(1923) 08 PAT CK 0002

In the Patna High Court

Jagdishwar Narayn APPELLANT

Vs

Md. Haziq Hussain and Others RESPONDENT

Date of Decision : 13-08-1923

Acts Referred:
Bengal Land Revenue Sales Act, 1859 — Section 2, 6

Citation : AIR 1924 Patna 537

Hon'ble Judges : Macpherson, J;Das, J

Bench : Full Bench

Judgement

Das, J.—This was a suit by the Plaintiffs-Respondents for setting aside a revenue Kale held on the 24th September 1917. The facts are these. An estate known as Chak Maharuddin Khatik is recorded as No. 3309 on the touzi of the Collectorate of Monghyr with a Government revenue of Rs. 129-13 as. There is no dispute before us that certain separate accounts were opened in respect of shares in this estate, and that after excluding the shares for which separate accounts had been opened, the residue of the estate bore a sudder jama of Rs, 80-9 as. I ought to mention that it was alleged by the Plaintiffs in their plaint that the sudder jama of the ijmali share should have been stated to be Rs. 79-6 and that the figure, Rs. 80-9 as., was arrived at by a wrong calculation. This position has been abandoned before us and we must take it as admitted that the residue of the estate bore a sudder jama of Rs. 80-9 as. On the 5th August 1917 the residuary share was advertised for sale "for arrears of revenue arid other demands which by law are realisable as arrears of land revenue." The sale took place, as I have mentioned, on the 24th September 1917 and at that sale Defendant No. 1, the Appellant before us, became the purchaser oi the share. The Plaintiffs who are interested in the residuary share preferred an appeal to the Commissioner of revenue u/s 2 of Act VII of 1868. They alleged various grounds of objection, all of which are now admitted to be wholly untenable. The appeal was rejected and the suit, out of which this appeal arises, was thereupon instituted by the Plaintiffs. The grounds of objection to the sale urged by the Plaintiffs in their plaint are as follows:

(1) The sudderjama of the residuary-share being Rs. 79-6, there was no arrear of land revenue for which the residuary share could have been put up for sale. It may be mentioned that the arrear to recover which the property was sold was stated in the sale notification to be Rs. 1-11-9.

(2) Notice was not served according to the provisions of Section 6 of Act XI of 1859,

(3) The name of the mahal and the details of the revenue in arrear were wrongly entered in the notice.

(4) Notice as provided by Section 7 of Act XI of 1859 was not served.

(5) The sale was liable to be set aside on the ground that the father of Defendant No. 1 who was a cosharer, and whose duty it was to pay the Government revenue, deliberately defaulted in doing so in order to enable him to purchase the share and he did purchase the share in the name of his son, Defendant No. 1.

(6) The share was sold at a gross under-value and the Plaintiffs have sustained substantial injury by reason of the irregularities complained of.

2. The learned Subordinate Judge, who heard the case at the first instance, had no difficulty whatever in rejecting each and every ground set forth as a ground of attack in the plaint; and in this Court no attempt has been made to impugn the correctness of the decision of the learned Subordinate Judge on these points. But while deciding against the Plaintiffs on each and every point raised by them in their plaint, the learned Subordinate Judge has set aside the sale on two grounds, first on the ground that there was no arrear of revenue for which the sale could be held on the 24th September 1917 and, secondly, on the ground that "the entire residuary share was neither described in the notice u/s 6 nor sold at the revenue sale on the 24th September 1917" and that as the Collector had no jurisdiction to split up the unit in arrear and to offer for sale something less than that unit, the whole sale was without jurisdiction and should be set aside.

3. So far as the first question is concerned I am unable to agree with the decision of the learned Subordinate Judge. The process of reasoning employed by the learned Subordinate Judge is as follows: The share in question was sold to recover the arrears in respect of the June kist, but, so it is argued by the learned Subordinate Judge, if the Kist or instalment was payable in June the revenue remaining unpaid could not be considered an arrear of revenue until the first of July. Now the Government revenue becoming an arrear on the 1st July 1917 was not payable under the Rules framed by the Board of Revenue until the 28th of September, and that being so, the share could not be sold on the 24th September 1917. The argument assumes that the term ''June kist'' as employed by the Board of Revenue means the kist payable in June according to the original settlement and kistbandi of the mahal. Ex. B., the copy of touzi Ledger shows that the Government revenue is payable in four kists in the following manner:--1st kist Ri. 14-5 payable on the 7th June every year; 2nd kist Rs. 30-1

payable on the 28th September every year: 3rd kist Rs. 20-2 payable on the 12th January every year; 4th kist Rs. 24-15 payable on the 28th March every year.

