

(1937) 09 BOM CK 0023

In the Bombay High Court

Case No : First Appeal No. 170 of 1935 (with Companion Appeal No. 180 of 1935)

Hanmantagouda Nagangouda Hiregoudar and The District
Local Board

APPELLANT

Vs

Shivappa Dundappa Manwi

RESPONDENT

Date of Decision : 27-09-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1940) 42 BOMLR 1123

Hon'ble Judges : Rangnekar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rangnekar, J.—These appeals, which have been fully argued for more than a day on both sides, raise some questions of law, some of which at least are not covered by direct authority. It appears from the facts that in the year 1929-30 defendant No. 1 had taken a toll contract appertaining to Sindgi Toll Naka from the District Local Board of Belgaum. He made default in the payment of the whole amount which became due under the contract to the Board, whereupon the latter served him with two notices of demand, one in March, 1930, and the other in May, 1930. He had also taken a similar contract from Government in respect of Chik Bagewadi and Hire Ulligere Naka for the year 1930-31, and in this contract two persons, who are described as defendants Nos. 3 and 4 in these proceedings, were sureties. He made default in payment of the dues under this contract also. According to the evidence, the payment in respect of the first contract became due in March, 1930, and that in respect of the second contract, in March, 1931.

2. There were monetary dealings between defendants Nos. 1 and 2 and the plaintiff, and the disputes arising out of these dealings were referred to arbitration by them in May, 1931. It is not clear when the arbitrator appointed

under the reference made his award. But on July 10, 1931, the plaintiff made an application to the Court of the First Class Subordinate Judge of Dharwar under the provisions of paragraph 20 of the second schedule to the CPC for the purpose of having the award filed and a decree made thereon. Accordingly, on September 14, 1931, that Court passed a decree in terms of the award. By the decree defendants Nos. 1 and 2 were ordered to pay to the plaintiff Rs. 12,464 with interest, by certain instalments, and the decretal amount was secured by a charge on certain lands belonging to defendants Nos. 1 and 2 and described therein. In the meanwhile, however, the District Local Board of Belgaum, under the combined provisions of Section 10 of Bombay Act III of 1875, and Section 173 of the District Local Boards Act of 1927, and Section 5 of the Revenue Recovery Act (Bom. I of 1890) requested the Collector to take steps to recover the amount due to the Board, under the provisions of the Land Revenue Code. It may be said that the effect of these provisions is to enable the District Local Board of Belgaum to apply to the Collector to recover the arrears due to them in respect of the toll contract as an arrear of land revenue. The second contract being given by Government, they also at or about the same time started proceedings under the Bombay Land Revenue Code to recover the arrears due in respect of the contract. These proceedings commenced some time after March, 1931. It appears from the evidence on the record that a sale of the lands of defendants Nos. 1 and 2 took place in January, 1932, but it proved abortive. Thereafter the lands were sold by the Collector under the Land Revenue Code, on March 6, 1933. On December 2, 1933, the present darkhast was filed by the respondent in execution of the award decree, to which the District Local Board was made a party as defendant No. 5. In my opinion, to describe the District Local Board and the sureties under the second contract as defendants Nos. 3 to 5 was entirely wrong. As far as I can see, there is no provision of law which would permit of parties in their position as being described on the record as defendants. Admittedly they were not parties to the suit.

3. A common defence, as far as I can see, was put in on behalf of these so-called defendants, the original and the only defendants to the suit not contesting the darkhast. They pleaded (1) that the award decree was obtained by the respondent in collusion with the original defendants Nos. 1 and 2 ; (2) that the decree was invalid and incapable of execution, as it was passed on an award and the award was not registered ; (3) that under the provisions of the Land Revenue Code, they had, by the state in their favour, obtained the lands free of any charge created by the award decree in favour of the respondent ; and (4) that the darkhast was incompetent as against them. This last plea, although raised in the written statement put in, did not form the subject-matter of a specific issue, and there is no trace of the point having been raised by the appellants before the learned Judge of the Court below. These answers were repelled by the learned First Class Subordinate Judge, and it is from that decision that these two appeals are taken.

