

(1919) 03 CAL CK 0043
In the Calcutta High Court

Golam Sattar and Another

APPELLANT

Vs

Maharaja Sir Prodyat Kumar Tagore Bahadur

RESPONDENT

Date of Decision : 07-03-1919

Acts Referred:

Citation : 51 Ind. Cas. 933

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. These appeals arise out of two suits for possession of the lands in dispute on establishment of the plaintiff's title thereto.
2. The plaintiff is the Zamindar of estates Nos. 3025 and 3453, within which the lands in dispute are situate. The plaintiff's father granted a Putni of estate No. 3025 which, in course of time, came into the hands of one Jogendra Kumar Chowdhury. In May 1899 the plaintiff's father caused the Putni to be sold for arrears of rent under Regulation VIII of 1819 and it was purchased by one Kashi Nath Guha. Kashi Nath did not get his name registered in the Zemindar's Sherighta and the Putni was again put up for sale on the 16th November 1899 under Regulation VIII of 1819, when it was purchased in khas by the plaintiff's father. The plaintiff's case is that his father obtained khas possession of the Putni after his purchase and was in possession of the lands in dispute until the year 1907, when a Settlement and Record of Rights were made in the District, and it was then that the defendants dispossessed the plaintiff from the land.
3. The Court of first instance dismissed the Suit No. 52 out of which Appeal No. 2720 arises, and partly decreed the Suit No. 48 which gave rise to Appeal No. 2721.
4. The plaintiff preferred appeals and it was found by the lower Appellate Court that the lands appertained to the plaintiff's estate and that the suits were not barred by limitation. The appeals were allowed and decrees were passed in favour of the plaintiff.

5. The defendants Nos. 1 and 2 have appealed to this Court.

6. The suits were instituted within 12 years of the purchase of the Putni at the sale under the Putni Regulation, but it is contended on behalf of the appellants that as the suits were based upon the allegation of possession and dispossession, the lower Appellate Court ought to have found whether the plaintiff was in possession of the land within 12 years of the suit and that there is no such finding.

7. But the learned District Judge says: "Plaintiff's case is that the lands in dispute appertain to the two estates referred to above and he was in possession of them. When, however, a Record of Rights was being prepared for this District under the orders of Government, under Chapter X of the Bengal Tenancy Act, defendants Nos. 1 and 2 as landlords, caused the other defendants to take illegal possession of these lands as their tenants. Thereupon plaintiff was dispossessed from these lands. He, therefore, claims khas possession of them."

8. Then, in dealing with the question of limitation, the learned Judge came to the conclusion that the defendants came into possession of the disputed lands from the time when the settlement operations commenced or were about to commence in this District, This took place in the year 1907, which was within 12 years of the suit. The learned Judge, therefore, accepted the plaintiff's case that he was in possession after the purchase of the Putni and that the defendants dispossessed him within 12 years of the suit.

9. The next contention is that the plaintiff's father did not acquire any title to the Putni by his purchase at the sale under Regulation VIII of 1819. In November 1899 proceedings were taken against Jogendra, the former Putnidar, and not against Kashi Nath, the purchaser. The defendants themselves, it is found, have no title to the land but they have apparently set up the title of Kashi Nath who purchased the Putni at a sale held in May 1899. With regard to this purchase by Kashi Nath, the learned District Judge observes: "There is absolutely no evidence to show that Kashi Nath Guha ever oared to take delivery of the sale certificate prepared in his name from the Collector's office, or if he did so, he went to the Zemindar's office with it to have his name registered, as provided in Section 15. The evidence does not in fact show who this Kashi Nath is, or whether he is living or dead. Apparently he found that the purchase made by him was no bargain; and so he did not go to the office of the plaintiff to have his name registered or to give the requisite security."

10. It is clear, therefore, that Kashi Nath did not take any steps whatever for registration of his name in the Zemindar's Sherista nor did he furnish security; and in fact ever since 1899 up to this date, he has not cared about the Putni.

11. It is contended, however, on behalf of the appellant that the remedy of the Zemindar was to take proceedings u/s 7 of the Putni Regulation by appointing a suzawal, that the plaintiff's father did appoint a suzawal and that under the circumstances, proceedings under the Putni Regulation could not be taken

against the former Putnidar.