4. There is no dispute before us that the share in question was sold to recover an arrear payable on the 7th June 1917 and the whole question before us is whether the term "kist" means the revenue kist payable in June according to the original settlement and kistbandi of the mahal u/s 2 of Act, 1869 or whether it means the kist of which the latest date for payment u/s 3 of the same &ct is the 7th June. The argument before us assumes that the dates for payment of the Government revenue according to the original settlement and kistbandi of the mahal u/s 2 of the Act are 7th June, 28th September, 12th January and 28th March respectively; and it is indeed remarkable that these are the dates fixed as the latest dates for payment u/s 3 of the Act. There is no difficulty, in understanding the scheme of the Bengal Land Revenue Sales Act, 1859. Section 2 defines an "arrear of revenue" and provides that Government revenue does not become an arrear until She month following that on which according to the original settlement and kistbandi the Government revenue is payable. It provides, in other words, that if the Government revenue is payable in June according to the original settlement and kistbandi of the mahal it does not become an arrear of revenue until the 1st of July. Section 3 gives power to the Board of Revenue to determine upon what dates all arrears of revenue and all demands which by the Regulations and Acts in force are directed to be realised in the same maner as arrears of revenue, shall be paid up in each district under the jurisdiction, in default of which payment the estates in arrear in those districts shall be sold at public auction to the highest bidder. A perusal of Sections 2 and 3 makes it perfectly clear that the Collector should not put up an estate for sale unless there is an arrear of revenue in respect of that estate and unless the latest date of payment fixed by the Board of Revenue has expired and the default has not been made good. There is no dispute before us that the Board of Revenue under the jurisdiction conferred on it by Section 3 of the Act has fixed the 7th June, 28th September, 12th January and 2th March respectively as the latest dates for payment u/s 3 of the Act. It is, in my opinion, quite impossible to take the view that the 7th June, which is the latest date fixed for payment by the Board of Revenue u/s 3 of the Act, is also the date upon which the kist or instalment was payable for June according to the original settlement and kistbandi of the mahal. The coincidence, in my opinion, would be a remarkable one if the arguments advanced on behalf of the plaintiffs are to be accepted. According to them thrdates of payment according to the original settlement and kistbandi of the mahal u/s 2 of the Act are identical with the latest dates of payment fixed by the Board of Revenue u/s 3 of the Act. There is, however, no evidence before us in what manner the Government revenue was payable in respect of this estate under original settlement and kistbandi of the mahal. It is certainly remarkable that the Plaintiffs should not have alleged in their plaint that the 7th June was the date fixed for payment according to the original settlement and kistbandi; it

is still more remarkable that they have not alleged that the Government revenue was not in arrear until the 1st of July and that the estate could not be sold until after the 28th September. That was not the ground specified by them in their appeal to the Commissioner and I find it quite impossible to support the judgment of the learned Subordinate Judge on this point. Whenever a person seeks to have a revenue sale set aside on the ground that there was no authority in the Collector to sell an estate having regard to the fact that the latest date fixed for payment by the Board of Revenue had not expired at the date when the property was put up for sale, he should, in order to enable the Court to decide the point give the dates of the revenue kistbandi. In my opinion the learned Subordinate Judge has fallen into this error that he has regarded the revenue kist as falling due on the 7th June whereas the fact is that the 7th June is the latest dale for payment of previous arrears. That being so, the Collector had complete jurisdiction to soil the property on the 24th September.

5. Assuming that I am wrong in the view which I have taken, the further question which arises is has the Court any power to set aside the sale on the ground that the Collector should not have put up the property for sale on the 24th September? Section 33 of the Act provides as follows:--"No sale for arrears of revenue or other demand, 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 the ground unless such ground shall have been declared and specified in an appeal made to the Commissioner u/s 25 of this Act, and no suit to annul a sale made under this Act shall be received by any Court of Justice unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section 27 of this Act, and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money: Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged." It may be assumed that the act of the Collector inputting up the property for sale on the 24th September was contrary to the provisions of the Act; but if it was, there is a complete procedure indicated in Section 30 which the Plaintiffs should have followed before seeking their redress in the Civil Court. There was a considerable divergence of opinion on the question whether Section 33 barred a suit in the Civil Court where the Act of the Collector amounted not only to an irregularity but to an illegality. It seems to me that that question has been conclusively determined by the Judicial Committee in the case of Gobin Lal Roy v. Ramjanam Misser [1894] 21 Cal. 70. Section 17 of the Act declares that "no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority shall be liable to sale

