(1952) 07 GAU CK 0011

In the Gauhati High Court

Case No : Revenue Appeal No. 42 of 1951

Bunbai Chetiani and Another — APPELLANT

Vs

Mahendra Nath Saikia — RESPONDENT

Date of Decision : 17-07-1952

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 72, 74(2), 79, 80, 81
Income Tax Act, 1961 — Section 66, 68(2), 68(3)
Limitation Act, 1963 — Section 12, 12(2), 29

Citation : (1952) 07 GAU CK 0011

Hon'ble Judges : Deka, J

Bench : Single Bench

Advocate : B.C. Barua, for the Appellant; Dinanath Medhi, for the Respondent

Judgement

Deka, J.—This is an application u/s 81 of the Assam Land and Revenue Regulation for setting'' aside the sale of lands covered by Patta No. 154 of village Majnara, due to default in payments of" revenue. The sale has Seen challenged on the ground of material irregularity as well as hardship.

2. The irregularity pleaded in this case that the property was put up to sale in violation of Section 74(2) of the Assam Land and Revenue Regulation which lays down that on sale for arrears of payment of revenue shall take place on Sunday or other authorised holiday, or until after the expiration of at least thirty days from the date on which the list of estates has been published u/s 72 of the Regulation.

3. Under Rule 136 of the Rules for Recovery of Arrears, it is provided that the list of each estate referred to in Rule 135 which means the defaulting estates, should be published in the following places : (a) in the Court of the Revenue Officer by whom it has been prepared; (b) at the office of the Sub-Deputy Collector in whose circle the estate is situated; (c) at the office of the Tahsildar or house of the mauzadar within whose tahsil or mouza the defaulting estate lies; and (d) where gaonburas are employed, on the signboard of the gaonbura within whose

charge the defaulting estate falls, and it is customary to publish the sale notice in the locality where the estate is'' situated if the owner is not traced. Here, in this case, it is alleged by the Petitioners that the notice as contemplated u/s 72 was published on 12-12-49 and the sale took place on 10-1-50 that is, within less than thirty days. The learned Magistrate who conducted the enquiry at the directions of the Sub-Divisional Officer, Sibsagar, held that the notice on the spot must have been served on 5-12-49 as the process serving peon deposed that he remembered to have served the; notice on the locality before about a week of the report, service report being admittedly filed on 12-12-49. I have looked into the evidence myself and examined Ext. 1, the service report which gives no detailed information as to when the notices were actually served but the report creates an impression on me from its examination that the notices were served particularly in the Court of the Sub-Deputy Collector''s Office not before 12-12-49, no matter when the notice was served at the place where the estate was situated. In this view, I cannot accept the finding of the enquiring officer, that the notices were served before 12-12-49 and I hold that the sale was held within less than thirty days of the date on which notices were served and it offends the provisions of Section 74(2) of the Assam Land and Revenue Regulation. This in my opinion is a material irregularity causing substantial injury--and amounts to an injustice in the eye of law. In this view, the sale is liable to be set aside.

4. On the point of hardship or the inadequacy of price there is no finding arrived at by the learned Sub-Divisional Officer or the officer who conducted the enquiry on his behalf, but it appears from the report of the enquiring officer that one of the Appellants namely Mt. Sarumai Chetiani is an unmarried girl and lives with her elder sister Mt. Bunbai who had been already married out. The defaulting estate belonged to their mother Mt. Makari who is dead and the present Appellants are her legal heirs. It will undoubtedly be hard at least for Sarumai if she loses the estate, though of course, it was her negligence not to get her name mutated with respect to the land or take pains to inform the moujadar about her whereabouts. Taking into consideration the local conditions, the illiteracy of these village people and the helpless condition of a maiden girl after she loses her parents, I am inclined to stress the point in her favour and hold that there was actual hardship at least for Petitioner No. 2--in the sale of this land.

5. A point of some importance has been raised by Mr. Medhi for the auction-purchaser in connection with this matter. The application for setting aside the sale was filed in this Court on 19-3-1951 and the sale took place on 10-1-50 which was formally confirmed on 18-3-50 and this goes to show that the application u/s 81 was filed beyond one year from the sale becoming final as contemplated u/s 80 of the Regulation. Mr. Medhi, however, concedes that if the time requisite for obtaining the copy of the order of sale is excluded, the application is within time but he contends that Section 12(2) of the Limitation Act does not apply strictly in terms to an application u/s 81 of the Regulation and as such, the application should be rejected as presented out of time and relief

denied.

6. Mr. Barua for the Appellants contends that though Section 12(2) of the Limitation Act does not specifically mention an application to set aside the sale as provided under the Assam Land and Revenue Regulation, Section 29 of the Limitation Act provides that provisions contained in Section 12 of the Limitation Act shall have application to any appeal or application provided by any special or local law to the extent to which they are not expressly excluded by such special or local law. He relies in support of his contention on the authorities of-- Mohan Lal Hardeo Das Vs. Commr. of Income Tax, and-- The Standard Type Foundry Vs. Chebolu Venkataramaniah,

7. In-- Mohan Lal Hardeo Das Vs. Commr. of Income Tax, Fazl Ali and Chatterji JJ. held that Section 12(2) of the Limitation Act will have application to an application for reference in an Income Tax matter u/s 66 of the Income Tax Act-- though Section 12 of the Limitation Act makes no mention of an application for reference. In the opinion of Fazl Ali J. (later Judge of the Supreme Court), it would not be straining the law to hold that the main principle laid down in Section 12, namely that the period for obtaining copies should be excluded in computing the period of limitation in certain cases has been made applicable under the special law for which the period of limitation has been prescribed and this will cover an application u/s 68(2) and (3) of the Income Tax Act. In '' the words of his Lordship:

In my judgment, technicalities apart, this will be the only reasonable way of giving effect to the intention of the Legislature.

This view was based on the decisions of two of other High Courts, Allahabad and Rangoon High Courts.

8. In-- The Standard Type Foundry Vs. Chebolu Venkataramaniah, Krishnaswami Ayyangar J. considered the question of applicability of Section 12(2) of the Limitation Act in connection with an application to the Munsiff against the decree passed under the Madras Village Courts Act. Therein the learned Judge goes to show that an application u/s 73 of the Madras Village Courts Act cannot surely be considered to be an appeal or an application for leave to appeal or an application for review of judgments as mentioned in Section 12(2) of the Limitation Act but his Lordship takes the view as enjoined by the Privy Council that it is difficult to say that the remedy by way of revision is essentially different from the remedy by way of appeal, though in the former case, the grounds of interference may be less wide and he accordingly holds that liberal interpretation should be given in the matter of construction of Section 12(2) of the Limitation Act and it should be made applicable wherein there is provision for application for revision even though it is not strictly an appeal.

9. In this matter, it is not very easy to say whether an application u/s 81 of the Assam Land and Revenue Regulation does not involve the powers of the appellate Court. It may undoubtedly be said to be an application for revision with

wide powers for setting aside the sale on the ground of hardship or injustice. Injustice, in my opinion, would include the powers u/s 79 of the Regulation which provides setting aside the sale on the ground of material irregularity. In this view, I am inclined to give a liberal interpretation to Section 12(2) of the Limitation Act and hold that it is applicable to an application u/s 81 of the Assam Land and Re-venue Regulation. In this view, Mr. Medhi''s objection as to the maintenance of the appeal on the ground of limitation is rejected.

10. I have already held on merits that the sale is liable to be set aside on the ground of injustice as well as hardship. The result is that the application is allowed and the sale is set aside on usual terms.

