

(1934) 04 BOM CK 0004

In the Bombay High Court

Case No : Civil Revision Application No. 269 of 1933

Balmukund Jagjivan Gujarathi

APPELLANT

Vs

The Collector Ahmednagar

RESPONDENT

Date of Decision : 18-04-1934

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 137, 26

Citation : AIR 1935 Bom 25 : (1934) 36 BOMLR 1103

Hon'ble Judges : John Beaumont, J

Bench : Single Bench

Final Decision : Allowed

Judgement

John Beaumont, Kt., C.J.—This is a civil revision application. It arises in these circumstances. In the year 1916 certain Immovable property was mortgaged to the applicant to secure Rs. 1,000, and in 1924 the applicant filed a suit to enforce his mortgage against the sons and grandsons of the mortgagor, who had died. On June 7, 1926, there was a mortgage decree, under which the mortgagee was to recover a sum of Rs. 1,751 with interest by sale of the mortgaged property, and if the mortgaged property was not sufficient, he was to have a right of recourse against other property of the mortgagor. In 1931 the mortgagee filed a darkhast for sale, and two of the mortgaged properties were sold for a sum of Rs. 2,586, which was rather more than the amount of the debt and interest. In February, 1933, the local Government Pleader wrote to the Subordinate Judge in whose Court the darkhast proceedings were, asking that the proceeds of sale of this property should be sent to the Collector of Ahmednagar, because Government had a claim against one of the sons of the original mortgagor. It is alleged by the Crown, though it has not been strictly proved, that the Crown had recovered against this son of the mortgagor, who was a talati, judgment for certain moneys in respect of which the talati was in default. The claim of the Crown is limited to one-fourth of the decretal moneys, that being the share in the mortgage moneys which, they allege, belongs to the talati,

and the one-fourth has been paid accordingly to the Collector. This application is made u/s 115 of the Civil Procedure Code, it being alleged that the Subordinate Judge in paying over these moneys to the Collector, instead of to the mortgagee, acted illegally and with material irregularity. I think that application lies u/s 115.

2. The claim of the Crown arises under the Bombay Land Revenue Code, and I will assume that the facts are as alleged, that is to say, that the Crown have recovered judgment against this talati in respect of public moneys in his hands with regard to which he was in default. Section 26 of the Bombay Land Revenue Code, so far as material, provides that the Collector may take steps to recover any public moneys due by a subordinate revenue officer in default in the same manner and subject to the same rules as are laid down in the Act for recovery of arrears of land revenue from defaulters. The words are, I think, important. The public moneys in respect of which there is default are not made recoverable in terms as arrears of land revenue, nor is any charge in respect of those moneys given upon any property of the officer in default, but the moneys are to be recoverable in the same manner and subject to the same rules as are laid down in the Act for recovery of arrears of land revenue. Then Section 137 provides that the claim of Government to any moneys recoverable under the provisions of Chapter XI shall have precedence over any other debt, demand, or claim whatsoever, whether in respect of mortgage, judgment decree, execution, or attachment, or otherwise howsoever, against any land or the holder thereof. Section 150 details various alternative processes for the recovery of land revenue, and Section 151 provides that the said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by Sections 137 and 138 shall apply only to demands for the current year. I am disposed to think that Section 137, which confers priority upon the Crown for land revenue over other debts of the person liable for land revenue, cannot be said to provide a method or be a rule for the recovery of arrears of land revenue within Section 26 of the Code. But if the provisions giving priority to Government can be said to constitute a rule for the recovery of land revenue, then it seems to me that one must read Sections 137 and 151 together, and reading those two sections together, the rule giving priority is limited in this way, that it confers priority only in respect of arrears for the current year and not for arrears of past years. So that, if those provisions can be said to be a rule relating to the recovery of land revenue within Section 26, then the rule is that priority is only given in respect of arrears relating to the current year, and this money, which was recovered from the talati, is not shown to be in respect of the current year. However, to my mind the provisions of Sections 137 and 151 giving priority in respect of Government claims for land revenue relate to matters of title, whilst Section 26 makes applicable to public moneys due by a revenue officer only the machinery for the recovery of arrears of land revenue. In my judgment, therefore, the learned Judge was wrong in sending a share of the proceeds of sale in his hands to the Collector, instead of dealing with the money in accordance with the provisions of Order XXXIV, Rule 4, Civil Procedure Code.

That being so, the application must be allowed. I direct the respondent Collector of Ahmednagar to return the moneys paid to him to the Subordinate Judge of Yeola to be dealt with by him according to law. The respondent will pay the applicant his costs of this application.