(1892) 07 CAL CK 0011

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1466 of 1891

Annada Charan Mukhuti and others — APPELLANT

Vs

Kishori Mohan Rai and others — RESPONDENT

Date of Decision : 27-07-1892

Acts Referred:

Citation : (1892) 07 CAL CK 0011

Final Decision : Allowed

Judgement

Beverley, J.—This was a suit brought to set aside a sale for arrears of revenue of a certain share in an estate on the ground that the share in question had been incorrectly and insufficiently described in the sale notification. It appears that an eight annas share of a certain taluk is recorded as No. 392 on the Touji of the Collectorate of Dacca, with a Government revenue of 1,452 rupees 9 annas 1 pie. It is alleged in the plaint, and the Subordinate Judge states in his judgment, that it was not denied at the trial that certain separate accounts were opened in respect of shares in this estate No. 392, both under sec. 10 and also under sec. 11 of Act XI of 1809, that is to say, both in respect of certain fractional undivided shares in the estate and in regard to certain specific land situated within the estate. After excluding these, shares, for which separate accounts had been opened, the residue of the estate bore a sudder jumma of 425 rupees 6 annas 1 pie; and it was this residue share that was sold, and to set aside the sale of which the present suit was brought. Now, it appears that this share was merely described in the notification of sale as the "residue," the Government revenue of 425 rupees 6 annas 1 pie above referred to being also mentioned. And it is contended, and we think rightly contended, that the mere description of the share in question "as the residue "without stating at the same time what shares were to be excluded in order to arrive at that residue was an imperfect description of the share sold. It is obvious that the term "residue" is a relative term only, and that it means what is left after excluding from the whole certain specific shares; and that unless those specific shares are stated, it is impossible for intending purchasers to know what is being advertised for sale and for what they are supposed to be bidding. Sec. 6 of Act XI of 1859 distinctly lays down that a notification of the sale of an estate or share of an estate must be published in the Gazette; and we think that the meaning of that clearly is that the share to be put up for sale must be so described that there can be no mistake about it. Merely advertising that the "residue" of an estate is to be sold without giving further particulars and stating what that "residue" is, cannot be considered to be a sufficient description of any share in that estate. That being so, the decree of the lower Appellate Court in this case is, in our opinion, erroneous. An attempt was made to contend before us that this point was never raised in the appeal to the Commissioner, but on a reference to his decision, it is quite clear that the point was not only taken but was dealt with by that officer. A further objection was raised that the Secretary of State ought to have been made a party to the suit. This is on objection which should have been taken in the first instance. It was indeed taken in the written statement, but no issue was framed on it, and therefore we must assume that the contention was given up, especially as it was not made a ground of appeal to the lower Appellate Court.

2. Under these circumstances the appeal is allowed, the decree of the lower Appellate Court set aside, and that of the first Court restored.

3. The Appellant is entitled to his costs throughout.

Norris, J.

I concur in the judgment just delivered by my learned colleague. I think that the description in the sale notification was not only "imperfect" and "insufficient," but that it was no description at all.

