

(1896) 02 PRI CK 0004

In the Privy Council

Bajnath Sahai

APPELLANT

Vs

Ramgut Singh and others

RESPONDENT

Date of Decision : 12-02-1896

Acts Referred:

Citation : (1896) 23 IndApp 45

Hon'ble Judges : Watson, Hobhouse, Davey, Richard Couch, JJ.

Judgement

Davey, J. 1. Their Lordships do not think it necessary to call upon the learned Counsel for the respondents to address them in this case. It comes before this Board on an appeal from a judgment of the High Court of Calcutta, which affirmed, with costs, the judgment and decree of the first Subordinate Judge of Zillah Shahabad, dated April 19, 1888. 2. The litigation out of which the appeal has arisen concerned a sale purporting to be made by the collector of Shahabad of an estate called Bhadwar on September 24, 1882. The plaintiffs in the action, the present respondents, were the owners of that estate. They are very numerous, and are alleged to be more than one hundred in number. The defendant, and present appellant, was the purchaser at that alleged sale. The sale was impeached by the owners on various grounds which may be summarised by saying that they are to the effect that the sale did not comply with the requirements of the statute under which it purported to be made. 3. Before discussing that question there is another question which requires decision. The defendant pleaded in the Court below, and his learned Counsel before their Lordships has argued, that the suit is barred by the Law of Limitation; and it is necessary for this purpose to consider the dates. The sale, which it is sought to set aside, was made on September 24, 1882. It purported to have been confirmed by the Commissioner on January 25, 1884. The present plaint was not filed until July 26, 1887, and therefore if there were nothing more in the case than that, and if it was really confirmed in a final and conclusive manner on the date mentioned in 1884, the suit would be barred under the provisions of the Law of Limitation. It would come within art. 12 of the second Schedule, namely, a suit "to set aside any of the following sales:---A sale in

execution of a decree of a civil court; a sale in pursuance of a decree or order of a collector or other officer of the revenue," as to which the time of limitation is only twelve months from the time when the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought. It was decided in the Court below that a certain time, particulars of which will be referred to presently, should be excluded from the period of limitation under the 14th section of the Act, which provides that "In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a court which from defect of jurisdiction, or other case of a like nature, is unable to entertain it." 4. Now the proceedings which gave rise to the argument which has been addressed to their Lordships are of a complicated character, and their Lordships do not think it necessary, for the purpose of the advice they propose to tender to Her Majesty, to express any opinion upon the merits of the litigation in the Revenue Court or to consider the various provisions of the different Acts relating to the matter. Suffice it to say that these present respondents being dissatisfied with the sale of the property which had been purported to be made on September 24, 1882, presented a petition to the Commissioner on the following September 26, asking that the sale might not be confirmed. Their petition was referred back to the collector for his report. He gave his report to the Commissioner, and finally the Commissioner, on January 25, 1884, refused the petition which had been tendered to him, and confirmed the sale. The present respondents were not satisfied with the decision of the Commissioner, and being, as their Lordships presume, advised that they had the right to do so, they presented a petition for revision, which was in the nature of an appeal to the Board of Revenue, and asked the Board of Revenue to reconsider, and, if necessary, discharge the order which had been made by the Commissioner confirming the sale. 5. On August 12, 1884, the Board of Revenue considered the petition addressed to them, and made an order setting aside the Commissioners' previous order confirming the sale, and they referred the matter back to the collector to consider the case upon its merits. Whether they were right or whether they were wrong in holding that the proceedings of the Commissioner had been irregular, and that the petition to themselves was irregular on the ground of want of jurisdiction, is not material for the present purpose, because it is not disputed that the parties were proceeding in good faith; and it is apparent from the judgment of the Board of Revenue that the question was one of very considerable difficulty. It is to be observed that the effect of that order of August 12, 1884, was to leave the sale unconfirmed. The order of the Commissioner confirming the sale was discharged, and the sale therefore was left unconfirmed. There was no actual sale (supposing it had been otherwise regular) which would give the purchaser a title to enter into possession or to enjoy the fruits of the sale, or, in other words, there was no real sale to the benefit of which the purchaser was entitled. 6. Their Lordships now come to the

