(1937) 06 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Original Decree No. 26 of 1934

Jaladhi Chandra Mukherji APPELLANT

Vs

Dharendra Krishna Mukherji and Others RESPONDENT

Date of Decision : 08-06-1937

Acts Referred:

Citation : (1937) 06 CAL CK 0004

Final Decision : Dismissed

Judgement

Ghose, J.—This is an appeal by Jaladhi Chandra Mukherji who was Defendant No. 3 and also Defendant No. 5 in the suit. The relevant facts are these:-Putni Mahal Rampara called Lot Rampara is situated in three Touzis Nos 82/1, Rampara proper 163 Chikuranda and 4001 Mahmudpur of the Hughly Collectorate. This putni was held at the material time by Parbati Charan Mukherji under the Maharaja Sir Jatindra Mohan Tag ore at a retrial of Rs. 16,058-5-6 pies out of which Rs. 9,358-5-6 was payable on account of Government revenue, the net munafa being Rs. 6,700. Putni Mehal Haripore, also called lot Haripore, is situated in Touzi No. 150 and was held at the material time by Parbati Charan''s eldest son Dharendra Krishna Mukherji at a rental of Rs. 11,818-1-4 of which the net munafa was Rs. 5,000, the remainder being payable as Government revenue. These two putnis were the subject-matter of a trust created by the Maharaja in favor of certain persons including the present Defendants Nos. 1, 2 and 3. Both the putnis fell into arrears of revenue and were made the subject of Ashtum proceedings on the 14th April, 1932. The application bearing No. 485 related to lot Rampara and the application bearing No. 509 related to lot Haripore. Both the putnis were put up to sale on the 16th May, 1932. According to the case for the Appellant Rampara was said for Rs. 5,300 to Jaladhi Chandra Mukherji in his personal capacity and in that capacity he is Defendant No. 5. Lot Haripore was sold for Rs. 8,650 to the Defendant No. 4 who is Bhupendra Chandra Mukherji, another son of Parbati Chandra. On the 20th May, 1932, Defendant No. 4 applied to the Collector stating that he had not purchased lot Haripore but that he had purchased lot Rampara. His application to record him as the purchaser of lot Rampara was however refused by the Collector. Defendant No. 4 then appealed to the Commissioner. The appeal was dismissed on the 7th June, 1932. Before that order on the 23rd May, 1932, the Plaintiff as putnidar brought Title Suit No. 25 of 1932 to have the sale of lot Rampara set aside. The putnidar of lot Haripore brought Title Suit No. 39 of 1932 to have the sale of that putni set aside. The two suits were tried together and in the result the sales were set aside. In Title Suit No. 39 of 1932, in which the sale of lot Haripore was set aside, there is no appeal. The present appeal relates to the setting aside of the sale of lot Rampara in Title Suit No. 25 of 1935. A large number of issues were framed in both the suits and some of these issues were decided in favor of the Plaintiff and some against him. Out of these, the following may be said to comprise the main allegations. It is alleged by the Plaintiff that on the date previous to the Ashtum sale a contract had been entered into between the putnidar on the one hand and the zemindars on the other that the Ashtum sales would be dropped on certain payments being made, that in accordance with that con tract payments Were actually made on the day previous to the sales and the balance was tendered on the day fixed for the sales. In spite of this the sales were held. Consequently, they are liable to be set aside. It is also alleged by the Plaintiff that on account of error in the procedure, to which the zemindar Defendants as well as the Collector contributed, lot Haripore instead of lot Rampara was put up for sale in the first Ashtum case No. 485 and lot Rampara instead of lot Haripore was sold in the second Ashtum case No. 529. The sales were vitiated by error in procedure. All these allegations and certain other allegations to which reference will be made in the course of the judgment the learned Judge found in favor of the Plaintiff. It is further alleged by the Plaintiff that the requisite sale notices were not duly published. On this point the learned Judge has held against the Plaintiff. It is not possible to turn to the points which are urged in support of the appeal.

2. It is contended for the Appellant that the learned Subordinate Judge was wrong in deciding issues 8 and 9 in favor of the Plaintiff, that there was no arrangement or contract to stop the sales as alleged by the Plaintiff, and that the Defendant and the Collector were justified in refusing to accept the tender made in behalf of Plaintiff on the date of the sale. The arrangement in question is stated thus in pares. 3 and 4 of the plaint:

The Defendants received from the Plaintiff on the 1st Jaistha, 1339 B. S., the sum of Re. 5,975 and the Defendants acknowledged receipt of the said amount at the time of the Ashtum Sale.