for arrears accruing while it was so held under attachment." In the case before their Lordships of the Judicial Committee the estate was sold for arrears which accrued while it was subject to an order issued by the Collector under the Cess Act of 1880 for the levy of road-cess in arrear. The order under the Cess Act of 880 forbade the payment of rent to any person bat the Collector until the amount due for road-cess was satisfied and their Lordships Had no difficulty in coming to the conclusion that the order issued by the Collector under the Cess Act was an attachment both in form and substance and an attachment within the letter and meaning of Section 17 of Act XI of 1859. That being so, their Lordships had no difficulty in holding that the Government sale was contrary to the provisions of Section 17 and that the sale was wholly illegal. Having come to that conclusion their Lordships had to consider whether Section 33 of the Act was a bar to the suit which had been instituted by the aggrieved party for setting aside the sale, and they expressed their opinion in the following words:--"Having regard to the scheme of the Act and the express direction contained in Section 33, we 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 their Lordships continued as follows:--"In the opinion of their Lordships a sale is a sale made under the 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 authorised 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 provisions for exemption having been directly contravened and their Lordships concluded with the following pregnant observations:--"Their Lordships desire to add that in their opinion it would have been most unfortunate if they had been compelled to adopt the construction placed upon the Act by the Courts in India. Sales for arrears of revenue are of constant occurrence; anything which impairs the security of purchasers at those sales tends to lower the price of the estates put up for sale. It is therefore of the utmost importance in the interest of the revenue paying population of India that all questions that, can arise as to the, validity of a sale for arrears of revenue should be determined speedily and that when the sale has once been confirmed by the Commissioner, the purchaser should not be exposed to the danger of having his sale set aside on new grounds." That was a sale held in direct contravention of the provisions of Section 17 of the Act. The outmost that can be urged in this case is that the sale is in direct contravention of the provisions of Section 3 and 6 of the Act In my opinion, the utmost that can be said is that the sale has been held contrary to the provisions of the Act. That being so, Section 33, in my opinion, constitutes a bar to the suit inasmuch as the objection was not declared and specified in the appeal made to the Commissioner.

6. The other question upon which the learned Subordinate Judge has set aside the sale is of considerable difficulty and is in my opinion concluded by the

decision of the Full Bench of this Court in the case of Mahant Krishna Dayal Gir v. Syed Abdul Gaffar [1917] 2 P.L.J. 402. The learned Subordinate Judge was quite right, in following the decision and as that decision is binding on us in this Court, we must hold that the sale was liable to be set aside on the ground urged by the Plaintiffs before the learned Subordinate Judge though neither declared or specified in the appeal to the Commissioner, nor taken in the plaint filed in this suit. But it has been argued before us that the case of Mahant Krishna Dayal Gir v. Syed Abdul Gaffar [1917] 2 P.L.J. 402 was wrongly decided and as we were asked to invite the Full Court to consider the correctness of that decision, I think that it is my duty to express my opinion on that case, I have dealt with the whole question in an order of reference which I had prepared for the learned Chief Justice under Chap V. Rule 6 of the Rules of this Court and all that I need do is to make that order a part of this judgment. The learned Chief Justice has declined to appoint a Special Bench to reconsider the decision of the Full Bench on the ground that as this case is likely to go to the Privy Council it is unnecessary to put the parties to the costs of a second hearing before a Special Bench of this Court: speaking with the utmost deference. I think that it was for the Court as a whole and not for the learned Chief Justice to decide whether a particular Full Bench decision should be considered by this Court in a Bench specially constituted for that purpose Rule 1, Chap. V of the Rules of this Court deals with a reference to a Full Bench and gives complete power to the learned Chief Justice to decide whether any case should be referred to a Full Bench where a Division Bench does not differ from another Division Bench upon a point of law or usage having the force of law, but desires that the case should be referred to a Full Bench. Rule 6 deals with a reference to the Special Bench and runs as follows.--"Every decision of a Full Bench shall be treated as binding on all Division Benches and Judges sitting singly, upon the point of law or usage having the force of law determined by the Full Bench, unless it is subsequently reversed by a Bench specially constituted of such number of Judges as in each case shall be fixed by the Court, or unless a contrary Rule is laid down by the Judicial Committee of the Privy Council." It will be noticed that the Rule does not say how the decision of a Full Bench should come before a Bench specially constituted for the purpose. But it does give the powers to the Court, and not to the learned Chief Justice to determine the question as to the number of Judges that should constitute a Special Bench. It is my opinion only right and pro per that the Court as a whole should express an opinion whether it ought to reconsider the decision of a Full Bench. The learned Chief Justice having declined to refer the matter-to a Special Bench, I must hold that I am conclusively bound by the decision of the Full Bench in the case referred to; but I propose to give my reasons for suggesting with all respect that the decision of the majority of the Judges in that case is not correct and that the opinion of Chapman, J, who was in the minority should have prevailed. The facts necessary to remember for the determination of the point are these:--The residuary share consists of 158 bighas 5 cuttahs 10 dhurs of land in eleven different mouzas, including 2 bighas 15 cuttahs 12 dhurs in mouza Saletnpur Khadabad. The sale notification u/s 5 and 13 of Act XI of

