(1894) 05 CAL CK 0007

In the Calcutta High Court

Ishri Mul and Others APPELLANT

Vs

Goasain Chutturbhooj Dut and Others RESPONDENT

Date of Decision : 28-05-1894

Acts Referred:

Citation : (1894) ILR (Cal) 844

Hon'ble Judges : William Comer Petheram, C.J;Beverley, J;Ameer Ali, J

Bench : Full Bench

Judgement

Ameer Ali, J.—This appeal arises out of a suit brought by the plaintiff''s under the following circumstances:

2. A revenue-paying estate called mehal Sonbursa was jointly owned by a number of proprietors, three sets of whom appear to have opened, u/s 10 of Act XI of 1859, separate accounts in the Collector''s Register for the payment of their respective shares of the Government revenue. The plaintiffs, who were the proprietors of the remaining share of the estate, were liable for the share of the revenue in respect thereof.

3. A default having been made in the payment of the March instalment of the revenue due for the share belonging to the plaintiffs, it was advertized by the Collector under the provisions of Section 13 of the Act for sale on the 18th of September 1890.

4. On the 16th of September the plaintiffs paid into the Collectorate the amount due and received a chalan or receipt therefor. No order, however, was made by the Collector u/s 18 exempting the property from sale. On the 18th the plaintiff''s share in the mehal was put up to sale as advertized, but there being no bidders, the Collector recorded an order in the following term (see ante p. 846):

On the same day the following notice was issued upon the other sharers in the mehal (see ante p. 846):

On the 4th and 7th of October respectively the defendants deposited in the

Collectorate the amount of arrear for which the plaintiff''s share was advertised for sale, and on the 5th of December the Collector gave the defendants, as purchasers of the plaintiff''s share, a certificate u/s 14 of the Act. The plaintiffs preferred an appeal to the Commissioner, who rejected the same on the 10th of March 1891.

5. They thereupon brought this suit for a declaration that the proceedings taken by the Collector u/s 14 of the Act were unauthorized and illegal and conveyed no title to the defendants, and for recovery of possession of the property,

6. The Subordinate Judge has decreed the plaintiff''s claim mainly on two grounds : In the first place he is of opinion that the payment of the arrear on the 16th of September was a bar to a proceeding u/s 14 under which the Collector purported to convey to the sharers the plaintiff''s share. In the second place, he has held that, as the defendants did not pay in the amount of arrear within ten days from the date on which the property was put up to auction, the transfer was illegal and void.

7. The defendants have appealed to this Court, and the learned pleader who appeared on their behalf took exception to both the conclusions of the Subordinate Judge. He contended that as the Collector did not accept the payment made by the plaintiffs on the 16th of September, and did not exempt the property from sale, that payment could not be a bar to the transfer to the defendants; and, secondly, that the period of ten days specified in Section 14 should be taken from service of notice and not from the date of the auction sale, and consequently the payment made by the defendants was within time.

8. I will take up the latter question first as it seems to me the decision of the case turns upon it.

9. Now, it is quite clear that the opening of separate accounts by one or more shareholders does not absolve the joint estate from liability for arrears of revenue in respect of any portion of the mehal; it only gives to the shareholders the advantage of throwing the burden primarily on the share from which the arrear is due. The estate remains liable all the same. A reference to Section 13 of the Act makes this perfectly clear. The first part of that section runs thus:

Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which according to the separate accounts an arrear of revenue may be due.

10. Then follows the provision relating to the exemption of the share or shares from which no arrear is due:

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in Section 6 of this Act.

11. Section 14 shows the position of the other shareholders. It runs thus:

If in any case of a sale held according to the provisions of the last preceding section the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers or one or more of them shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share.

12. It is clear from these two sections that so long as the defaulting share is not sold, the liability of the joint estate for the Government revenue continues, only in the first instance the defaulting share or shares must be put up to sale; if that proves infructuous then the Collector "shall declare that the entire estate will be put to sale, &c."