At the time of the payment of the said amount it was agreed between both parties that out of the said amount, the sum of Rs. 551-3 annas 9 pies due to the Defendants Nos. 1, and 2 and 3 on account of the Ashtum case for Lot Haripur against Dharendra Krishna Mukherji, son of the Plaintiff, should be credited first, and the balance should be credited towards Lot Rampara; and that the Defendant, on receiving from the Plaintiff, the balance due to them for the last mentioned mahal on the next day, the 2nd Jaistha, at the Hooghly Collectorate, should cause both the Ashtum cases, namely Nos. 485 and 509 of 1932-33 to be struck off. As a matter of fact, nothing was due by the Plaintiff to the Defendants Nos. 1, 2 and 3 as rent on the 2nd Jaistha on account of the patni mahal in suit; therefore the sale thereof has been invalid.

3. The defence on the above point is contained in para.6 of the written statement of the Defendants Nos. 1, 2 and 3. It characterizes the Plaintiff''s allegation as false and fraudulent, states that there was never any such contract, and further that "the payments of rents that were made in respect of the two patni taluqs on behalf of the Plaintiff and his son Dharendra Mukherji on the 1st Jaistha were by separate chalans. Thereby the falsity of the allegation made in para 4 of the plaint will be apparent."

4. [His Lordship then discussed the evidence and proceeded as follows:-]

The result is that we must hold that the alleged agreement of the 1st Jaishta, 1339 B. S., is true, that the Plaintiffs or patnidars performed their part of the agreement, and that Defendants Nos. 1, 2 and 3 had no risdiction for acting in, breach of the agreement, and they were stopped from going on with the sales.

5. The next question which is urged in this appeal is comprised in issues 10 and 11. The learned Judge summarizes the matter thus:

The only other substantial question of fact which arises in these suits is whether sale of Lot Haripur was announced to the bidders present when Ashtum Case No. 485 was taken up for trial and also sale of Lot Rampara was announced to the bidders present when Ashtum Case No. 509 was taken up for trial. After giving my most anxious consideration to the evidence and the circumstances, I am of opinion that the question should be answered in the affirmative.

6. The Plaintiff''s case was stated in paragraph 5 of the original plaint. But there was a subsequent amendment: see paragraph 8 of the petition filed on 4th July, 1932 (p. 71 of the Paper-Book). The defence version is given in paragraph 7 of the written statement of Defendants Nos. 1-3 and paragraph 7 of the written statement of Defendant No. 5, also in paragraph 2 of the additional written statement of these Defendants. The practice at the Collect orate at the time of the Ashtum sales is deposed to by Shampada Chatterji, D. W. 8, the Revenue Peshkar, Nimai Chand Mukherji, D. W. 13 the next Revenue Peshkar, and Nalini Kanta Bose, D. W. 14, the Touzi Clerk. It appears that the notices relating to the sales are taken down and brought to the ijlas where the Collector sits:

The Ashtum cases are called one after another according to their serial numbers, the cases relating to the Burdwan Maharaja''s Touji No. 1 being placed first on the list. The Collector keeps before him the Register No. 8 relating to Ashtum petitions and refers to it from time to time as the need arises. As soon as the Superintendent calls out the number and the lot the Zemindar''s man concerned places a statement of account before the Collector,... The number of the case or the name of the lot or the number of the touzi is not shouted out immediately at the commencement of the biddings. They are called only once when the case is first taken up..... Immediately after the maximum bid is accepted the purchaser pays 15% of the purchase money to the Plodder who also sits in the ijlas at the Ashtum sales. Either before or after that payment the purchaser has to sign his name in the Register of Patni Sales (Register No. 20). Objection petition relating to any case is heard by the Collector as soon as the case is called" (D. W. 8).