1859 correctly stated the touzi number of the estate, the sudder jama of the whole estate and the sudder jama of the residuary share put up for sale and it described the property to be sold as follows:--"The shares hare been noted in the reverse. No share other than the ijmali share specified herein, shall be sold." "The shares noted in the reverse" give the total area included in the residuary share as 156 bighas 7 cuttahs 17 dhurs; and it is admitted that the description is correct in every particular, except as to mouzah Salempur Khadabad, the area in which mouza is erroneously stated to be 17 cuttahs 19 dhurs whereas it actually was 2 bighas 15 cuttahs VI dhurs. It will be noticed that an area of 1 bigha 17 cuttahs 13 dhurs was left out of the sale notification out of the total area of 158 bighas 5 cuttahs 10 dhurs included in the residuary share.

7. Although Mr. Purnendu Narayan Sinha on behalf of the Appellant (the auction-purchaser) at first contended that the area of Salempur Khadabad included in the residuary share was correctly stated in the sale notification, he ultimately accepted the finding of the learned Subordinate Judge on this point. It must follow, therefore, that the area in one of the villages was not properly described in the sale notification. The question at once arises whether the misdescription affected the existence of the jurisdiction of the Collector to sell the share in question, or whether it merely affected the exercise of his jurisdiction. If the conclusion follows that there is an entire absence of jurisdiction in the Collector to sell a share unless he describes it correctly and with sufficient clearness, then I must hold that the sale was entirely void and did not operate to convey the share to the Defendant No. 1. If on the other hand, I am forced to the conclusion that the error on the part of the Collector did no more than affect the exercise of his jurisdiction, and not the existence of it, then it must follow that there was an irregularity in the conduct of the sale which will not entitle the Civil Court to set aside the sale unless the terms of Section 33 of Act XI of 1859 have been complied with. I have cited that Section in connection with the other question which I have dismissed, and it will be noticed that the conditions which must be satisfied before a Civil Court will assume jurisdiction to an nut a revenue sale are these: first, the Court must be satisfied that the sale was made contrary to the provisions of Act XI of 1859; secondly, there must be proof that the Plaintiff has sustained substantial injury by reason of the irregularity complained of; thirdly, the ground of attack must have been declared and specified in an appeal to the Commissioner u/s 2 of the Bengal Land Revenue Sales Act, 1868; and fourthly, the suit must be instituted within one year from the date of the sale becoming final and conclusive as provided in Section 27. It may be assumed in this case that the sale was made contrary to the provisions of Act of XI of 1859 and it may be assumed that the suit was instituted within the time allowed by law. But there is no proof in this case that the Plaintiffs have sustained substantial injury by reason of the irregularity complained of and what is more important although the Plaintiffs presented: an appeal to the Commissioner under the provisions of Section 2 of the Act, 1868, they did not in the appeal declare and specify the grounds upon which they have succeeded in the Court below. If it is relevant to

enquire into the actual or assumed grievance on the part of the Plaintiffs, it is certainly remarkable that it did not strike them to formula''s their grievance in their appeal to the Commissioner nor to specify it to their plaint as a ground for annulling the sale. I think that it is abundantly clear that if there was an irregularity on the part of the Collector, and not an entire absence of jurisdiction in the Collector to put up the share for sale, Section 33 of Act XI of 1859 constitutes a complete bar to the maintainability of the suit.

8. I apprehend that there is no difference of opinion on this point. The difference of opinion arises with reference to the question whether the error committed by the Collector deprived him of the jurisdiction to put up the share for sale.