4. In this Court the same contentions have been raised. But in the course of

argument the contention as to the incompetency of the darkhast was specifically pressed, and it has been fully argued before me. In addition to the original defence, it is contended on behalf of the appellants that an award decree must also be registered and that as this decree has not been registered, the charge created by it cannot be enforced. On the other hand, it is contended on behalf of the respondent that the doctrine of lis pendens would apply to the facts of this case and would be a complete answer to the contentions of the appellants. I propose to deal with these contentions in the order in which I have set them out.

5. It appears from the facts that in the year 1930, at any rate, the original defendants were in difficulties. In the months of March and May 1930 a large sum was claimed from them by the District Local Board of Belgaum. By the end of March, 1931, another large sum became due to Government under the second contract. In August, 1930, proceedings were taken against them and yet on May 27, 1931, the alleged reference to arbitration was entered into. An award was made before July 10, 1931, and an application to file it was made on that day, and a decree taken on September 14, 1931. On the same day a consent purshis was put in, whereby an important clause in the award decree was deleted by consent of parties. On the other hand, it appears from the evidence that there were dealings between the plaintiff and defendant No. 1 from 1924. The moneys due in respect of them were paid off. Further dealings commenced a week later, and in 1927 a sum of Rs. 8,826 became due to the plaintiff. This was acknowledged by defendant No. 1 in 1928. All this was proved by the accounts of the plaintiff, which the learned Judge has held to have been kept in the regular course of business and balanced every day and beyond suspicion. The crux of the matter, however, is that although the reference shows that there was only a dispute as regards the actual amount due by the defendants to the plaintiff, and the arbitrator was asked to fix that amount, the arbitrator, by his award, gave a charge on all the lands of defendants Nos. 1 and 2. Whether that charge was justified or not, and therefore on that ground the award is bad or not, is a question which does not arise in these proceedings. The fact does appear to be significant. But for that charge, the present, proceedings would never have been taken. I think, therefore, that there are suspicious circumstances in the case, particularly as to the manner in which the reference was made and the award obtained, but upon the whole, I am not prepared to differ from the learned First Class Subordinate Judge who held that the award decree was not obtained by the respondent in collusion with defendants Nos. 1 and 2. Apart from that, as will be presently seen, it is not open to the appellants to raise that contention in these proceedings.

6. The next question is as to whether an award requires registration. Under Act III of 1877, decrees and orders of Courts and awards were exempted from registration u/s 17. This Section was amended by the Transfer of Property (Amendment) Supplementary Act, 1929. The clause, as it stood before the amendment, provided that "nothing in clauses B and C of sub-Section (1) applies to any decree or order of a Court and any award ". The effect of the amendment

is that an award is no longer exempted from registration, and an award which is of the nature referred to in clauses B and C of Section 17, sub-s(7), is not exempt from registration. It is now clear from sub-Section (2) (vi) of Section 17 of the Act that no registration is necessary in the case of any decree or order of a Court except a decree; or order expressed to be made on a compromise and comprising Immovable property other than that which is the subject-matter of the suit or proceeding. It is argued by Mr. Desai that an award decree is registrable, as the term " compromise " is wider than an award and includes an award, and he referred to the observations of Sir Amberson Marten and Mr. Justice Crump in the full bench case of Chanbasappa Gurushantappa Hiremath Vs. Baslingayya Gokurnaya Hiremath, , f.b.. The answer to that is, assuming that a compromise includes, an award, it must still be shown that it includes or refers to immovable property which was not the subject-matter of the suit. That, again, raises another question, for which there is no authority, and that question is : What is the suit in the case of an award made without the intervention of the Court and filed under paragraph 20 of the second schedule to the CPC ? Is it the reference, or is it the award, or is it the reference and the award together, which would constitute the suit ? Paragraph 20 of the second schedule of the CPC provides :

(1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to; any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and, registered, as a suit between the applicant as plaintiff and the other parties as defendants.

The rest of the paragraph is immaterial. Then paragraph 21 says :

(1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon and where no ground such as, is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according, to the award.

Then clause 2 says :

(2) Upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

It is clear, therefore, from these provisions that it is the application which is to be registered and numbered as a suit, and the application must contain and show what the award is, and it is on the award that the Court has to pronounce judgment and pass a decree which must be in accordance with the award. If so, it follows that as a charge was created on the properties mentioned in the award and belonging to the defendants, it cannot be said that the compromise related

to properties which were outside the suit and which were not the subject-matter of the suit.