13. There is no provision in the section about any notice to the other recorded sharer or sharers. The Collector is required simply to declare at the time he stops the sale that the entire estate will be put up to sale, in other words that the existing liability would be enforced against the entire estate unless the other sharers or one or more of them should within ten days purchase the share in arrear by paying to Government the whole amount due. The reason for not requiring any notice of such declaration is obvious from what I have already stated. The entire estate is liable for the revenue, only the particular share is to be put up to sale first; the advertisement of sale prescribed in Section 6 is duly published at the Collector''s office, and though in that document the intention of excluding the share or shares from which no arrear was due is notified, owners of the latter know from the notification that the entire estate is in jeopardy, and that the exemption of their shares is only conditional, and that in case the highest bid does not cover the arrear due to Government, the entire estate will be sold unless the other shares pay in the amount within a limited time and take over the property. Therefore, so far as the liability to sale of the entire estate is concerned, each sharer has the knowledge when the advertisement or notification is issued. It is for them to see whether the defaulting share covers the arrear or not. The law assumes that the other sharers are present and know whether the highest bid reaches that point; and for this reason makes no provision for a notice of the Collector''s declaration, which, must be made simultaneously with the stoppage of the infructuous sale.

14. It has been contended that the Board of Revenue has framed a rule providing for the issue of a notice. It is a commendahle rule, if I may say so, showing that the Government is not disposed to apply the sale law, which is drastic enough, more harshly than it can help, and therefore provides for the issue of a notice to the other sharers. But the Board cannot, by any rule, supplement the law which is complete in itself. Nor can a remedial executive rule designed for one purpose, that is, for protecting from sale the shares of others than the defaulting sharer without some notice, be construed as enlarging the time fixed for payment by

the sharers, and thus depriving a man of his property without the sanction of the law.

15. If the entire estate is sold without the notice required by the Board''s rule, or within ten days from service of such notice, the sharers not in default may, on that ground, obtain a reversal of the sale, but that rule, to my mind, will not warrant the Collector handing over one man''s property to another without strict compliance with the law under which alone that power can be exercised. As I understand Section 14 of Act XI of 1859 it gives to the other sharers a statutory right of pre-emption so to speak in respect of the defaulting share. The right is of an exceptional character; it entitles them to obtain the property which may be of considerable value for the merest trifle without any competition. In order to claim such a right and to enable the Collector to give effect to such a claim they must show a strict compliance with the provisions of the law.

16. It is to be observed that the section speaks of the "highest offer," not equalling the amount of arrear due. To my mind these words show that the law contemplates the exercise of the exceptional power given to the Collector u/s 14 in a case where the property is either so valueless or so peculiarly situated that at a competitive sale the highest offer does not, in fact, reach the amount due; in other words, after it has been tested in open market by actual bidding that the property could not fetch the amount in question. It does not in my opinion contemplate a case where from some accidental reasons there have been no bids. It is impossible to conceive that but for some accidental circumstance there would be no offer at all even to the extent of 18 rupees for the property in suit, which the Judge finds to be of considerable value.

17. I am, therefore, of opinion that the Subordinate Judge is right in holding that the defendants, not having made the payment within ten days from the 18th of September 1890, acquired no right whatsoever to the property which was purported to be conveyed to them by the Collector, and that his proceeding is illegal and void and without jurisdiction.

18. If the intendment of the law be that the declaration of the Collector should come to the knowledge of the sharers, there is nothing to show that it must be by a formal written notice. I take it that if the defendants had notice or information of the declaration made by the Collector on the 18th, the absence of a written notice would not absolve the estate from its liability to sale.

19. There is absolutely nothing on the record to show that the defendants had no knowledge of the Collector''s declaration on the 18th, or in fact when they first became aware of it.

20. Assuming, however, as it is contended on behalf of the appellants, that a formal written notice was necessary, I find that it bears date the 18th of September, the date on which the defaulting share was put up to sale. There is not an iota of evidence as to when the notices were received by the defendants. The endorsements on the notices in my opinion are no evidence of the facts they

purport to mention; it is perfectly possible that they may be post-dated, which is by no means uncommon. The peon who served the notice has not been examined, nor have the defendants given their evidence to show when they received the notices. Nor is there the smallest explanation why the notices dated as they are the 18th of September, were not issued until the 2nd of October. If the defendants want to avail themselves of the strict letter of the law, they roust satisfy by strict proof that they came within its provisions. Courts of Justice are often compelled to enforce the law in all its stringency regardless of all considerations of individual hardship or injury to private rights, but they are not constrained to make every assumption in favour of the co-sharer claiming an exceptional right.