9. Now whatever controversy there may have existed as to the meaning of the term "jurisdiction," I think that the recent Full Bench decision of our Court in the case of Raj Kumar Mahton v. Ram Khelwan Singh 1922 Patna 55 haw put the matter beyond doubt or speculation. Jurisdiction, in relation to the proceedings of a Court means the authority of a Court to decide a particular cause or matter. Where the authority exists the proceedings are binding on the parties until set aside by some process known to the law. They cannot be set aside or disregarded in a collateral proceeding., I think that there is fundamental distinction between existence of jurisdiction and exercise of jurisdiction, and that those proceedings only can be declared null and void and therefore disregarded which have been conducted by a Court not having any authority to conduct them, but that, where the complaint is as to the mode in which the jurisdiction has been exercised the appropriate procedure provided for the removal of the grievance must be pursued if the complainant is to have any remedy for the injury done or supposed to be done to him.

10. In my opinion there was complete authority in the Collector to put up the residuary share for sale on the 24th September 1911. T hold, on the evidence, that there was an arrear of revenue within the meaning of that term as defined in Section 2 of the Act of 1859, and that the latest date fixed by the Board of Revenue for the payment of the arrear had expired before the Collector issued the notification for sale u/s 6 of the Act. I further hold, on the evidence, that all the circumstances existed which entitled the Collector to put up the residuary share for salt, on the 24th September 1917 in respect of an arrear of the so-called June kist, that is to say, an arrear, "the latest date of payment" of which was 7th June. That being so, what authority is there for suggesting that the sale was null and void and that the Plaintiffs are entitled to recover their shares from the auction-purchaser?

11. The argument is put on the terms of Section 6 of the Act of 1859 which provides that the Collector shall issue notifications "specifying the estates or shares of estates which will be sold." The argument is this: It was not the intention of the Collector, so as it was argued, to put up the residuary share as such for sale without any specification of the interests that made up the residuary share, but that it was his intention to sell the specific properties "noted

in the reverse" and that, as the area for sale in one of the villages was stated to be 17 cuttahs 19 dhurs whereas its actual area within the residuary share was 2 bighas 15 cuttahs 12 ahurs, there was first of all no sale in respect of that which was not put up for sale, namely, the difference between 2 bighas 15 cuttahas 12 dhurs (the actual area of the residuary share of mouzah Salempur Khadabad) and 17 cuttahs 19 dhurs (the area therein which was actually notified for sale), and secondly, the whole sale must be disregarded as null and void, as the Collector had no authority to split up the unit in arrear and to offer for sale something less than that unit.

12. It may be conceded that the arguments advanced on behalf of the Respondents are completely covered by the decision of the majority of the Judges in the Full Bench case of Mahant Krishna Dayal Gir v. Syed Abdul Gaffar [1917] 2 P.L.J. 402. Now the decision of the Full Bench is based on the view that "if the notification u/s 6 is not according to law, but, nevertheless a sale is held, the sale is void aid nullity for want of jurisdiction." No authorities are quoted in support of this proposition and none have been cited in the arguments before us. We have investigated he

Tiff missing 545

the residue is arrived at by excluding from the entirety the specific separate shares. Now there is a well-known maxim which says that that which is capable of being made certain is certain. How is it possible, then, to suggest that a residuary share is no-, just as definite and certain as Write-acre or Black-acre? I am quite willing to concede that unless the residue is described in detail, it is impossible for the intending purchasers to know what is being advertised for sale; and there is such manifest-injustice in such a case that, pro vided the appropriate procedure pointed out in the Act is adopted, the Court will subject to the other provisions of the Act, set aside the sale. But the sale will be set aside, not because the estate could not be sold as a residuary estate, but because there is obvious prejudice to the interest of the defaulting proprietor. It is one thing to say that a residuary share as such can under no circumstances be sold; it is another and a different thing to say that a sale of a residuary share as such without specification of what it consists of is an irregularity and will be set aside by the Court, provided the Plaintiff establishes that he has sustained substantial injury by reason of such irregularity, and provided he has followed the appropriate procedure indicated in Section 33 of the Act. I am of opinion that, at any given point of time, the residuary share is a perfectly definite and certain subject and is capable of being sold as definite and certain subject, though doubtless a sale of a residuary share as such without specification of what it consists is liable to be set aside in the circumstances mentioned in Section 33 of the Act.