7. A rubakari is prepared but not generally immediately after the filling up of Register No. 20 (D. W. 14). The Collector personally makes entries in the 6th Col. of Register No. 8 (D. W. 13) while Register No. 20 is filled up by D. W. 14. The chalans are written up by the Ashtum Clerk, in this case one Kali Das Sarkar Who has not been examined. Beyond stating the practice, these clerks appear to have little or no re-collection of the particular incident in question. On that date the 2nd Jaistha or 16th May, 485 Ashtum cases were disposed of and 23 sales were held. It is undisputed that Ashtam case No. 8/485 related to Lot Rampara and that Ashtum Case No. 8/509 related to Lot Haripore; that in the ordinary course of things case No. 485 would be put up for sale before case No. 509; and that J. Mukherjee Defendant No. 5 was the auction-purchaser @ Rs. 5,300 at the earlier sale, while Bhupendra Krishna Mukerji Defendant No. 4 was the auction-purchaser @ Rs. 8,650 at the later sale. Therefore, if the procedure were correctly observed, J. Mukherjee would be the purchaser of Lot Rampara and Bhupendra would be the purchaser of Lot Haripore. It is the Plaintiff''s case that there was a confusion at the time of the sales, that the papers got mixed up, and that actually Haripur was put up for sale first and subsequently, after some other cases had been disposed of, Rampara was put up. This is the question in controversy.

8. The Plaintiff''s version is deposed to by Defendant No. 4 (P. W. 1), his clerk (P. W. 2), one Pran Krishna Chandra (P. W. 3) who was one of the bidders, and one Kali Pada Ganguly (P. W. 10). The Plaintiff''s version may be stated as follows:-

The two petitions Exs. 1 and 2 were first disposed of by the Collector, being rejected on the objection of Defendant No. 3 who it appears was sitting by the side of the Collector. It is in connection with the filing of these applications that P. W. 1 says (p. 103 of the Paper-Book) that " the first case was called out not by its number but by the name Rampara.

9. Then the petitions were presented to the Collector. After they had been rejected, Defendant No. 4 retired to a remote part of the room, but he came back when the sales were held:

The Collector''s Peshkar called aloud the names of the mahals. He first called the name of Lot Haripur. When that name was called Rai Bahadur Satish Babu on behalf of the Zemindars offered one bid. Defendant Dhirendra Narain Mukherji also offered bids. I never offered any bid at the sale. Defendant No. 3 offered the maximum bid of Rs. 5300." On the ere of the sale the Rai Bahadur presented to the Collector statements of accounts relating to these two mahals. That was subseqnent to the refusal of Ex. 1 and Ex. 2. After the sale of Lot Haripur some other patnis were put up for sale and mahal Rampara was called out by the Peshkar for sale. At the sale for that mahal the Rai Bahadur on behalf of the Zemindars offered a bid. Dhirendra Mukherji, Pran Krishna Chander, Defendant No. 3 and my self were the other bidders at that tale. My bid which was one/of Rs. 8,650 was the maximum and accepted by the Collector-On that day I deposited Rs. 1,300 as the earnest "money (P. W. 1).

10. The defense version is deposed to by Defendant Nos. 3/5 (D. W. 18) and the clerk Kedareswar (D. W. 11). That version differs from Plaintiffs in this way. It is admitted that the wrong name Haripur was called out first as No. 485 Haripur. This mistake was due apparently to the zemindar''s account paper which was placed on the table and which showed the wrong case number in each of the two cases. This was corrected.

Then, a clerk on the floor standing beyond the railing of the Dais, referring to our statement of account, called out ''No. 485 Haripur''. My man, Kedar, at once told me that wrong name of the mahal was being given, and asked me to see what was the matter. 1 then took the statements of account from the clerk on the floor and comparing it with the records of the cases, said that everything was all right, except that the numbers of the cases had been wrongly stated in the statements. I then got the errors corrected by substitution of the correct numbers in the statements of account. The corrections were made by some clerk of the Collector but I cannot say by which clerk."(pp. 178-179 of the paper book).

11. It is admitted therefore that the proceedings started with a mistake due to the zemindar''s own papers; the question is whether the mistake was corrected before the sales were actually held. It has to be remembered that a mere mistaken impression on the part of the auction-purchaser will not be sufficient to justify the setting aside of the sales. It will have to be shown further that there was an error in the statutory procedure which led to such a wrong impression if any.