21. But it is objected on behalf of the defendants that inasmuch as this ground was not "declared and specified" in the appeal before the Commissioner the plaintiff''s are precluded under the provisions of Section 33 from raising it in the Civil Court; and in support of their contention they rely on the case of Gobind Lal Roy v. Ramjanam Misser I.L.R Cal. 70. This brings me to the consideration of the question whether the transfer by the Collector of the defaulting share to the co-sharers is a "sale" coming within the purview of Section 33. That section so far as is material for the purposes of the present discussion runs as follows: "No sale for arrears of revenue or other demands, realizable in the same manner as arrears of revenue are realizable made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of, and no such sale shall be annulled upon such ground unless such ground shall have been declared and specified in an appeal made to the Commissioner u/s 25 of this Act." Their Lordships of the Privy Council in the case upon which the defendants rely express themselves thus: "Giving, however, full weight to these considerations their Lordships, having regard to the scheme of the Act and the express direction contained in Section 33, are of opinion that in every case where a sale for arrears of revenue is impeached as being ''contrary to the provisions'' of Act XI of 1859, no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner." And then follow the significant words: "In the opinion of their Lordships a sale is a sale made under Act XI of 1859 within the meaning of that Act, when it is a sale for arrears of Government revenue held by the Collector or other officer authorized to hold sales under the Act, although it may be contrary to the provisions of the Act either by reason of some irregularity in publishing or conducting the sale, or in consequence of some express provision for exemption having been directly contravened."

22. The question then is-Is a purchase u/s 14 "a sale held by the Collector under the Act?" Section 19 tells us how sales are to be made or held. "Sales shall ordinarily be made by the Collector or other officer as aforesaid in the Land Revenue office at the sudder station of the district; provided however that it shall

be competent to the Board of Revenue to prescribe a place for holding sales other than such office whenever they shall consider it beneficial to the parties concerned." Sections 20 and 21 relate to the procedure to be observed at the time of making "the sale." Section 22 says: "The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer aforesaid, etc." Compare also the phraseology of Section 14 "if such purchase be completed" with that of Section 28 "immediately upon a sale becoming final." These and the succeeding sections show clearly that the sale contemplated in Section 33 and referred to by their Lordships is a public sale held either in the Land Revenue office at the sudder station of the district or any other place, which the Board may prescribe whenever they consider it beneficial to the parties concerned -a sale at which bidders are or can be present, and in which there is a possibility of competition; otherwise the provisions of Section 19 become meaningless, and the reference to what is beneficial to the parties concerned" superfluous. It could never have been the intention of the Legislature to designate the dealing u/s 14 as a "sale" under the Act. Section 14 itself shows clearly to my mind the distinction between a "sale" under the Act and the proceeding by which the Collector conveys the defaulting share to the sharers. The latter clause of the section runs thus: "If such purchase be completed, the Collector, or other officer as aforesaid, shall give such certificate and delivery of possession as are provided for in Sections 18 and 19 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid the entire estate shall be sold after notification for such period and publication in such manner as is prescribed in Section 6 of this Act." It gives on the completion of the "purchase" and the delivery of the certificate to the purchaser or purchasers the same rights as if the share bad been purchased by him or them at the sale "-the sale which was to he held u/s 13 in accordance with the provisions of Section 6. If the purchase u/s 14 was a "sale" it would not only be unnecessary but absurd to say that the purchasers would have the same rights as if they had purchased at "the sale" which was advertised in accordance with the provisions of Section 6, and which could only be held under the guarantees of Section 19.

23. As I mentioned before, to my mind Section 14 gives to the sharers a statutory right of pre-emption, so to speak, subject to a statutory obligation. It gives to the Collector, subject to the same conditions, the power of handing over the property of one who was primarily liable for the arrears which had fallen due in respect of the estate to others equally liable, though their liability can be enforced only at a later stage. All the elements which constitute a "sale" are wanting here; there is no competition, there are no bidders, no advertisements and no publicity, and the price is the arrear due which may be a mere trifle compared to the value of the property. What their Lordships in the Privy Council

had in view was, as it seems to me, the case of a person buying in open market at a "public sale" in competition with others. I think therefore the objection of the defendants founded on Section 33 is untenable.

24. In the view I take of the case it is unnecessary to consider whether the payment made by the plaintiffs on the 16th of September was or was not a bar to the transfer by the Collector. But as the question has been raised and discussed I think it better to express my opinion on the point.