13. In regard to the other description, namely, the description by the list of villages, it was confessedly inaccurate; and we know of no authority of the English Courts which allows a confessedly inaccurate description to be regarded

as a leading description. In my opinion, the subject-matter described as "ijmali" was certain and definite on the principle that that which is capable of being rendered certain and definite is in fact certain and definite, whereas the subject-matter described by the list of the villages was admittedly inaccurate and incorrect. That being so, the description of the subject matter by the term "ijmali" should have been regarded by the learned Judges as the leading description, especially as the consequence of accepting the other description was that the learned Judges were compelled to hold that the entire transaction was null and void. Cases are not wanting where the Courts have had to consider which of the two descriptions by which.-. properties have been conveyed should be regarded as the leading description; these cases are not easy to reconcile and are hardly of any assistance in construing a sale notification u/s 6 of the Act. But, if the English cases are to preferred to, it is necessary to point out that it is always the anxious endeavour of the Courts of law to uphold a transaction rather than to disregard it as null and void; and that for this reason, where the words used are capable of two constructions, such construction is adopted as tends to uphold the deed, "A. deed shall never be void where the words may be applied to any intent to make it good." I know of no cases where a description has been deliberately adopted as a leading description, and then the transaction evidenced by the deed has been wholly disregarded as null and void.

14. In my opinion, the decision of the Privy Council in the case of Ravaneshwar Prasad Singh v. Baijnath Ram Goenka [1915] 42 Cal. 897 impliedly negatives the view of Mullick and Atkinson, JJ. in the Full Bench case. That was a case where an ijmali share was put up for sale, but the sale notification distinctly stated that the ijmali share could not be specified. That case was much stronger from the point of view of the defaulting proprietor than the case before the Full Bench; and if the point was rightly decided by the Full Bench, the Privy Council should have held that the sale was a nullity and that it did not operate to convey the residuary share to the auction-purchaser. But that was not the view of the Judicial Committee. Their Lordships certainly set aside the sale, but only on the ground that the requirements of the law had not been complied with and that the Plaintiffs by reason of the irregularity had sustained injury. That was a case in which the Plaintiffs proceeded under the Act itself and adopted the procedure indicated in Section 33 of the Act; and it is worthy of note that their Lordships examined the evidence to see whether the Plaintiffs had substantial injury by reason of the act of the Collector in putting up the residuary estate for sale without any specification whatever, an act, which they deliberately described as an "irregularity."

15. In my opinion, the question was correctly decide by Chapman, J.

16. The next question is whether, assuming that the estate was sod by the description of the shares "as noted in the reverse," there is any authority for the view that the whole is nullity, because a small area included in the revenue unit was, by mistake, not specified in the sale notification? If it be held that the

subject-matter was sold, not as described by the term "ijmali" but as described by the list of villages, it must follow that that which was not specified in the list was not sold and did not pass. But with all respect, I am unable to take the view that the sale, though it purported to pass the areas mentioned in the sale notification, did not in law pass these areas. The conclusion of Mullick and Atkinson, JJ. is based on the view that the Collector has no jurisdiction to split up the unit in arrear and to offer for sale something less than that unit. In my opinion, the question affects the exercise of jurisdiction and not the existence of it. The Collector was the only person who could decide what were the different items of properties comprised in the revanue in arrear. He did decide in and in pursuance of statutory authority put up for sale that unit, expressed in terms of bighas cuttahs in different villages. It is true that in deciding that question he made a mistake; but, if he did make a mistake and if the Plaintiffs suffered substantial injury by reason of that mistake, there is procedure indicated in the Act of which they could have taken advantage for the removal of their grievance. In my opinion there is no question of want of jurisdiction involved in the act of the Collector.

17. That is my opinion on the question raised by the Full Bench decision of this Court. But that decision is binding on this Court, and, in accordance therewith, I must hold that the sale was rightly set aside by the learned Subordinate Judge. This appeal accordingly fails and must be dismissed with costs.

Macpherson, J.

18. I agree that this appeal must be dismissed with costs.

19. I am of the same opinion as my learned colleague and for the reasons set out by him that each of the two-grounds on which the learned Subordinate Judge decreed the suit is wrong in law. But his decree cannot be set aside by this Division Bench as we are bound by the decision of the majority of the Full Bench in Mahant Krishna Dayal Grir v. Syed Abdul Gaffar [1917] 2 P.L.J. 402 in respect of the second ground.

20. Personally I am of opinion that the view of Chapman, J. should have prevailed in that case, and the reasons given by him for his decision appear to me conclusive.