proceedings before the collector. The collector made an order declining to confirm the sale from which there was an appeal to the Commissioner who, on March 11, 1886, held that he had no jurisdiction to entertain the appeal; and therefore the order of the collector refusing to confirm the sale stood. From that decision the present appellant appealed to the Board of Revenue, and it came a second time before the Board. The Board of Revenue then reversed their previous decision in consequence, apparently, of some decision which in the meantime had been given in the High Court at Calcutta, and they discharged the order of the collector apparently on the ground that it was made without jurisdiction, and that they themselves had no jurisdiction to entertain the question. The effect of these proceedings was to revive---to use the language of the Board of Revenue---the order of the Commissioner of January 25, 1884, which from that date became an operative order. 7. It is not disputed by the counsel for the appellant that if that confirmation of the sale took effect only from the last order of the Board of Revenue on August 21, 1886, the suit is brought within twelve months, and the Law of Limitation is not an answer to it. 8. Now the present suit is a suit to set aside the sale on the ground of non-compliance with the provisions of the Bengal Act No. VII. of 1880, and was instituted within a year after the final order of the Board of Revenue. The Subordinate Judge, and the High Court agreeing with him, have held that the case before the collector, the Commissioner, and the Board of Revenue comes within the description of a civil proceeding for the same cause of action in the 14th section of the Limitation Act, and that the time occupied by those proceedings ought therefore to be excluded in the computation of time for the purpose of limitation. Their Lordships do not intend to express any opinion upon the question whether the proceedings taken by the parties to stay the confirmation of the sale was such a civil proceeding as referred to in Section 14 because in the view which they take of the present case that question does not arise. Their Lordships are of opinion that there was no final, conclusive and definitive order confirming the sale while the question whether the sale should be confirmed was in litigation or until the order of the Commissioner of January 25, 1884, became definitive and operative by the final judgment of the Board of Revenue on August 21st, 1886, or (in other words) that for the purpose of the Law of Limitation there was no final or definitive confirmation of the sale until that date. The second Schedule, article 12, says: "When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought." It cannot be said in the opinion of their Lordships when the parties were litigating, before the Revenue Courts as to whether the sale should be confirmed or not---because that was the object of the litigation before the Revenue Courts---that the sale had become either final or conclusive. In fact, their Lordships are of opinion that there was not during the period which had elapsed between the date of the sale and August 21, 1886, any sale to set aside which a suit could have been brought. Therefore their Lordships are of opinion that the confirmation dates only from August, 1886, and that the Law of Limitation is not a defence to this action. 9. Passing to the merits, their Lordships do not think it necessary to say very much with regard to them.

Various grounds were mentioned in the proceedings and pleadings in this suit, and-in the judgments of the Subordinate Judge, and of the High Court---in which the case was very fully discussed and considered---upon which it was alleged by the present respondents that the sale was invalid. Their Lordships do not think it necessary to express an opinion upon all those grounds because there is one ground upon which they entirely agree with the view taken in the High Court which Cuts away the whole basis of the proceedings for the sale. It should be here mentioned that the 7th section of the Bengal Act VII. of 1880, under which the sale took place, contains this provision, that "?" When any arrears of the following public demands"---and this was undoubtedly a public demand under the Road Cess Act---"are unpaid by the persons liable to pay the same," then---leaving out the immaterial provisions---"the collector of the district may make under his hand, and in Form No. 2 in the 2nd Schedule annexed to this Act, a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office; provided that no such certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force." Then Section 8 provides that, "Subject to the provisions of this Act, every certificate made under the provisions of Section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a civil court." Then Section 10 provides that when the certificate is filed notice shall be given to the judgment debtor, and upon service of the notice the certificate has the effect of binding the immoveable property of the judgment debtor. 10. Now, it is obvious that those are very stringent provisions. The proceeding in the first instance is apparently ex parte. The certificate is to be made by the collector in a certain form and filed, and when the certificate is filed it has the effect of a decree against the persons named as debtors in the certificate" so far as regards the remedies for enforcing it, and when served it also binds their immoveable property. It is unnecessary for their Lordships to point out the necessity there is when power is given to a public officer to sell the property of any of Her Majesty's subjects that the forms required by the Act, which are matters of substance, should be complied with, and that if the certificate is to have the extraordinary effect of a decree against the persons named in it as debtors, and to have the effect of binding their immoveable property, at least it should be in a form such as provided by the Act, which enables any person who reads it to see who the judgment creditor is, what is the sum for which the judgment is given, and that those particulars should be certified by the hand of the proper officer appointed by the Act for the purpose. If no such certificate is given then the whole basis of the proceeding is gone. There is no judgment, there is nothing corresponding to a judgment or decree for payment of the amount, and there is no foundation for the sale. The authority to proceed to the sale is based on the certificate which has the effect, as has been already pointed out, of a judgment or decree, and if no judgment or decree is given, and no certificate is filed having the force or effect of a judgment or decree, there can be no valid sale at all. 11. In the present case Mr. Arathoon---who certainly argued this Case for his client with as much zeal as any counsel