12. Now the relevant documents may be divided into two classes, one relating to the case records, and the other relating to the registers. The mistakes appear in the former class. They started with the affidavits of Mofussil service. Ex. C relating to lot Rampara was by mistake attached to the record of case No. 509. Ex. C (1) relating to Haripur was by mistake attached to case No. 485. The wrong case numbers are noted on the documents themselves. This mistake was followed up by the zemindars in their statements of demand Ex. 17. Ex. 18 relating to the two mahals respectively in which again the wrong case numbers appear. That this led to the wrong names being called out is certain. The evidence of J. Mukherji Defendant No. 3/5 is that thereupon his attention was drawn and the wrong numbers were corrected. Ex. 17 and Ex. 18 show that the numbers were penned through, but the evidence does not disclose who did this. The Collectorate clerks have no recollection. The Collector''s order Ex. 38

confirms that the affidavits were wrongly filed and that they were not read out, so no party can claim he was misled by them. This however is a fallacy, for if the affidavits had been read, as provided for by sec. 10 of the Patni Regulations the chances are that the mistake would have been discovered and corrected. I cannot accept the contention that the expression " until the receipt for the notice shall have been read " occurring in the second clause of sec. 10 means that the notice may be read privately, and that it has no more force than that some document is taken " as read " at a proceeding. There is an express provision in the aforesaid clause that the lot shall not be put up to sale until the receipt for the notice shall have been read " the observance of which forms shall be recorded in a separate rubakari to be held upon each lot to be sold." The object clearly is to ensure correctness and publicity. There was thus a breach of the statutory provision in sec. 10 of the Patni Regulation. It is evident that the receipts of notice were neither read out nor read; none paid attention to it then. Otherwise the mistake would have been corrected. That the mistake continued is again confirmed by the bid-sheets Ex. 3 in ca?e No. 485 and Ex. 4 in case No. 509. In both the cases the name of the mahal is "Rampara and others." Thus paragraph 5 of the original plaint alleges that

it appears from the two bid-sheets that Lot Rampara was sold twice,'' therefore the auction sale of the mahal in suit is void and illegal.

13. This is an indication that there was a confusion and that actually the mahah were put up to sale in the wrong order. A very strong piece of corroboration comes from the Defendant''s side by the letter Ex. 5. It is dated 19th May, 1932, and is addressed to the Plaintiffs and Defendant No. 4 by Messrs. H. N. Dutta & Co. Solicitors, Calcutta. The material portion is quoted in the judgment of the Subordinate Judge. It is clear that the solicitors acting under instructions from Defendant No. 1 were charging Bhupendra Defendant No. 4 with having purchased Lot Rampara in breach of an arrangement. The only explanation which the defense has given is that the letter was not written under the instructions of Defendant No. 3 and that Defendant No. 1 might have had a wrong impression as he was not actually present at the sale. But that wrong impression must have been conveyed to him by someone who was present at the sale in behalf of the zemindars. Defendant No. 3/5 goes so far as to say that Messrs. H. N. Dutta & Co., were never his solicitors, a statement which the learned Judge characterizes as wanting in candor. It is apparently because the cheque, which incidentally was for the rent of Lot Rampara, was drawn in favor of Defendant No. 1 alone, that the above letter was addressed on behalf of that Defen dant instead of on behalf of all the Defendants Nos. 1, 2 and 3. At any rate here again we sadly miss Defendant No. 1 from the witness box.

14. The contesting Defendants for their part have relied on the two registers, Register No. 8 [vide Ex. h and Ex. i] and Register No. 20 [vide Ex. z and Ex. b (1)] In the former, the entries in Col. 6 only were made by the Collector himself on the date of the sales We cannot say that the learned Judge is wrong in