25. As I have already mentioned, in my opinion the transfer u/s 14 is not a sale under the Act. Section 6 lays down the procedure for issuing notifications, etc., and provides that: "Except as hereinafter provided all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by, and in the presence of, the Collector or other officer as aforesaid, and shall be sold to the highest bidder, and no payment, or tender of payment, made after sunset of the said latest day of payment shall bar or interfere with the sale either at the time of sale or after its conclusion." The sale referred to at the end of the section is the public sale by auction, the procedure of which is laid down in Sections 19 20 and 21. Section 8 declares as follows:

No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter and sufficient to pay the arrear of revenue due was in the Collector''s hands bar or render void or voidable a sale under this Act, unless such money stand in the defaulter''s name alone and without dispute, and unless, after application in due time made by the defaulter or after the written agreement provided for in Section 15 of this Act, the Collector shall have neglected or refused on insufficient grounds to transfer it in payment of the arrear of revenue due," and Section 18, so far as is material, runs thus: "It shall be competent to the Collector or other officer as aforesaid at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case, and no such sale shall be legal if held after the receipt of such order of exemption, provided, however, and it is hereby enacted that the Collector or other officer as aforesaid, or the Commissioner, shall duly record, in a proceeding the reason for granting such exemption, and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

26. Throughout these sections the sale referred to is the public sale by auction.

The payment on the 16th, in the absence of an order of exemption u/s 18, would have been clearly no bar to a sale on the 18th as advertised; but there is not a word anywhere throughout the Act that an actual payment of the arrear, though after due date, should not he a bar to the Collector proceeding u/s 14 to hand over the property without any formality or guarantees that surround a public sale to the other sharers. In the absence of any provision to that effect or any authority I do not feel inclined to stretch the law beyond its legitimate extent. On the whole, therefore, I agree with the lower Court on both the points, and would accordingly dismiss this appeal with costs.

Beverley, J.

27. The plaintiffs in this suit were the owners of a share known as the ijmali or joint share in a certain estate. The defendants are the owners of three other shares in the same estate, in respect of which separate accounts have been opened. In 1890 the plaintiffs defaulted in payment of the Government revenue due upon their share, and their share was accordingly advertised to be sold on the 18th September under Sections 6 and 13 of Act XI of 1859. On the 16th September the plaintiffs tendered the amount in arrear and actually paid it into the Treasury; but the Collector refused to exempt the share from sale, and in fact proceeded to put it up to sale on the 18th. There being no bid, however, the sale was stopped, and the Collector made an order u/s 14 of the Act that unless the arrear was paid in within ten days by the other recorded sharers, the entire estate would be put up to sale. The arrear was paid in by some of the defendants on the 4th October and by others on the 7th October, and accordingly the Collector u/s 14 of the Act granted a certificate of purchase and delivery of possession to the defendant.

28. The plaintiff''s thereupon instituted the present suit- (1) for a declaration that the entire proceedings under the Act were illegal and invalid; (2) for recovery of possession of the share; and (3) for mesne profits.

29. The Lower Court has decreed the plaintiffs'' suit on two grounds : In the first place, the Subordinate Judge has held that the plaintiffs having paid up the arrear on the 16th September, there was no arrear due when the Collector purported to proceed u/s 14, and that his action was for that reason illegal and invalid. In the second place, he has held that as the arrear was not paid in by the defendants within ten days from September 18th, they acquired no title by their alleged purchase u/s 14.

30. From this decision the defendants appeal on the ground that the Subordinate Judge is wrong in law on both points, and I am of opinion that the appeal must be allowed.

31. In the first place, I am of opinion that the Subordinate Judge is wrong in assuming that there was no arrear due after the 16th September. The money was no doubt paid into the treasury on that date, and an application was made to the Collector to receive the amount on account of the arrear and to exempt

