(1929) 05 AHC CK 0005

In the Allahabad High Court

Chandu Mal — APPELLANT

Vs

Darbari Lal and Others — RESPONDENT

Date of Decision : 10-05-1929

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 233(1)
Uttar Pradesh Land Revenue Act, 1901 — Section 233(1)
Uttar Pradesh Land Revenue Act, 1901 — Section 233(1)

Citation : AIR 1929 All 592 : (1929) ILR (All) 981

Judgement

1. The respondent, Darbari Lal, was assessed with Income Tax to the amount of about Rs. 83. He also owed, it appears, a small amount of money on account of irrigation dues. Both the taxes were due for the year 1923. Certain immovable properties of his, namely four shops, were attached and sold to realise the two taxes. They were sold on 17th March 1924, and were purchased by the appellant before us, Lala Chand Lal alias Chandu Mal. Darbari Lal thereupon brought the suit out of which this appeal has arisen to have the sale set aside on the ground that the sale was brought about by means of fraud to which the appellant was a party. The suit succeeded in the Court of first instance and an appeal by the auction-purchaser, Lala Chanda Lal, was dismissed, but on a ground which will be presently stated. The auction-purchaser has now come up in second appeal, and his contention is that the ground on which the learned Judge has dismissed his appeal was untenable and the learned Judge should have tried the question of fraud.

2. It appears that the learned appellate Judge was of opinion that the sale that was held was a nullity inasmuch as there was no previous sanction obtained from the Collector and there was no confirmation of the sale by the Commissioner. The argument on behalf of the appellant is that a revenue sale, or sale for recovery of a tax, which may be recovered as if the same were land revenue, cannot be challenged on any ground other than the one laid down in Clause (1), Section 233, Land Revenue Act of 1901. Clause (1) permits a party to maintain a claim to set aside a sale for arrear of revenue on the ground mentioned in Section 175.

Apparently, the plaintiff''s case was based on Section 175. Clause (m), Section 233 shuts out:

Claims connected with, or arising out of the collection of revenue, or on account of revenue, or on account of a sum which is by this or any other Act realizable as revenue.

3. The language of this Clause (m) is very very wide and would shut out any claim for setting aside a sale made by the plaintiff respondent, on the ground of want of jurisdiction on the part of the revenue authorities.

4. In the course of the arguments, here, the question arose whether Clause (1) would cover the sale of property for recovery of a tax which was other than the land revenue. We should think that it would cover a case like the present. Under the Income Tax Act, Section 46, Income Tax may be realized as if it were an arrear of revenue. Similarly under the Canal and Drainage Act the arrears may be recovered as land revenue. Section 175, Land Revenue Act provides an exception in the case of land revenue, and apparently the same rule would apply where any other tax could be realised as land revenue. There seems, therefore, to be no bar to the maintenance of the suit on the ground of fraud as provided in Section 175. In the result we allow the appeal, set aside the decree of the Court below and remand the appeal to that Court for disposal on the merits. Costs in the Courts below and in this Court will abide the result.