could bring to bear upon it---utterly failed to point out to their Lordships in this voluminous record any document corresponding with the certificate which was required by the Act as the foundation for the statutory sale. The documents he referred to when examined are found not to purport to be certificates under Section 7 at all, nor do they comply with the requirements of the form stated in the second Schedule of the Act. In the first place they purport to be mere notices for the amount demanded, not under Section 7 but under Section 9 of the same Act, which relates to a different subject-matter, that is "In case of arrears of public demand payable to officer other than collector, such officer may give notice to collector," and they have nothing to do with the sections of the Act now in question. One document contains these headings, "Names of Debtors," "Residences of Debtors," "Amount due to Government for which this notice is given" ---it purports to be a mere notice---and "Nature of the demand made by Government for which this notice is given." It does not contain, as form No. 2 in the schedule requires, any certificate at all. Form No. 2 is in this form: "I hereby certify that the above---mentioned sum of Rs. ---mentioning the sum---"is due to the Secretary of State for India in Council," "from the above-named (blank)" with the date, signed by the collector in his name describing himself as collector of the place in question. There is no certificate at all here in which the collector undertakes the responsibility of finding a gum due, and the person to whom it is due in the manner required by the Act. To the other document the same observations apply that it neither purports to be nor is it in form or in substance a certificate of the character required by the Act in order to constitute a judgment in execution of which a statutory sale could take place. Their Lordships, therefore, cannot admit these documents as certificates in compliance with the provisions of the Act. Mr. Arathoon also referred to a third document which is of this kind. It is addressed to Hurdyal Singh, proprietor of Mehal Bhadwar, and it says, "You are hereby informed that under the provisions of an Act of 1880 passed by the Lieutenant-Governor of Bengal in Council, a certificate has been drawn up by me for Rs. 197 4. which you have to pay as road and public works cesses, and that the said certificate has been filed in this Court." Then it calls upon him to shew cause why he should not comply with the certificate. If there had been such a certificate that notice would have been in compliance with the Act, but notice that a certificate has been made is not equivalent to a certificate having been made; and if there was, as their Lordships have already expressed their opinion, no certificate, then notice to the proprietor that a certificate had been made and filed which was erroneous would . not, of course, be a compliance with the Act. 12. It is further to be observed that by Section 10 a true copy of the certificate is to be transmitted by post, and only binds the immoveable property of the" debtor after the notice has been served. If there was no certificate, of course there could be no notice of the certificate, and, therefore, there could be nothing? to bind the immoveable property of the debtor, and enable the collector to sell. 13. Their Lordships do not think it necessary to go into the other grounds which are mentioned, and very fully discussed, in the judgment of the High Court in this case for holding the sale to

be invalid; but they entirely concur in the observations regarding the necessity for caution in sales of this description by public officers with which the judges of the High Court conclude their judgment. 14. Their Lordships will, therefore, humbly advise Her Majesty that the appeal in the present case be dismissed. The appellant will pay to the respondents who have appeared their costs of the appeal.