the share from sale. But an "arrear of revenue" is defined by Section 2 of the Act, and there is nothing whatever in the Act to give support to the theory that subsequent tender by the defaulter of a sum which has once become an arrear has the effect of cancelling that arrear, so that it no longer exists. It is true that u/s 18 the Collector may for good reason exempt an estate or share of an estate from sale, and he would probably refuse to exercise this power, unless the sum in arrear was paid by the defaulter or by some other person. But in the present case it is clear upon the evidence that the Collector refused to exempt the share from sale and to treat the arrear as wiped out or cancelled. In their plaint the plaintiffs say that no order was passed on their application. The same statement was made in their petition of appeal to the Commissioner of the Division. On the 18th September the Collector''s order was: "No bid. Proceedings to be taken u/s 14." On the 23rd September Mr. Chardon, a zurpeshgidar under one of the plaintiffs, filed an application, asking the Collector to accept the tender or to allow him to pay up the arrear, and in that petition he stated: "Although that arrear with cesses was paid in by chalans by the joint proprietors, and an application was made for exemption from sale, still Your Honour upon returning the application gave the order. "Let the khata and the ijmali be put together and notice u/s 14 of the sale law be given to the shareholders of the khata, so that they may pay up the arrear and retain the estate." On 1st October the plaintiff Dharu Lall made another application to the Collector, in which, after referring to the deposit and the former application, he stated: "But as the aforesaid share had defaulted seven times within the last three years Your Honour verbally passed the order : There is no need of filing a petition, this share will in any case be sold by auction," and on that application the Collector made the following order: "The share was properly put up for sale, as it defaulted seven times in twelve kists. It is beside the point that the petitioner or any one else has paid in the arrears after the estate has defaulted. When the ijmali share was put up for sale, no one bid, and accordingly I had no alternative but to buy it in for Government (which I did not think advisable) or to postpone the sale and take action u/s 14 of the Sale Act. This I did, and having done so, the law must take its course. I have no power to cancel my order. Application rejected."

32. From all this it is quite clear that the Collector refused to exempt the share from sale; the share was in arrear, and the arrear must be held to have been still due when the Collector proceeded in accordance with the provisions of Section 14 of the Act.

33. It is admitted both by the Subordinate Judge and at the bar here that u/s 6 of the Act no payment, or tender of payment, made on September 16th could bar or interfere with the sale unless there had been a specific order of exemption from sale u/s 18-Gobind Chandra Gangapadhya v. Sheraju-nessa Bibi 13 C.L.R. 1, and Lala Gauri Shankar Lal v. Janki Pershad ILR Cal. 809 but it is contended that in this case there was no such sale as is contemplated by Section 6 of the Act, and that the last clause of that section will not apply to a purchase by the other recorded sharers u/s 14; that no order of exemption in that case was

necessary; and that there being at that time no arrear due, the purchase by the other sharers was illegal and invalid.

34. I have already given my reasons for holding that the arrear was still due at the time of the purchase by the defendants, and I am of opinion that the tender and deposit of the arrear on September 16th did not invalidate the purchase by the defendants u/s 14. The proceedings u/s 14 were only taken because there was no bid for the share at the sale of September 18th. Had the share been sold then, it would have been admittedly a good sale, and Section 14 distinctly says that a sharer purchasing under that section "shall have the same rights as if the share had been purchased by him at the sale." The defendants therefore, by exercising the privilege allowed them by Section 14, were put in the same position as if they had purchased the share at the sale of September 18th, and, as that sale would admittedly have been a good sale in the absence of any order of exemption, the defendants must have acquired a good title by their purchase.

35. I must confess that I find myself unable to follow the reasoning of the Subordinate Judge or to understand why an arrear, which would have justified a sale of the share on the 18th September, and which presumedly would have justified a sale of the whole estate had the arrear not been paid by the other sharers u/s 14, is nevertheless not such an arrear as would make the purchase by the sharers under that section a valid transaction. That purchase must be regarded as a part of the sale proceedings. There had been no bid for the share, and under the law the entire estate was liable to be sold, but as the other sharers were not to blame for the default, the law mercifully allows them to save their property from the hammer by paying up the arrear due from the share in arrear, and the legal effect of such payment is the transfer of the share in arrear to the other sharers in the same way as if the share had been purchased by them at the sale.

36. On the second point, I am also of opinion that the Lower Court is wrong in holding that the defendants'' purchase is invalid, because they did not pay the arrear within ten days from the date of sale, that is to say, September 18th. What Section 14 says is that if at the sale the highest offer for the share shall not equal the amount of arrear due there upon to the date of sale, the Collector shall stop the sale and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share." Now, in the absence of any specific words to the contrary, the reasonable construction of this provision of the law is that the other sharers shall be allowed ten days'' time within which to pay the amount of arrear and save their property from sale, and that the ten days shall count from the date on which notice of the Collector''s order or declaration shall have been communicated to them. This reasonable construction of the law is incorporated in a circular order of the Board of Revenue which runs as follows: "When an entire estate, of which separate accounts have