7. Assuming, however, that the award required registration and that the award decree was compulsorily registrable, the question is : Is it open to the appellants to raise the question in execution proceedings ? I think, not. An executing Court cannot go behind the decree and cannot question the legality, validity or correctness of the decree. It must take the decree as it stands, and if the decree is subsisting and there is no question of limitation, it must proceed to execute the decree. This principle, I think, has been accepted by all the Courts, although there does appear to be a difference of opinion between some of the High Courts in this country on the question as to whether a party can challenge a decree in execution proceedings, if it is apparent on the face of the decree that the Court passing the decree had no territorial or personal jurisdiction over the matter. No such question arises in this case, and I do not propose to enter into the controversy. It is sufficient for the purposes of this appeal to say that it was not open to the appellants to raise these contentions in these proceedings. But it is said by Mr. Desai that these principles may be very good principles as between the parties to the decree, but there is no reason why it should not be open to a stranger, who is not a party to the decree, to raise questions like these. There is considerable force in the contention and I am not prepared to deny it. But, on the other hand, it seems to me that if the object of execution is to enable a successful litigant to obtain the fruits of his decree as expeditiously and as cheaply as possible, then questions like these, which are complicated questions, should not be allowed to be raised, even at the instance of a stranger. It is not as if the stranger is without any remedy. If he fails on these contentions-as he must -,it is perfectly open to him to bring a properly constituted suit for proper reliefs and challenge the decree in that suit. I think, therefore, that even a stranger to the decree cannot be allowed to challenge the decree in execution proceedings, and in this respect some support can be derived from the observations of the learned Chief Justice in Gurpadappa Dodappa Hasibi Vs. Karveerappa Kulkarni, . A similar contention was raised before him. Dealing with it, the learned Chief Justice observes (p. 524) :

The second point is that the decree is bad because the award on which it was founded required registration under the Indian Registration Act. It is, I think, doubtful whether the award did in fact require registration." But assuming that it did, the point that it was not registered should have been taken at the hearing, and the decree resisted on that ground. The decree having been passed, it is, in my opinion, not open to the defendant in execution proceedings to allege that the decree was founded on evidence which ought not to have been admitted. I think, therefore, that there is nothing in that point.

8. This brings me to the question as to whether the appellants are entitled to take the lands which they bought free of the charge created by the decree. I have referred to the relevant statutes, the effect of which is to enable District

Local Boards and Government to recover arrears due in respect of contracts as an arrear of land revenue under the Bombay Land Revenue Code. I must, therefore, go now to the relevant provisions of the Bombay Land Revenue Code. These are to be found in Chapter XI, which is headed " Of the Realization of the Land Revenue and Other Revenue Demands ". Section 137 is in these terms :

The claim of Government to any moneys recoverable under the provisions of this chapter shall have precedence over any other debt, demand, or claim whatsoever, whether in respect of mortgage, judgment, decree, execution, or attachment, or otherwise howsoever, against any land or the holder thereof.

Section 150 lays down the various kinds of processes which may be taken by the Collector for recovery of arrears. Section 151 provides :

The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by Section s 137 and 138 shall apply only to demands for the current year :

Provided that any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may not be fully executed within that year.

Then comes Section 187, which is in these terms :

All sums due on account of land revenue, all quit-rent, nazranas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines, and costs payable or leviable under this Act or under any act or Regulation hereby repealed, or under any Act for the time being in force relating to land revenue :

and all moneys due by any contractor for the farm of customs-duties, or of any other duty, or tax, or of any other item of revenue whatsoever and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement;

and also all sums declared by this or by any other Act or Regulation at the time being in force or by any contract with the Secretary of State for India in Council to be leviable as an assessment, or as a revenue demand, or as an arrear of land revenue,

shall be levied under the foregoing provisions of this chapter and all the foregoing provisions of this chapter shall, so far as may be, be applicable thereto.

It is clear from the last Section that all the provisions of Chapter XI apply, *mutatis mutandis*, to the present case. It is also clear, reading Section s 137 and 151 together, that the preference which is given by Section 137 as regards the claim of Government only applies in the case of demands for the current year, but when a process is commenced in the current year for recovery of the demands for the current year, then, although the process may not be fully executed within the current year, still the preference given by Section 137 will

come into effect. That seems to me to be the plain meaning of these provisions. Then there is Section 3(22), which defines a "year". It says :

The words " revenue year" or " year" mean the period from, and exclusive of, the thirty-first July of one calender year until, and inclusive of the thirty-first July in the next calendar year.

