has in our opinion made these decisions conclusive.

4. It was suggested that Macpherson, J., intended in this case to depart from these decisions in deference to the opinion expressed by Vice-Chancellor Bacon in the case of Paget v. Ede. L.R., 18 Eq., 118, but we have no reason whatever to suppose this to be the case. That decision does net really bear at all upon the question before us, which turns upon the construction of cl. 12 of the Letters Patent, which has been, held to exclude from the jurisdiction of this Court any suit which is a suit for land situate in the mofussil.

5. But acknowledging that it is now settled that a suit for a foreclosure is a suit for land within the meaning of cl. 12 of the Letters Patent, it does not necessarily follow that every suit which has any reference to land is therefore a suit for land within this section. Concurrently with the decision of this Court already referred to, and apparently without any supposed conflict with them, it has been held that a suit to declare that a person resident in Calcutta holds lands in the mofussil subject to certain trusts is not a suit for land within the meaning of cl. 12--Bagram v. Moses 1 Hyde., 284. So also it has been held that this Court has jurisdiction to enforce specific performance of a contract to sell lands situate out of Calcutta made by parties resident in Calcutta Ramdhane Shaw v. Sreemutty Nobumoney Dossee, Bourke''s Rep., 218: and the High Court of Bombay has held that a suit by one shareholder to recover his share of the rent received by the other is not a suit for land, although the title is in dispute Chintaman Narayan v. Madhavrav Venkatesh, 6 Bom. H.C. Rep., A.C., 29.

6. The true nature of the present suit appears to be to enforce the right of the plaintiffs to act in all respects as co-sebaits. No possession of any land is claimed, and no decree bearing directly upon land or any interest in land has been given. In fact, as pointed out by the learned Judge, neither plaintiffs nor defendants have any beneficial interest in the land whatsoever. It may be added that in strictness of law they have no legal interest in it either. The ownership of the debutter property is vested in the idols, the sebaits being, strictly speaking, not trustees for the idols, but managers-- 13 M.I.A. 270 (Privy Council) --though there is this peculiarity, that all transactions, including even litigation, are carried on by the managers in their own names. Even, therefore, had this suit been brought in the mofussil, it would hare been laid at least as correctly as a suit for a declaration of the plaintiffs'' right as co-sebaits, and for an order that the defendants should admit them to that right, as for possession, and we should be inclined to think that the former is in reality the only correct form of the suit.

7. Under these circumstances we are not prepared to say that, having regard to the interpretation which has been put upon these words and the similar words in s. 5 of Act VIII of 1659, the learned Judge was wrong in holding that this Court had jurisdiction to try

this suit and make this decree.

8. It was further objected to the terms of the decree that this Court has no power to appoint a receiver and ought not to have directed an account. It has been the practice of this Court, where it is necessary to do so in order to enforce its own decree, to appoint a receiver in respect of landed property situate in the mofussil, and we feel ourselves justified in following that practice. With regard to the account which is directed by the decree, we think that, upon the facts found by the learned Judge, it was right to direct an account. The learned Judge held that Juggodumba Dossee having got into possession about the time the decree of the Court of the 24-Pergunnas was passed, has ever since resisted all attempts made by Puddomoney to exercise her right as sebait. We see no reason to differ from the learned Judge in this finding of fact, and it was admitted that if Puddomoney had been excluded she was entitled to an account. The result is that in our opinion this appeal ought to be dismissed with costs.