supposing that the entries in the previous columns, were written either on 15th April, the date of the institution of the suit or within a few days thereafter. Register No. 20 contains the signatures of the respective auction-purchasers made soon after the pales. Defendant No. 4 says the other columns were blank. Defendant No. 3-5 say there were writings but he did not read them. No clerk has deposed to what actually happened. It is reasonable to suppose that other columns of this register were not filled up then and there. The learned Judge pertinently observes that there were 694 cases to be dealt with that day. The contesting Defendants have also relied on the treasury chalan Ex. 39 and the Rubokari Ex. K. These are drawn up by the Ashtum clerk who has not been called. Ex. K is dated 16th May, Ex. 39 and the other chalan Ex. p (1) were signed by K. Sarkar on 16th May and receipted by the Treasury on 18th May. We are told the 17th May was a holiday. According to Defendant No. 4, Ex. 39 was received by him on the 19th May. These documents must have been prepared from the Registers. P. W. 9 who appears to be conversant with Ashtum sale says that the chalan for earnest money is "subsequently filled up and presented by the purchaser." Defendant No. 4 says that on receipt of the chalan he found that it had mistated the name of the auction-purchased mahal as Haripur and that he there-upon took steps to apply to the Collector for correction. The defence suggestion that the Defendant No. 4 got the idea on receipt of the mis-conceived letter Ex. 5 from the solicitors seems to us to be improbable. It is admitted that on receiving that letter Defendant No. 4 at first threw it away and so the solicitors had to send him another copy of that letter by post on the 20th May. We think the learned Judge is right in saying that if Defendant No. 4 had got the idea first from Ex. 5 he would have carefully kept the letter the first time. The Collector disposed of the matter on 20th May, 1932. His order shows that he relied on his usual practice in thinking that the correct names were called out. but he mentions that both the bid-sheets contained the name Rampara which was a mistake and that wrong affidavits were filed. Both mistakes remained uncorrected and apparently the Collector confined himself to the 6th column of Register 8 which he had to fill up himself. So far as the present enquiry is concerned the point lies in this that on the 20th May, Bhupendra did apply to the Collector pointing out that he was bidding for Rampara and not for Haripur. Turning for a moment to the bid-sheets it is note worthy that the Rai Bahadur acting for the zemindars bid Rs. 500 only at the first sale in case No. 485, but went up to Rs. 2,100 at the later sale in case No. 509. As the learned Judge points out, these accounts do not differ very much from the zemindar''s claims in respect of Haripur and Rampara respectively. Defendant No. 3-5 and his officer Kedar admit that Lot Rampara is the more valuable property of the two, and yet the maximum price was much higher in case 509. Defendant No. 4 says he never intended to bid for Lot Haripur. His witness Fran Krishna Chandra who bid up to Rs. 3,600 in ca3e No. 509 says that he was biding for Rampara which was known to him, the mouza being about 5 miles from his darpatni mahal. He did not bid for Lot Haripur as he did not know that mahal and he says that if he had known that mahal he would have bid for it. We do not see why this evidence should be disbelieved. There is confirmation from P. W. 10. One Dhirendra Mukherji, who appears to be a mortgagee of Lot Haripur filed the petition Ex. V to have the sale stopped by making a deposit. He bid at both sales, but he has not been examined. We may add that though some Collect orate clerks were examined by the zemindar Defendants it was not put to any of them that the mistakes about names and numbers were corrected then and there and the right names and numbers were thereafter announced. The incident being unusual it stands to reason that these officers might remember it. But they have no re-collection. We find that at the first sale held in case No. 485, Lot Haripur was put up and at the subsequent sale held in case No. 509 Lot Rampara was put up. This was due to error which originated with the wrong affidavits of service being filed by the zemindars'' officer. The account of the balance of each advertised Lot was also wrongly filed at the time of the sale. The affidavits of service were not read. Thus there was a breach of the statutory provisions of sec. 10 of the Patni Regulations.

15. It has been contended that it is not for Plaintiff to claim that the sale should be set aside because he was merely the defaulting patnidar while the dispute was between two auction-purchasers. We notice that this argument was not advanced before. It was in fact advanced at the reply stage in this Court. However there is no substance in it. The Plaintiff is entitled to say that the sale must be set aside because it was vitiated by error in the procedure and the sale has caused serious prejudice to him. We agree with the learned Judge below in thinking that the mistakes were fatal to the sales and that so they must be set aside.

16. It has been contended in this connection by Dr. Basak for the Plaintiff Respondent, by way of strengthening his case for the Plaintiff, that the Collector acted irregularly by refusing to accept the patnidar''s tender which was made with the application Ex. 1 in the case of Lot Rampara and Ex. 2 in the case of Lot Haripur. This question was part of the issue No. 9 and it was answered by the learned Subordinate Judge against the Plaintiff''s contention. Broadly, the question raised is that the patnidar has a right under the Patni Regulation to deposit the arrears on the day fixed for the sale. Sec. 8, second clause, which deals with the first sale to be applied for on the first of Bysakh provides that the notice must state that

if the amount claimed be not paid before the first of Jyte following, the tenure will on that date be sold by public sale in liquidation.

