

(1889) 12 PRI CK 0001

In the Privy Council

Janki Pershad and Others

APPELLANT

Vs

Lala Gowri Sunker Lal and others

RESPONDENT

Date of Decision : 11-12-1889

Acts Referred:

Citation : (1890) 17 ILRPC 809 : (1889) 17 IndApp 57

Hon'ble Judges : Hobhouse, Macnaghten, Barnes Peacock, Richard Couch, JJ.

Judgement

Richard Couch, J. 1. The Appellants were Defendants in a suit to set aside a sale of an estate or mehal called Dumaria, for arrears of revenue due from the Plaintiffs, made by the Collector of Sarun under the provisions of Act XI. of 1859. The Lower Court dismissed the suit, but the High Court of Bengal reversed its decree, and ordered the sale to be set aside, and that the Plaintiffs should recover possession of the estate. 2. On the 13th of August, 1883, Rs. 8. 13a. 5p. of Government revenue due on the 7th of June, 1883, being unpaid, a notification was issued by the Collector of Sarun that the estate would be publicly sold on Monday the 24th of September, and was duly published. On the 24th of September the Collector made an order in these terms: "Payments of revenue in arrear will be received in the Treasury up to the time of sale. Applications for exemption on the ground of payment will be received up to 1.30 P.M., but they must be supported by Treasury receipts for payment in full of all demands. No applications will be received and no payments will be accepted, after the sale has commenced." On the 22nd of September Bindeswari Pershad Singh, one of the Respondents, presented a petition to the Collector, stating that in mehal Dumaria there was an arrear of Rs. 8. 13a. 5p., in consequence of default in payment of revenue made by the other shareholders, and that he had brought the amount of arrears, and praying that it might be received and entered in the account and the mehal released from sale. On the back of this petition, there is a written order, dated the 24th of September, that the office report be submitted, and after entries of the office reports there are the following:

Receipt not produced before sale. C.C. QUINN. The 25th September, 1883.

Accept on payment of all Government demands. R.C. P., Sarun Collectorate. The-September, 1883. 3. In the Lower Court, and in the High Court, the last entry is spoken of as made on the 22nd of September, 1885. It does not appear for what reason. Mr. Quinn was the Collector. It is not known who was the person who used the initials R.C. P., but no issue was raised in the suit as to the authority to make that entry, and that cannot now be disputed. 4. In the judgment of the Lower Court it is found that the payment was not made before 1.30 P.M. on the 25th of September, to which day the sale of Dumaria and a number of other estates in arrear had been duly adjourned by the Collector, and at the time of the sale no Treasury receipt was produced. The payment was made at the Collector's office some time before 2 P.M. on the 25th and before the commencement of the sale, but after the officers had left the office and gone to the Collector's ijlās (bench) to attend it. 5. Thus the order of the 24th of September, called the general order, under which an exemption might have been granted, was found not to have been complied with, and the Plaintiffs were obliged to rely upon what is called in the issues the special order, dated the 22nd of September. The Lower Court held that this is not an order for exemption under Section 18 of Act XI. of 1859. The High Court has held that it is. That Court says the effect of the order may be expressed as follows: "I exempt this estate from sale, provided the arrears are paid before sale." It appears to their Lordships that what is called the special order is not such an order as is intended by Section 18. It should be an absolute exemption, not an order which may have effect as an exemption or not according to what may happen or be done afterwards. The section says it shall be competent to the Collector or other officer, at any time before the sale, to exempt the estate from sale. The Collector is to record in a proceeding the reason for granting exemption. Although this, as the High Court says, may be done at any time, the reason should exist at the time the exemption is granted, and not be a fact which may happen afterwards, or an act which may or may not be performed. The words "accepted, &c," have been called by the Lower Courts an order, and considered as one, but it may be doubted whether they are more than a note by one of the Collector's officers that the Es. 8. 13a. 5p. would be received, and therefore the mehal would be released from sale. 6. There is another, and, their Lordships think, a fatal objection to the decree of the High Court. Section 25 makes it lawful for the Commissioner of Revenue to receive an appeal against any sale made under the Act, if preferred within a specified time, and gives him power to annul any sale made under the Act which shall appear to him not to have been conducted according to its provisions. Section 26 gives power to the Commissioner, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, if they see cause, may recommend the Local Government to annul the sale, and the Local Government may do so, and cause the estate to be returned to the proprietor on such conditions as may appear equitable and proper. And Section 33 enacts that no sale shall be annulled by a Court of Justice upon the ground of its having been made contrary to the provisions of the Act, unless the ground shall have been

declared and specified in an appeal made to the Commissioner. The Plaintiffs appealed to the Commissioner. In their grounds of appeal they say the Collector, on the 24th of September, passed a general order, and they complied with it. They do not mention any order of the 22nd of September. The Subordinate Judge thought paragraph 1 of the memorandum of appeal was sufficient, but it is not. It only says the sale is fit to be set aside for reasons detailed in the following paragraphs. If the case now set up had been stated in those paragraphs, the Commissioner would have inquired into it, and if he thought there was hardship or injustice might have represented the case to the Board of Revenue. The second issue, as summarized by the Subordinate Judge is, "Does Section 33 of XI. of 1859 bar the suit?" and upon his opinion of paragraph 1 he held that it did not bar the suit. In the judgment of the High Court this issue is not noticed. It is said that the two points upon which the parties went to trial were-1st. Was the amount due for arrears paid before the sale commenced? 2nd. What was the meaning and legal effect of the orders of the 22nd of September and 24th of September? This is a misapprehension. The issue upon Section 33 was tried by the Subordinate Judge. It was decided against the Defendants; but the decree being entirely in their favour it was not necessary for them to file a notice of objection under Section 501 of the Code of Procedure. They could support the decree on the ground that the second issue ought to have been decided in their favour. The High Court ought to have decided that issue, or have shown in their judgment a reason for not doing so. If it had been decided that the suit was barred by Section 33, the appeal to the High Court ought to have been dismissed. 7. Upon both the grounds which have been considered their Lordships are of opinion that the decree of the High Court ought to be reversed, and the appeal to that Court dismissed, with costs, and the decree of the Lower Court affirmed, and they will humbly advise Her Majesty to order accordingly. 8. The Respondents other than the Secretary of State for India in Council must pay the costs of this appeal.