been opened, becomes liable to sale for arrears of revenue under this section, in consequence of the highest offer for the share exposed for sale being not equal to the amount of arrears due thereupon up to the data of sale, it shall be the duty of the Collector to publish in open Court a declaration that the entire estate will be put up for sale on a future date, unless the other recorded share holders, or one or more of them, shall, within ten days from the date of the service of a notice on them, purchase the share in arrear by paying to Government the whole arrear due from such share, and the Collector shall also serve a notice to this effect on each of the other recorded shareholders of the estate." Board''s Circular Order, dated 5th October 1884; see Grimley''s Revenue Sale Manual, p. 44. It may therefore be presumed that this is the recognised usage in all Collectors'' offices, and I think we may and ought to look at this usage as supplementing the law on this point. There is nothing in the law requiring the other sharers to be present at the sale of a share, and it would be altogether unreasonable that an order should be made for the sale of the entire estate without notice to them. It is admitted that notice was issued to the defendants in the present case, and it is not alleged that the arrear was not paid within ten days from the date of service of such notice. That being so, I think there is ample evidence on the record to show that the amount was so paid, and I am of opinion that that payment sufficiently complied with the requirements of the law.

37. It has further been contended for the appellants that u/s 33 of the Act this point cannot be raised in the present suit inasmuch as it was not taken in the petition of appeal to the Commissioner. Having carefully considered that petition and the order of the Commissioner, I am satisfied that this ground was not "declared and specified" before him, and therefore on the authority of the Judicial Committee of the Privy Council in Gobind Lall Boy v. Ramjanam Misser ILR Cal. 70 it is not open to the plaintiffs to raise the point in the present suit. It may be that the case is a hard one and that the plaintiffs have suffered great loss in consequence of their default in paying the Government revenue. But that is not a consideration that ought to influence the Civil Courts in the administration of the law. All that the Court has to consider is whether the plaintiffs have succeeded in proving such legal defects in the defendants'' title that their purchase ought to be set aside. The law itself in Sections 18 and 26 provides for relief in cases of hardship, but that is not a matter in which the Civil Courts are authorized to interfere.

38. I am of opinion that the appeal should be allowed, and that the plaintiffs'' suit should be dismissed with costs in both Courts.

39. As however my learned colleague dissents from the view of the law taken by me, the papers must be laid before the Chief Justice in order that the case may be referred to a third Judge.

W. Comer Petheram, C.J.

40. The facts of this case are so fully set out by the learned Judges who have

differed that it is not necessary for me to state them again.

41. Section 3 of the Act provides that, if all arrears of revenue, etc., are not paid up to the date at which they are declared to be due, the estate in arrear shall be sold by auction to the highest bidder. Section 6 provides that "no payment, or tender of payment, made after sunset of the latest day for payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion." Section 10 provides a machinery by which a share of an estate may, for certain purposes, be treated as a separate estate, and Section 13 provides that, when this has been done, such share shall be first offered for sale for its own arrears, and that the entire estate shall not be sold for the arrears of shares, unless at [8 the sale a sufficient amount to satisfy the arrears has not been obtained for the share. Section 14 provides for what is to be done with reference to the sale of the entire estate when the share has not been sold because a sufficient amount could not be obtained for it to satisfy its arrears. In that case the Collector must stop the sale, and declare that the entire estate will be put up for sale at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to the Government the whole arrear due from it.

42. There can be no doubt that whether the sale is a sale of the share only u/s 13 or is a sale of the entire estate at a "future time," such as is contemplated by Section 14, it must always be a sale for default of payment of revenue u/s 3 and be subject to the provision of Section 6, and, consequently, no payment or tender can prevent a sale either of the share or of the entire estate unless made in time, or unless the Collector decides to exempt the estate or share from sale under the power given him in Section 18, and it is I think impossible to hold that the estate or share is in arrear for the purpose of bringing it to sale and is not in arrear for the purpose of enabling the Collector to act under the other provisions of Section 14, which are in fact regulations under which the power to sell the entire estate for the arrears of the share are to be exercised. This disposes of the first ground on which the suit has been decreed, and on that ground I think the appellant is entitled to succeed.