17. The third clause deals with mid year sales and provides that the notice will be to the effect that the sale will take place on the first of Aghrayan "unless the whole of the advertised balance shall be paid before the date in question." etc. The form of the notice (Boards'' Form 19, p. 292 of the Manual 1933) is however less definite to this extent that it says that the tenure will be sold unless " before the sale " the defaulter pays the arrears together with interest " up to date of payment " and costs. This may mean that the payment may be made at a reasonable time before the Bale. The scheme of the Regulation is that the

zemindar has to make up an account of the amount due. In the notice under sec. 8 the account is made up to a certain period. But at the time of the sale the account is brought up to date "with a particular statement of the payments made up to the date of sale" (sec. 10). It is a question whether in tersest and costs incurred up to date may be added. This question was considered by us in S. A. 1635 of 1934Since reported 41 C. W. N 946 (1937) (Provat Kumar v. Sir Bejoy Chand) decided on 20th March, 1937. It is pointed out that in the present case according to the stipulation in the patni kabuliyat Ex. A, interest till the date of realization is chargeable. At any rate, according to sec. 10 there is a demand made up at the time of the sale. This is no doubt intended to ensure that the Zemindar''s right to sell subsists, but at the same time the procedure gives to the patnidar an opportunity to know and if so inclined, to satisfy the dues up to the time of sale. Under sec. 14, should the balance claimed remain unpaid upon the day fixed for the sale, the sale shall be made without reserve, etc. But there is nothing in these provisions which disentitles the patnidar from paying the demand up-to-date direct to the Zemindar even on the date of the sale. But unless the payment is made within the period of the notice, it cannot be said that the patnidar has a statutory right to stop the sale by such payment to the Zemindar.

18. Then comes the question whether payment may be made to the Collector. Express provisions to that effect are contained in secs. 13 and 14. The former refers to under-tenants with whom we are not now concerned. Sec. 14 is relevant for our purpose. When payment is not made to the Zemindar sec. 14 comes into play and there provision is made for deposit before the Collector. The law is summed up "correctly enough in the Revenue Boards Rules 83 and 84, p. 264, Board''s Manual, Edn. 1933. Sec. 14 does not refer to payments made in satisfaction of the demand, it provides for deposits being made to stay the sale. The First clause says,

nor shall it (the sale) be stayed or postponed on any account unless the amount of the demand be lodged.

19. This is the demand at the time of the sale. The second clause deals with a particular class of cases, viz. ''cases also in which a tuluqdar may contest the Zemindar''s demand of any arrear, as specified in the notice advertised."

20. There, in order to have a summary investigation, the sale may be stayed, but not unless the amount claimed be "lodged in cash or in Government securities or in currency notes." The lodging of the amount is therefore a condition precedent under both clauses of sec. 14. But even if this condition is complied with, it does not follow that the sale must be stayed. The Zemindar is made exclusively responsible for saying whether the demand is satisfied or not, and where the summary investigation is not finished in time the lot will be put up to sale nevertheless at the risk of the Zemindar. The second paragraph of the First clause and the concluding portion of the second clause expressly save the patnidar''s right to sue to have the sale reversed. Therefore, what may not

validly serve to stop the sale may yet afford a valid cause of action in a suit, and because the Collector was bound to proceed with the sale it does not follow that the Plaintiff has no remedy. It will be recalled that by the amending Bengal Act IV of 1933 remedy is now available before the Collector.

21. I may here refer to two cases which were cited at the Bar. In Sadar Dewani Decisions 1859, p. 521, it was held that lodging the money under sec. 14 could be done on the day of sale in reference to a pending summary suit contesting the demand and in that contingency only. This was considered by Dwarkanath Mitter, J., in his dissentient judgment in Kristo Mohan Saha v. Moonshee Aftabooddeen Mahomed 15 W. R. (Civil) 560 (1871) He conceded that the expression " lodging "money into Court may mean that it is a conditional payment, as for instance dependent upon the award referred to in clause. In Kristo Mohan Saha''s case 15 W. R. (Civil) 560(1871) the full amount in arrears was paid before the date fixed for the sale to the Collector''s Accountant. He did not bring it to the notice of the Collector and the sale was held in the usual course. It was held by the majority of the Judges that there is nothing in the Patni Regulations which empowers a patnidar to deposit in the Collectorate before the day of sale or which gives to such deposit, if made, the effect of payment to the zemindar. Mitter, J., held the contrary view. All the Judges however laid stress on the fact that in that case notice of the payment had not been given either to the zemindar or to the Collector. Norman, C. J., after expressing the majority view proceeded to remark (p. 571) that had the patni (dars attended at the Collectorate with their receipt and shown that the full amount of rent had been deposited, there can be no doubt that the Collector would have stayed the sale. However, in the present case the petitions, Ex. 1 and Ex. 2, were not in the nature of prayer for making deposits under sec. 14. They merely professed to make payments in complete settlement of the demands amicably. Since the zemindar was not agreeable, the Collector was right in refusing to accept and referring the parties to the Civil Court.