The learned Judge referred to these Section s, except the last. After stating that processes to recover the amounts due for 1929-30 were started during the current year for doing it, it seems to me, with great respect, that he went wrong as to the plain meaning of these provisions, probably because his attention was not directed to the provisions of Section 187, the effect of which is to place the claim of the District Local Board on the same footing as if it was a claim by the Collector in respect of a recovery of land revenue. This is what he says :

It seems to me, however, that these special preferences given by Section 137 apply to the land revenue of the current year only. By Section 151 arrears of former years for land revenue as well as for the current year can be recovered. But the special preferences u/s 137 are confined to the arrears of the current year only. These toll naka dues are no doubt recoverable as arrears of land revenue. For that purpose the processes by which arrears of land revenue are recovered can be employed. But though recoverable as arrears of land revenue they do not become arrears of the land revenue of the current year. It is argued that they were arrears of the current year in the sense that they became due to the Local Board in that current year. I do not think by this circumstance they are entitled to the special preferences u/s 137. A toll naka contractor does not take contracts for all years. Every year the contractor may vary. That is not the case with land revenue. The land revenue is a permanent charge on the land's and in the case of land revenue there can be a distinction of previous arrears and arrears of the current year. No such distinction can be made in the case of arrears of toll naka. Again when Government has not given these special preferences to their own arrears of land revenue due for the previous years, I do not think the Legislature intended to give such preferences for amounts which were to be recovered as land revenue.

With great respect to the learned Judge, it is difficult to accept this reasoning, which is sought to be supported before me by the learned advocate for the respondent. u/s 187, a claim as to the recovery of dues in respect of toll contracts stands on the same footing as a claim for the recovery of arrears of land revenue, and it is difficult to see, having regard to the provisions of that Section, why the claimant in this case could not contend that he should have the preference given by Section 137 in respect of the dues under the toll contract. But, of course, he would be entitled to such preference only if he proves that a process was issued in respect of a demand for the arrears of the current year for that year. It is only then that the preference comes into effect, and if he fails to prove that, then it must follow that he would not be entitled to any such preference. The appellants contend that the learned Judge has in effect held that

the processes to recover the amount were started during the current year and continued till the next year. The processes commenced some time after August, 1931, and then continued till 1932, and although the sale took place in 1933, they would be entitled to this special preference. Now, it is entirely true that the learned Judge has assumed -as the learned advocate in his opening address did assume-that the processes were started during the current year. But this position was challenged by the learned advocate on behalf of the respondent, and it became then necessary for the appellants to show conclusively that that was so. In my opinion, there is no evidence on the record, and none has¹ been pointed out by the learned advocate on behalf of the appellants, in support of the contention that any process was started in the current year. As a matter of fact, the record seems to be meagre. There is nothing to show for what period the arrears were due and nothing to show what was the year of the contract. Ordinarily, the contract period, having regard to the fact that it was a contract for 1929-1930, would be from either April 1 to March 31 of the following year or taking the duration of the year u/s 2, Clause (22), from August 1, to July 31, of the following year. Whichever period is taken, however, it is clear that there was no process taken out as contemplated by Section 151 within the current year. It is common ground that the matter was referred to the Collector in August, 1930, and naturally therefore any process which the Collector has issued or might issue must take place after that date, and that, I think, puts an end to the contention of the appellants that they are entitled to priority over the charge created by the award decree.

9. This leaves only two questions : one raised by the respondent about *lis pendens* and the other raised by the appellants about the incompetency of the *darkhast*. It will be convenient to deal with the latter contention first, for, if the *darkhast* was incompetent, that is to say, the decree-holder could not proceed to execute the decree against the appellants, it must follow that the question of *lis pendens* would not arise, and would not affect the position. The question of *lis pendens* is one thing and the question as to the appellants being representatives of the judgment-debtor within the meaning of Section 47 of the CPC is another thing. A number of authorities were referred to by Mr. Murdeshwar on behalf of the respondent. I do not propose to discuss these authorities, for the simple reason that the question which now arises is concluded by a series of authorities of this Court. It is quite clear from Section 47 of the CPC that all questions relating to execution, discharge and satisfaction of a decree arising between the parties to the suit in which the decree was made, or their representatives, must be determined in execution proceedings, and a separate suit is barred. The appellants admittedly were not parties to the suit. It is, therefore, necessary for the respondent to show that they are representatives of the original judgment-debtor, or of the decree-holder. He contends, relying upon the full bench decisions of the Calcutta and Allahabad High Courts, that a person can be said to be a representative if he is bound by the decree, even though his interest came into existence after the decree. The word " representative " is not defined in the