43. The next ground on which it is contended that the sale cannot be effective to pass the share to other sharers is that the arrear was not paid to the Government by them, until after the period of ten days from the day when the sale of the share was stopped by the Collector. Mr. Justice Ameer Am thinks that, when that period had expired, all the rights of the other sharers in the entire estate to stop the sale of their own property were at an end, as they are in conflict with those of the defaulting sharer, and he thinks the right of the defaulter must prevail over those of the sharers who are not in default at all. To test the soundness of this view I will try to consider the question from their point of view, and for this purpose will assume that the action is one which is brought by the owners of the shares, not in default, to set aside the sale of the entire estate for an inadequate price at a sale, held after they had deposited the whole

of the arrears, but at a time which was after the period of ten days had expired, but within ten days of the time when they had notice of what had taken place, and that they never in fact had any notice at all of the sale of their own property. If Mr. Justice Ameer Ali''S view of the law is correct, their suit must fail, and they must lose their estate, however valuable it may be, for the inadequate price for which it was sold at a sale, of which they never heard, and they must do so because their rights are in conflict with those of their defaulting co-sharer whose right in this view of the law was, at the expiration of an arbitrary period of ten days, to have the whole estate sold in order that he might get the best price for his share. The defaulter might have protected his share by payment at any time before sale of the revenue in arrear, but in addition to this he might have protected it on the very day of sale by himself purchasing it for the amount of the arrears; he must of necessity have known that his share would be offered for sale, because he must have known that he had not paid the revenue in time, and that the Collector had refused to exempt it from sale, and he would know that if a sum equal to the arrears were not offered, the sale would proceed.

44. I have myself examined the Act and have asked my colleagues and the gentlemen who have appeared in the case whether there is any provision in the Act which prevents the owner of a defaulting estate or share from himself bidding at the sale, and no such provision can be found, and it must follow that if he had been pleased to do so the defaulter might have attended the sale, and himself, as there were no bidders at all, have purchased the share for the amount of the arrears, which amount was already standing to his credit in the Collectorate, and so his estate would have been saved. I cannot think that the Legislature ever intended that the estate not in default should be sacrificed in the interest of a defaulter having such opportunities, and not caring to take advantage of them, without giving its owner some reasonable means of protecting himself, and that I think can only be done under this section, and this is the only section which gives him any protection at all, by reading it as Mr. Justice BEVERLEY has done, or by limiting the operation of so much of the section as prescribes a period of ten days to the power of the Collector to notify the entire estate for sale, but leaving him at liberty to sell it in the other way prescribed by the section at any time before the sale by public auction takes place, and this is the view which I am disposed to take.

45. But however that may be, I am of opinion that the ground cannot be relied on by the plaintiff in this action, as it was not declared and specified in his appeal to the Commissioner. Section 33 of the Act provides that "no sale for revenue or other demands, realizable in the same manner as arrears of revenue are realizable, shall be annulled by a Court of Justice, except on the ground of its having been made contrary to the provisions of the Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of," and that "no such sale shall be annulled upon such ground unless the ground shall have been declared and specified in an appeal made to the Commissioner." In this case an appeal was made to the Commissioner, and the

grounds of that appeal are upon this record; one of them states that the sale ought to be set aside, because the whole of the arrears had been deposited in the Collectorate on the 16th, but neither of them contains any reference to the period of ten days mentioned in Section 14, nor in any way complains that the sale to the defendants was made after that period had expired. There can be no doubt that the object of the suit is to annul the defendants'' purchase from the Collector, and if that purchase was made in a sale for arrears of revenue, I think that the Civil Courts cannot annul it on this ground, as it certainly was not declared and specified in the appeal to the Commissioner. It is said that this section only applies to sales by public auction, and that the whole Act shows that this is (he case, but I cannot agree in that view of the meaning of the section. The Act provides two modes in which a share of an estate may be sold for an arrear of revenue, one by public auction in the same way as that in which entire estates are sold, the other by private sale to the other sharers in the entire estate, after the share has been offered for sale by public auction, and at a higher price than the highest bid obtained for it. It is quite true that most of the references to sales in the Act appear to be to sales by public auction, and the remarks of the Judicial Committee in the case which has been cited before us have the same tendency, but I am quite unable to understand how it can be possible for us to refuse to give effect to such plain words as those used here for such a reason. The words used are "no sale, etc., shall be annulled, etc.," and they are as general as it was possible for the Legislature to make them, and I do not think we should be justified in restraining their operation to sales conducted in one way only, when in their ordinary meaning they include all sales made for this purpose, in any way Contemplated by law.

46. This disposes of the second ground on which the suit has been decreed and on that ground too I think the appellants are entitled to succeed. I agree with Mr. Justice Beverley that the appeal must be allowed, and the suit dismissed with costs in both Courts.

