
(1938) 01 CAL CK 0030
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Bon Behary Shaw

RESPONDENT

Date of Decision : 28-01-1938

Acts Referred:

Calcutta Municipal Act, 1923 — Section 133(i)

Citation : AIR 1938 Cal 581

Hon'ble Judges : Lort-Williams, J; Lord Williams, J

Bench : Division Bench

Judgement

Lort-Williams, J.—In this suit, instituted in April 1935, the Corporation of Calcutta claims to enforce a statutory charge for Rs. 1937-11-0 on account of consolidated rates due in respect of premises No. 122, Manicktolla Street, Calcutta. These rates became due between 15th October 1931 and 15th January and include both the owner's and the occupier's shares. The suit is now contested only on behalf of defendant 1, Bon Behary Shaw, who is sued both personally and as shebait of certain Thakurs.

2. The material facts are that one Banku Behary Shaw died in 1927, leaving a will whereby he dedicated and bequeathed absolutely to certain deities the outer portion of the premises in suit, and bequeathed the remaining portion to his four sons in equal shares absolutely, which portions are delineated as A and B, respectively, on a plan annexed to the will, and he appointed his son, Bon Behary Shaw sole executor and sole shebait. Bon Behary Shaw obtained probate of the will in March 1928, and in April his attorney wrote to the assessor of the Corporation informing him of these facts enclosing a certified copy of the probate, and a plan, and asking him to subdivide the assessment according to the value of the portions A and B, respectively, and to issue two separate rate bills, one in the name of Bon Behary Shaw as executor, and the other in the names of Bon Behary Shaw, Pulin Behary Shaw, Bepin Behary Shaw and Brojo Krishna Shaw. In a further letter he asked that the assessment of portion B also should be similarly sub divided, and that four separate rate bills for both the

owner's and the occupier's shares should be issued in respect thereof in the names of the four brothers, respectively.

3. In May, the assessor wrote asking for a further plan "showing the portions required separately assessed and numbered." After further correspondence and after a further plan had been submitted, the assessor replied in July that as the portions sought to be separated had not been demarcated by metes and bounds, the question of separation could not then be dealt with (Ex. E). In March 1929, the attorney wrote asking that the assessment of the premises No. 122, Manicktolla Street should be apportioned into two portions u/s 133, Clause (i), Calcutta Municipal Act, and that two separate bills should be issued (Ex. A). To this the Corporation assented, and in July 1929 the assessor issued notices in Form No. A-105 (Ex. I) which is the usual form issued under that clause. The Corporation made an order accordingly in October 1929. Thereafter the rates payable by the shebait were paid regularly by Bon Behary Shaw, but those payable by the brothers personally fell into arrear owing to family squabbles. In October 1934 the property was partitioned, and in 1936, after the institution of this suit and upon the application of the defendants made on 22nd May 1935, a further apportionment was made, and the various portions of the premises having been sepa. rated by metes and bounds and structurally divided were separately numbered under the provisions of Clause (ii) or Clause (iii) of Section 133.

4. The contention of defendant 1 is that the Corporation is not entitled to enforce its statutory charge u/s 205, Calcutta Municipal Act with regard to the debutter portion of the premises in suit. Evidence has been tendered on behalf of this defendant to show that the two portions were made structurally separate and entirely independent and capable of separate enjoyment prior to 1929. But I am satisfied beyond any doubt that he has failed to prove these facts; on the contrary, the evidence is conclusive against his contention. The result is that the assessment was properly dealt with as coming under the provisions of Clause (i), unless it can be established that that clause is not applicable to the circumstances disclosed in the present case. Moreover, the defendant specifically asked that the apportionment should be made under the provisions of that clause. But it is contended that the Corporation ought to have known that the provisions of that clause were not applicable and to have so informed the defendant, and that in any case the defendant's mistake cannot affect the point in issue Section 133 reads as follows:

If, during the currency of any period prescribed by Sub-section (1) of Section 131, the ownership of any land or building, or portion thereof, is sub-divided into separate shares, the Executive Officer may, on the application of any of the co-owners, divide the assessment of such land, building or portion in the following manner, namely,

(i) if the ownership be sub-divided into two or more shares without separate allotments, or if as the result of such sub-division there is a separate allotment of

such land, building or portion into two or more separate portions, which are not entirely independent and capable of separate enjoyment, the Executive Officer may, if he thinks fit, apportion the assessment among the share holders according to the value of their respective shares without assigning any separate number,

(ii) if, as the result of such sub-division there are separate allotments of such land, building or portion and if such allotments are made entirely independent and capable of separate enjoyment but not in conformity with the provisions of this Act, or of any rules or by-laws made thereunder, relating to buildings, the Executive Officer may, if he thinks fit, assess such portions separately after assigning to them separate numbers under this chapter,

Provided that by such separate assessment the total assessment for the entire premises shall not be increased;

(iii) if such separated portions of such land, building or portion are, or are made, entirely independent and capable of separate enjoyment in conformity with the provisions of this Act, or of any rules or by-laws made thereunder, relating to buildings, the Executive Officer shall assess each portion separately by assigning a separate number thereto,

Provided that by such separate assessment the total assessment for the entire premises shall not be increased:

Provided also that such apportionment or separation of the numbers and assessment, as the case may be, shall remain in force and the consolidated rate shall be levied accordingly until the expiration of the said period.

5. I have, somewhat reluctantly, come to the conclusion that the defendant's contention is unsound. The real dispute between the parties is over a question of costs, because the value of the other portion of the premises is more than ample to meet the plaintiff's claim. But it may have been necessary for the Corporation to add the shebait as a party in order to obviate possible objections by the other defendants. It is true that Section 133 refers to subdivision into separate shares and to co-owners and that Clause (i) refers to ownership divided into shares without separate allotments, and that, generally speaking, the provisions of the section seem to be directed to apply more particularly to property of a joint Hindu family, and it is true that the owners of portions A and B were not cosharers or co-owners, in the ordinary sense in which those terms are generally used.

6. But in my opinion the Section was intended to have and has a wider application, and covers the circumstances disclosed in the present case. No other Section of the Act was or is applicable, and no such division of the assessment was or is possible except under its provisions. The property was assessed as a whole in 1928, presumably prior to the defendant's first application. u/s 131 such assessment remains in force for six years. During that period any change in

the assessment must be made, if at all under either Section 131 or Section 133 or Section 134 or Sections 139 to 142 or Sections 145 and 146. Of those, none but Section 133 can have any application. Section 135 refers only to buildings. Moreover, the Executive Officer has discretionary power under this section. Sections 145 and 146 apply only where the premises are structurally separate and independent and/or entirely independent and capable of separate enjoyment. It is clear, in my opinion, and it has not been disputed on behalf of the defendant, that if the division of assessment is made under the provisions of Section 133, Clause (i), the whole of the premises so affected remain subject to the statutory charge. No separate numbers are assigned, and there remains only one assessment of the whole premises, though that assessment is apportioned among the shareholders or co-owners, according to the value of their respective shares. The result is that there must be judgment for the plaintiffs in terms of the prayer of the plaint with costs. The premises in suit are now numbered 122-A, B, C, D and E, Manicktolla Street.