Code. In my opinion, a representative is a person in: whom the interest of a party to the suit has vested either by an act of the party, i.e., a transferee from the party, or by operation of law. Operation; of law, ordinarily, would mean, and would include, cases of testamentary and intestate succession upon the death of the party to the suit or upon his insolvency, or cases of forfeiture. Their Lordships of the Privy Council however have said in a case, to which I shall presently refer, that a purchaser at an auction held by the Court in execution of a decree, commonly referred to as a Court purchaser, is a transferee by operation of law. It is true that their Lordships have also said that he is not a representative of the judgment-debtor, but speaking with great humility and with infinite respect, it seems to me that the expression " operation of law" must mean this, that the interest of a party has automatically, without anything more, become vested in another person under the statute or common law. In the present case the appellants were not parties to the suit nor has any interest of any of the parties to the suit vested in them by an act of the parties themselves. They purchased the property at a sale held by the Collector, or by Government, in pursuance of the provisions of various Acts; and it is difficult, in my opinion, to hold that they have become transferees of the interest of the judgment-debtors, as the result of an act done voluntarily by the judgment-debtors themselves. Then the question is whether the appellants are transferees by operation of law. No authority directly bearing on the position of a revenue purchaser is forthcoming ; at least none has been cited before me. All the authorities cited refer to the case of a Court purchaser or, as he is sometimes called, an auction purchaser. It is necessary, therefore, to consider the position of a Court purchaser. The learned advocate of the respondent relies upon the Calcutta and Allahabad decisions. The effect of these decisions undoubtedly is that a transferee of a party to the suit, whether by assignment, succession or otherwise, who, so far as such interest is concerned, is bound by the decree, is a representative of the party within the meaning of Section 47 of the Code. The view of the Calcutta and Allahabad High Courts, therefore, is that a stranger purchasing the judgment-debtor's property in execution of a decree against him is his representative. The learned advocate therefore contends that where, as here, the decree binds Immovable property of the judgment-debtor, then, any transferee, whether he is a voluntary transferee, or the property is transferred to him at an involuntary sale, either by the Court or by the revenue authorities, would be bound by the decree and would be a representative of the judgment-debtor in the case. On the other hand, a different view is taken by the Bombay and the Lahore High Courts, and in Madras the decisions are not always reconcilable. Thus it has been held by some of the Courts that a Court purchaser would be a representative of the judgment-debtor : it has been held by others that he would be a representative both of the judgment-debtor and judgment-creditor. On the other hand, it has been roundly asserted that he is not a representative of the judgment-debtor. In some of the Courts, a still finer distinction is drawn, which requires for its appreciation the existence of particular facts and circumstances. But it is clear from the authorities of this Court that this Court has consistently taken the view that a