22. The next question is whether the learned Subordinate Judge is right in holding that the sales are liable to be set aside on the ground that the zemindars had not allowed abatement of rent on account of land being acquired by Government. This is issue No. 14. The Plaintiff made an allegation to this effect in para. 4 of the plaint. The answer in the written statement is that the Plaintiff has never before claimed any abatement. The Patni Kabuliyat Ex. A shows that out of the patni rent of Rs. 16,058-5-3 p. a total sum of Rs. 9,358-5-6 p. is payable as revenue on account of the three touzis comprised in the mahal and the balance of Rs. 6,700 is the munafa to the zemindar. According to clause 1 of the kabuliyat however the entire sum of Rs. 16,058-5-3 p. is treated as patni rent which is expressly payable to the zemindar at his house. On the question of abatement reliance is placed on el. 14 of the kabuliyat which runs as follows:-" If any land within the limits of this patni be acquired by the Government for Railway or any other purpose, I shall get half the amount of compensation that shall be awarded therefor, and the Maharaja shall get the remaining half; and I

shall not be competent to take any objection on the ground of reduction of area of land, but if the Maharaja gets any abatement of jama (revenue) by raising any objection, he shall also grant me (abatement) at the same rate." The total amount of revenue payable by the zemindar was subsequently reduced to Rs. 8,918-5-1 p. a reduction of Rs. 440-0-5 p. This will appear from the Land Revenue and Cess Ledger, vide Ex. 32-35 and from the extracts of D Register, vide Exs. 44 and 44 O. It is not however shown that this reduction was all due to acquisition of land by Government. Plaintiff did not mention the amount of abatement in the plaint. P. W. 1 in his deposition says for the first time that the amount abated was Rs. 440. On the other side Defendant No. 3-5 states in his deposition that there was a separation of account for which the revenue for his grand-father''s Touzi became less by about Rs. 400. The learned Judge points out that this evidence is not supported by documents. But on the other hand the story of P. W. 1 is also not supported by documents. Exs. 44 and 44 (1) only show that an abatement of about Rs. 90 was on account of Land Acquisition proceedings. The last acquisition was in 1917. But not only has no abatement of rent ever been claimed by the patnidar, but on the contrary the full amount of the rent as per Kabuliyat Ex. A has always been paid. Ex. C shows that he allowed an ex parte decree to be passed against him in 1931. What the learned Judge finds is that there has been some abatement of revenue and that therefore the zemindar Defendants should have claimed a smaller amount as rent than they did. In that view he has held that the patni sales are liable to be set aside. If this view be correct, the position will be that the properties will never be liable to sale under the Patni Regulations, for it will not be known what the correct rents might be. Dr. Basak has contended that the Patni Regulations throw the responsibility on the zemindar to see that the proper forms are observed and the correct account is exhibited, and he has relied on that class of cases, e.g., Bhupendra Narayan Singh v. Madar Buksh L. R. 52 I. A. 439:S. C. I. L. R. 53 Cal, 1 (1925), which refers to the formalities as to service of notice. Here we are dealing with a different set of circumstances altogether. The learned Judge has found that on account of some barati arrangement, the exact terms of which are not known, the patnidar has been paying revenue and cess direct to Government. It was for the patnidar to show what amount of revenue was abated on account of acquisition of land by Government. He has not been able to show this. Moreover by his conduct he shows that he has waived his claim. We must therefore disagree with the Subordinate Judge on this point and hold that the patni sale is not liable to be set aside on this ground. In view of our finding as to the arrangement referred to above and as to the error in the sales, we must hold that the sale of Lot Rampara has been rightly set aside. The appeal is dismissed with costs to Plaintiffs Respondents.

Patterson, J.

I agree.

