
(1911) 06 CAL CK 0036
In the Calcutta High Court

Chaitan Patgosi Mahapatra

APPELLANT

Vs

Kunja Behari Patnaik

RESPONDENT

Date of Decision : 29-06-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 43

Citation : (1911) ILR (Cal) 832

Hon'ble Judges : Holmwood, J;D. Chatterjee, J

Bench : Division Bench

Judgement

Holmwood and D. Chatterjee, JJ.—The Deputy Collector passed a decree for over Rs. 100 for the rent of a tanki tenure. The learned Deputy Collector has upon a remand by this Court found that these tanki tenures are not transferable. The decree-holder put in an application for execution and soon after an application that some other property of the judgment-debtor might be sold: this other property, a kharidamafi tenure of the judgment-debtor was accordingly sold. Having come to know of the sale, he deposited the decretal amount with costs and the 5 per cent, payable to the auction-purchaser and asked for the cancelment of the sale: he also alleged fraud, irregularity and loss. The Deputy Collector held that Section 310A of the Civil Procedure Code, did not apply to sales under Act X of 1859 and there was no other law under which he could set aside the sale. On an appeal, the Collector upheld the decision of the Deputy Collector, and on motion to us, we at first issued the above rule, and being-desirous to know whether the property had been rightly sold in accordance with law, we asked for findings as to the nature of the tenure in respect of which arrears had been decreed and also the one sold. The findings have been sent and at the further hearing" of the rule a preliminary objection has been taken that we have no jurisdiction to interfere with the orders of the Deputy Collector and Collector passed under Act X of 1854 and reliance is placed on the case of Huro Mohun Mookerjee v. Kedar Natk Doss (1886) 5 W.R. (Act X) 25 In this case L.S. Jackson and Glover JJ., held that the power of control and superintendence given by Section 15 of the Charter Act, was in reference to the General Appellate

Jurisdiction of the Court and not to particular cases in which that jurisdiction is extraordinarily exercised or to a superintendence vested in the Commissioner and the Board of Revenue by the express provisions of the Act. This view certainly supports the objection, but it has been subsequently departed from in a series of cases and virtually overruled. Very soon after the above case, was decided the case of Bhyrub Chunder Chunder v. Shama Soonderee Debea (1866) 6 W.R. (Act X), in which Norman J. said: "It is clear that the Collector's Court is a Court over which at the time of the passing of the Charter Act the Sudder Court possessed Appellate Jurisdiction and therefore it is clear that the 15th section of the Charter Act gives us a superintendence over such Courts for the purpose to which I have already alluded : " the purpose is set out in the earlier part of the judgment and is "to compel them to do any act which by law they should do, to command them to execute all powers with which they are vested and to restrain them from meddling when they have no jurisdiction." L.S. Jackson J. agreed. This was a case in which the Collector had entertained an appeal which lay to the District Judge. The same question came before the Full Bench in the next year in the case of Gobind Coomar Chowdhry v. Kisto Coomar Chowdhry (1867) 7 W.R. 520. In this case the Deputy Collector refused to entertain an application for restitution of an excess realized in execution of a decree subsequently modified. The Judge did not entertain an appeal as t he thought an appeal was incompetent as the matter was subsequent to decree. The High Court compelled the Deputy Collector to entertain the application. It may be noted that there is no provision for such restitution in Act X of 1859 and the order must have been made in accordance with the general Civil Procedure Code.

2. Then in the case of Deanutoollah v. Nowab Nazim Sidhee Nuzzer All Khan Uahadoor (1868) 10 W.R. 341, Sir Barnes Peacock C.J. and D.N. Mitter J. held that Act X of 1859 confers upon the Revenue Courts merely a limited jurisdiction and the High Court under its general power of control has the right to prevent them for exceeding that jurisdiction. In this case the attachment and sale order passed by a Collector in respect of properties of the judgment-debtor other than the tenure in arrear was set aside by the High Court as it was not shown that the Collector was satisfied that execution could not be obtained against the person and moveable property of the judgment-debtor.

3. In the case of Gudadhur Chatterjee v. Nund Lall Mookerjee (1869) 12 W.R. 406, the order of the Collector ordering execution against a person against whom the decree passed had been cancelled, was set aside by the High Court. In the case of Rooknee Roy v. Amrith Lall (1870) 14 W.R. 254, an appellate decree of the Collector was set aside as passed without jurisdiction. In the case of Sreemutty Nassir Jan v. Akbur Mozoomdar ILR (1882) Cal. 295 : ILR 9 IndAp 174, the Collector was compelled to entertain an intervention which he had disallowed. The matter went up to the Privy Council in the case of Nilmoni Singh Deo v. Taranath Mukerjee ILR (1882) Cal. 295 : ILR 9 IndAp 174. In that ease an order of the Collector transferring a decree for execution to another district was

set aside by the High Court as passed without jurisdiction on the authority of Gobind Coomar Chowdhry v. Kisto Coomar Chowdhry (1867) 7 W.R. 520, and their Lordships of the Judicial Committee agreed with the High Court as to its jurisdiction u/s 15 of the Charter Act.