Court purchaser who is a stranger is not a representative of either the judgment-debtor or the decree-holder. I will refer only to one decision, namely, in *Narsinghbat v. Bando Krishna* ILR (1918) Bom. 411 : 20 Bom. L.R. 495, where the decisions of the Madras and Calcutta High Courts on which Mr. Murdeshwar relies have been expressly dissented from. Apart from anything else, I am bound by these authorities, but I think there is almost equally good reason in support of the view which has commended itself to this Court. That there is, and there must be, a distinction between the position of a voluntary transferee from a judgment-debtor or a decree-holder and a Court purchaser is quite clear, and this distinction is pointed out by their Lordships of the Privy Council in *Dinendronath Sannial v. Ramkumar Ghose* ILR (1881) Cal. 107. The title obtained by the purchaser on a private sale of property in satisfaction of a decree differs from that acquired upon a sale in execution. Under a private sale, the purchaser derives title through the vendor, and cannot acquire a title better than this. Under an execution sale the purchaser, notwithstanding that he acquires merely the right, title and interest of the judgment-debtor, acquires that title by operation of law," adversely to the judgment-debtor and freed from all alienations and encumbrances effected by him after the attachment of the property sold. It is difficult, in my opinion, to take the view that a Court purchaser is a representative of the judgment-debtor. He is not a transferee by act of parties : there is no bargain between the parties : the title which impliedly the transferor gives in a private sale is wanting in a sale by the Court. These and other considerations, therefore, to which I need not refer, support the view taken by this Court. Order XXI of the CPC itself seems to recognize the distinction between a transferee at an auction sale held by the Court, and a voluntary transfer. Thus, when property is sold by the Court and purchased by a person, such person, if he is obstructed in obtaining possession of the property, is not bound to proceed u/s 47, or under the provisions of Order XXI itself. It cannot be disputed that such a purchaser, who comes under Rule 95 of Order XXI, would be entitled to bring an ordinary suit for possession within twelve years from the date of the purchase. On the other hand, if such; a purchaser is a representative of the judgment-debtor, clearly a suit of this nature would be barred. If then a Court purchaser is not a representative of the judgment-debtor, it seems to me that a revenue purchaser is still less. The provisions of the Bombay Land Revenue Code to which I have referred show that if proper steps are taken the revenue purchaser acquires the property free of charges created by the owner thereof.

10. In my opinion, the darkhast was clearly incompetent against the appellants. It is not as if the decree-holder has no remedy. It is perfectly open to him to bring a suit to establish the priority of the charge in his favour over the claims of the appellants. But, in my opinion, he cannot proceed to execute the decree to which they were not parties. It seems to me, it would be dangerous to extend the doctrine of representation to the case of a purchaser at an involuntary sale. Various complicated questions are bound to arise, and these questions can better

be disposed of in a regular suit than by way of execution proceedings u/s 47 of the Code.

11. The last point is the applicability of the doctrine of lis pendens. If the darkhast is incompetent, as I have held it to be, the question does not arise. But on the facts of the case dso, in my opinion, the doctrine has no application. It is quite clear that proceedings, to recover the arrears due under the contracts as an arrear of land revenue were taken at least some time before 1932, and in January, 1932, the sale was actually held ; and in fact the correspondence shows that some process must have issued towards the latter end of the year 1931. Even supposing that the reference to arbitration amounted to the institution of a suit within the meaning of Section 52 of the Transfer of Property Act,-which I have held it did not-, the proceedings Which the two parties-the Government and the District Local Board-took, started before it. The transfer in favour of the appellants being made before the commencement of the execution proceedings, it is difficult to hold that the doctrine of lis pendens would apply. Apart from this, the position is at least doubtful. Though the doctrine laid down in Section 52 of the Transfer of Property Act does not in terms apply to involuntary sales in execution of a decree, it has been held by the Privy Council that the principle of lis pendens would apply to such sales : Nilkant v. Suresh (1885) L.R. 12 IndAp 171 and Radhamadhub Holdar v. Monohur ILR (1888) Cal. 756. But as to the position regarding sales for the recovery of land revenue and other taxes there is a conflict of decisions. It has been held in Calcutta that sales for the recovery of land revenue u/s 17 of the Bengal Land Revenue Sales Act are subject to the rule of lis pendens [Har Shanhar Prasad Singh v. Shew Gobind Shaw ILR (1899) Cal. 966]. The Patna High Court has taken the view that sales in; execution of a decree and sales for the realization of Government revenue stand on the same footing [Mathura Prasad Sahu v. Dasai Sethu ILR (1922) Pat. 287]. On the other hand, the view of the Rangoon High Court is that the principle of lis pendens should not be made applicable to sales for the recovery of Government taxes and local rates. [K.M.V.V.M. Chettyar v. M. Subrdmaniam ILR (1927) Ran. 458.] If it became necessary to express an opinion on this point, I have no hesitation in saying that I agree with the view taken by the Rangoon High Court.

12. In the result, therefore, the appeals will be allowed, the order made by the lower Court will be set aside, and the darkhast dismissed as against the appellants in both the appeals. The darkhast, of course, will proceed against defendants Nos. 1 and 2.

13. As the appellants have failed on all the points they took and they succeeded on a point which was specially raised for the first time here, I think this is not a case for an order of costs in their favour. I make no order as to costs.