12. It is contended on behalf of the respondent that unless the provisions of Section 15 of the Putni Regulation were complied with and security furnished, the Zemindar was not bound to recognise the purchaser as a Putnidar even though he might have I unstated at a sale under Regulation VIII of 1819. Reliance is placed upon a passage in the judgment of one of the learned Judges in the case of Rainarain Mitra v. Ananta Lal Mondul 19 C. 703 ; 9 Ind. Dec. (N.S.) 911 where it was observed that "proceedings under the Putni Regulation taken for the realisation of arrears of Putni rent are not taken against persons at all but against the tenure."

13. No doubt, proceedings under Regulation VIII are taken against the Putni tenure; but we are not prepared to hold that the tenure can be sold by taking proceedings against wrong persons. It is unnecessary, however, to decide the question. Even if the sale held in 1899 could be set aside on the ground that the proceedings were taken against the former Putnidar and not against Kashinath, we think that it is not open to the defendant in the present case to contend that the plaintiff's father did not acquire title to the Putni by his purchase at the sale. As already stated, Kashi Nath himself never cared to take any steps to have the sale set aside within one year or at any time, and the sale became final. The sale took place in November 1899, and the plaintiff's father obtained possession of the Putni and was in possession until dispossessed in 1907. Kashinath himself, therefore, after the lapse of one year could not now get the sale set aside and we think that the defendants, therefore, cannot impeach the title of the plaintiff.

14. It is contended on behalf of the appellants that it was not necessary for Kashinath to have the sale set aside as proceedings were not taken against him.

15. Now, the second portion of the first Clause of Section 14 of the Regulation lays down that "it shall, however, be competent to any party desirous of contesting the right of the Zemindar to make a sale, whether on the ground of there having been no balance due or on any other ground, to sue the Zemindar for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages. The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss at the charge of the Zemindar or person at whose suit the sale may have been made."

16. The words "on any other ground" in the second part of the section are wide enough to cover the case of proceedings taken against wrong persons.

17. In Suresh Chandra Mukhopadhyaya v. Akkori Singh 20 C. 746 ; 10 Ind. Dec. (N.S.) 503 it appears that a Putni had been sold without notice of sale. This was in contravention of Section 14 of Regulation VIII of 1819 and it was contended that the sale was void. The question was raised in a suit which was not brought for setting aside the sale of the entire Putni but which was brought by the Se putnidar of a portion of the lands (let out Putni) for possession of the Mouzahs

forming his Se-putni. The plaintiffs, after the sale, had been dispossessed by the defendants who claimed under the purchase at the Putni sale. Sir Comer Petheram, C.J., held that the plaintiffs' only remedy was to bring a suit to set aside the sale of the Putni and observed: "That being the law, the question is whether when the Collector has gone through the form of selling a Putni, and has placed the purchaser in possession, the whole transaction is absolutely void if the Zemindar has not complied with one of the rules, or whether it is one which in that case can be reversed at the instance of any person injured in a suit brought by him against the Zemindar to which the persons interested are necessary parties, and in which complete justice can be done. In my opinion the transaction is voidable only, and, moreover, that it can only be avoided by a suit under the provisions of Section 14. The second Clause of that section provides that in the cases which that clause deals with, a suit to reverse the sale shall be the only remedy for the alleged defaulter, and this shows quite clearly to my mind that the Legislature could not have contemplated that a sale held by the Collector under the Regulation should under any circumstances be void; as, if that were so, a Putnidar, who was in default and whose Putni had been sold without a complete compliance with the rules, could maintain an action to recover possession of it, on the ground that the sale was no sale at all, and that his estate in the land was not affected by it; whereas the section says in so many words that in some cases of the kind, at all events, his only remedy shall be by suit for damages and to set aside the sale. I think that such a sale is good and effectual, unless and until it is reversed in a suit properly framed for the purpose, and that until that is done, the title of any person who claims under it is valid against all persons who claim under the alleged defaulter."

18. We agree with the observations made in that case, and hold that the defendants cannot attack the title of the plaintiff as Putnidar with respect to the small plots of lands which are in dispute in this case when no suit was brought under the provisions of Section 14 of the Putni Regulation.

19. The result is that these appeals fail and are dismissed with costs.