4. The case of Mohant Gobind Ramanuja Das v. Lakhun Parida (1906) 11 C.W.N. 112, may seem at the first blush to go a step further, but we think it is quite in keeping with the older decisions read by the light of the decision of the Judicial Committee in the case of Nilmoni Singh Deo v. Taranath Miikerjee ILR (1822) Cal. 295 : ILR 9 IndAp 174.

5. We have therefore no doubt that we have jurisdiction to interfere u/s 15 of the Charter Act. It was further contended by the learned vakil for the opposite party that as the original suit was valued at above Rs. 100 an appeal lay to the District Judge and not to the Collector and we cannot, therefore, interfere in revision. We cannot uphold this objection. In the first place the sale in this case is impeached as ultra vires and illegal, and in the second place, the case was one under, Section 310A of the Civil Procedure Code, the auction-purchaser being a third party, and in either case the proceedings of the Deputy Collector are amenable, to the revisional jurisdiction of this Court and not to an appeal.

6. On the merits of the case it is contended by the learned vakil for the petitioner, firstly, that the learned Deputy Collector had no jurisdiction to hold the sale of other lakhiraj property of the petitioner in the manner in which he did it and that on that ground the sale and all subsequent proceedings are ultra vires and void; and secondly, that the learned Deputy Collector was quite competent to entertain the application u/s 310A of the Civil Procedure Code and in refusing to do so refused to exercise a lawful jurisdiction.

7. On the first point the learned Deputy Collector has found that the tanhi tenure in respect of which arrears had been decreed was not saleable. The case therefore was clearly one u/s 109 of Act X of 1859 and the other property of the petitioner could be sold only if satisfaction of the judgment could not be obtained by execution against his person or moveable property. In this case that procedure was not followed. There is nothing to show that any attempt was made to execute the decree against the person or the moveable property of the petitioner. All that the learned Deputy Collector says is "on the 26th February, 1909, the decree-holder made an affidavit that the tanki tenure for which he had obtained a decree for arrears having been allotted for the sheba of Jagganath temple other properties of the judgment-debtor may be sold for realization of the decretal amount and according to his prayer the mafi kharida land 1.62 acres were sold." As the jurisdiction of the Deputy Collector is a limited one and the procedure u/s 109 was not followed, the sale of the lakhiraj land of the judgment-debtor was ultra vires and must be set aside. See Deanutoollah v. Nowab Nazmi Sidhee Nuzzer Ali Khan Bahadoor (1868) 10 W.R. 341.

8. The second question raised by the petitioner is whether Section 310A was

applicable to the case. If the sale had been held in due compliance with the provisions of Sections 109 and 110, the sale would be "under the provisions of the law for the time being in force, applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof," i.e., under the provisions of the Civil Procedure Code. This would naturally attract all the provisions of the CPC with regard to sales, from attachment to delivery of possession at least and there is no special provision in Act X of 1859 dealing with these matters. It is contended, however, that only those sections of the Code are applicable which provide for proceedings up to and inclusive of the sale and none else. Reliance is placed for this contention on the case of *Harish Chandra Ghose v. Ananta Charan Patra* (1897) 2 C.W.N. 127. The learned Judges are reported to have said "the CPC applies up to the sale and does not apply, after. Section 310A comes in after the provisions relating to sale." Although there is no discussion of the reasons pro and con and no reference is made to what the law is after sale in such cases we should have felt ourselves somewhat embarrassed by this case if it were not for the further contention of the learned Vakil that this decision is in direct contravention of the ratio decidendi of the case of *Nilmoni Singh Deo v. Taranath Mukerjee* (I.L.R.1882) Cal. 295 :I.L.R. 9 IndAp 174, decided by the Privy Council in 1882 and not referred to by the learned Judges. That was a case in which their Lordships had to consider whether a Collector could transfer a decree for rent for execution to a Civil Court in another district. The High Court had held that there was no provision for such a transfer in Act X of 1859 and the transfer was therefore incompetent. Their Lordships in setting aside the order of the High Court say that Revenue Courts deciding suits under Act X of 1859 are Civil Courts and "there is nothing in the Act (X of 1859) which provides for any execution beyond his (Collector's) jurisdiction and there is nothing to forbid the conclusion that such executions are left to the operations of Act XXXTTI of 1852 or the corresponding portion of Act VIII of 1859." This and other reasons given for the decision seem to leave no room for doubt that their Lordships thought that except upon points expressly provided for by Act X of 1859, the procedure of the Revenue Courts when trying questions arising under that Act must be governed by the Civil Procedure Code. It cannot be said, however, that the ratio decidendi of their Lordships has been uniformly kept in sight in subsequent cases. The majority of the Allahabad Court followed up the said reasoning of their Lordships and held that Section 43 of the CPC was applicable to rent suits under Act XII of 1881, the local rent act. This decision of the Allahabad Court was followed by our own Court in the case of *Adhirani Narain Kumari v. Raghu Mohapatra* I.L.R. (1885) Cal. 50. In the case of *Radha Madhub Santra v. Lukhi Narain Roy Chowdhry* ILR (1893) Cal. 428, the learned Judges held that Section 373 of the CPC did not apply to suits before revenue authorities. Mr. Justice Amir Ali, as he then was, who delivered the judgment of the Court said : "We think the point has been virtually-decided by the reasoning in the Full Bench decision in *Nagendro Nath Mullick v. Mathura Mohun Parhi* ILR (1891) Cal. 368. The latter case, however, was in respect of the provisions of Section 14 of the Limitation Act applying to rent suits in Revenue Courts.

9. The learned Judges said "Act X of 1859 has always been considered a code complete in itself and unaffected by the general laws of limitation of procedure." The discussion was confined to the question of limitation and the case of Nilmoni Singh Deo ILR (1882) Cal. 295 : ILR 9 IndAp 174, was not so much as mentioned. The expression "complete code" must therefore be understood as complete as to matters specially provided for in the Act. In this view of the case it was not a sound basis for the judgment in Kadha Madhub Santra v. Lukhi Narain Roy Chowdhry ILR (1893) Cal. 428. In the next case on the point, .however, Mokunda Bullae Kar v. Bhogahan Chunder Das ILR (1894) Cal. 514, another Bench held the same view as to Section 373. The learned Judges say as to the case of Nilmoni Singh ILR (1882) Cal. 295 : ILR 9 IndAp 174, that it held that "there being nothing in Act X of 1859 to prohibit the Collector acting under that Act from transferring an execution case from his own file to the file of a Civil Court, the procedure laid down in the CPC might be followed in the matter of the transfer of the decree for execution to some other Courts" : and they distinguish it as not specifically dealing with Section 373 of .the Civil Procedure Code. With great deference to the learned Judges we may point out that the Judicial Committee in the case of Nilmoni Singh I.L.R.(1882) Cal. 295 : ILR 9 IndAp 174 does not hold that the provisions of the CPC might be followed as if the Collector had a discretion in the matter, but their Lordships say " These considerations lead to the conclusion that the Rent L Courts established by Act X of 1859 must be held to fall within Section 284 of Act VIII of 1859 of the same year." Section 284 of Act VIII of 1859 runs as follows : "A decree of any Civil Court...which can not be executed within the jurisdiction of the Court, whose duty it is to execute the same may be executed within the jurisdiction of any other such Court in the manner following." The result of the ruling of their Lordships is, we think, that the provisions of the CPC must be followed in such cases. In the case of Hare Krishna Mahanti v. Bishnu Chandra Mahanti ILR (1908) Cal. 799 Stephen and Mukerjee JJ. express a serious doubt as to whether in view of the ruling in Nilmoni Singh's ILR (1882) Cal. 295 : L.R. 9 IndAp 174 case, it can still be said that Act X of 1859 is a complete code in itself in the sense of excluding the application of the CPC to proceedings thereunder. In the case of Ram Lochan Singh v. Beni Prasad Kumri ILR (1908) Cal. 252, another Bench of this Court relied upon the case of Nilmoni Singh ILR (1882) Cal. 295 : ILR 9 IndAp 174 and the Pull Bench ruling of the Allahabad Court in Madho Prakash Singh v. Murli Manohar ILR (1883) All. 406, for holding that the provisions of Section 492 of the CPC as to injunctions applied to rent decrees under the North-Western Province Rent Act, XII of 1881, transferred for execution to a Civil Court. We think, therefore, that the cases decided in disregard or under a misconception of the ruling of the Privy Council in the case of Nilmoni Singh ILR (1882) Cal. 295 : L.R. 9 IndAp 174 cannot stand in the way of our holding that Section 310A of the CPC was applicable to the present case and the learned Deputy Collector failed to exercise a lawful jurisdiction vested in him by law.

10. In the result, therefore, the orders of the Deputy Collector and the Collector are set aside. The sale is held to be ultra vires and void.

11. The parties are relegated to the position in which they were before the sale. The auction-purchaser will get back the amount paid by him, the decree-holder will realize his decretal amount, first, from the deposit made by the petitioner u/s 310A, and any balance in due course of law. Each party will pay its own costs in connection with this proceeding in all Courts.