
(1940) 04 PAT CK 0019
In the Patna High Court

Kameshwar Singh Bahadur and Others APPELLANT
Vs
Prasad Singh and Others RESPONDENT

Date of Decision : 11-04-1940

Acts Referred:

Public Demands Recovery Act — Section 46

Citation : AIR 1940 Patna 692

Hon'ble Judges : Wort, J;Dhavle, J

Bench : Full Bench

Judgement

Wort, J.—This appeal by the defendant arises out of a suit in which the plaintiff-respondents claimed a declaration that certain tenures, more particularly described in the schedule to the plaint, having been purchased by them in execution of a mortgage decree, could not be attached and sold in certificate proceedings, the proceedings in question having the effect of a money decree only. They claimed an injunction restraining the defendants from putting up the properties for sale. The certificate proceedings in question were commenced on 4th September 1934, against one Raghubans Lal, Ramnarain Lal and Jadubans Lal for arrears of mukarrari rent for the years 1338 to 1341 Fasli in respect of villages Neori Silounja, Parwaria, Sadwa, Parsauna and Ankurahwan.

2. These certificate proceedings were started whilst the proceedings in execution of the plaintiffs' mortgage decree were pending, a decree absolute in the mortgage suit having been obtained in the High Court on 15th February 1934; proceedings in the execution proceedings having commenced in the same year. The plaintiffs purchased some of the properties, the subject-matter of the certificate proceedings, on 15th January 1935. As regards the tenures the khewats showed Harbans, Raghubans and Jadubans Lal as tenants. Jadubans had died in the year 1922, Shivnarain was substituted in his place in the proceedings, and Brijkishore Lal was added as a party on 2nd January 1935. Shamnarain and Dipnarain, sons of Raghubans, Alakhnarain, son of Harbans and Bechu, son of Shamnarain, were not made parties.

3. The Judge in the Court below has held that Raghubans and his sons being joint (which is admitted), Raghubans being the karta, the sons were represented in the proceedings. Harbans having died during the proceedings, Raghubans being the karta and manager of the affairs of Harbans, Harbans' sons also were duly represented in the certificate proceedings. In these certificate proceedings Raghubans Lal, Ramnarain Lal, and Brijkishore Lal filed objections, their contention being that as there were two separate tenures in the villages the certificate proceedings were not maintainable in their present form. This objection was overruled by the certificate officer and the Collector, but before the Divisional Commissioner a compromise was entered into.

4. It was admitted by the compromise that there were two separate tenures with separate jamas. Certain payments which had been made were credited to the separate tenures: Rs. 984-5-9 was credited to the account of Brijkishora Lal Nandkeolyar with respect to the land in Schedule 1 of the certificate, and Rs. 1250 odd was credited to Raghubans Lal with respect to the tenure in Schedule 2. It was also admitted that the dues as regards the tenure in Schedule 1 had been paid and it was agreed that Brijkishore Lal Nandkeolyar be struck off the list of certificate-debtors and that the properties in Schedule 2 be put up for sale for arrears of Rs. 7699.5-11.

5. The certificate debtors in this compromise waived all objections regarding the service of notice u/s 7 and Rule 25, Public Demands Recovery Act. The parties also waived any objection on the score of the maintainability of the proceedings. The proceedings were continued as regards the 2 annas share of Neori Silounja, 6 annas share of Parsauna and 6 annas share of Ankurahwan.

The learned Judge in the Court below, dealing with the objections to the maintainability of the suit has come to the conclusion that the case came within the exception clause of Section 46, Public Demands Recovery Act, and has held it to be maintainable.

6. He has held that the persons interested in the tenure, although all of them had not been joined as parties, were duly represented; but as the plaintiffs became the purchasers of the properties in suit in execution of their mortgage decree on 15th January 1935, owing to the necessity of the amendments to which reference has been made, and by reason of the order of the certificate officer dated 27th February 1935 by which new sale notifications were ordered to be issued, the certificate proceedings must be deemed to have begun de novo on 22nd November 1935, and the relationship of landlord and tenant no longer existing on that date, the certificate proceedings could not be regarded as proceedings having the effect of a rent decree and the tenures were therefore unaffected thereby.

7. In appeal the defendant-appellant has contended that the attachment resulting from the issue of the certificate proceedings in September 1934, in spite of the amendments made under the compromise, was subsisting at the

time of the purchase by the respondents; that the certificate proceedings therefore had the effect of a rent decree, and being a first charge on the tenure, the purchase by the plaintiffs in January 1935, was a purchase subject to that charge. It was further contended that all parties necessary to the proceedings in order to give the proceedings the effect of a rent decree had been joined and the others duly represented.

8. The first point to be determined is the validity of the proceedings of 1934, and the question whether the attachment was subsisting in January 1935, the date of the purchase by the plaintiffs. An examination of the Act is necessary for the determination of this question. Section 5, Public Demands Recovery Act (4 of 1914), provides:

When any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form.

Section 6 provides that if the Certificate Officer

is satisfied that the demand is recoverable and that recovery by suit is not barred by law, he may sign a certificate in the prescribed form and shall cause the certificate to be filed in his office,

Section 7 provides for notice on the certificate debtor, and Section 8 provides that from and after the service of any certificate on the certificate debtor, the certificate debtor is prohibited from transferring or delivering any of his immovable property; and Sub-clause (b) of the section says:

The amount due from time to time in respect of the certificate shall be a charge, upon such property, to which every other charge created subsequently to the service of the said notice shall be postponed.

9. It will be seen from the proceedings in the certificate case that notices were served on the certificate-debtors on 27-11-1934, (and it was from that date therefore that the charge provided for by Section 8 of the Act, came into existence) and on the heirs of the deceased Jadubans Lal on 9th January 1935. In my judgment the amendments in I no way affected the incidence of the charge. By the order of the Certificate Officer, dated 22nd November 1935, the certificate case was struck out although the certificate holder was requested by the same order to amend the proceedings in conformity with the compromise entered into by the parties before the Commissioner. However, this order seems to have been cancelled as on the next day, having regard to the difficulties pointed out by the certificate-holder,

10. the case was restored and the sale notification was issued fixing 6th January 1936 for the sale. It is clear therefore that the charge which took effect on the service of notice on 9th January 1935 subsisted throughout from that date: see Section 8, Public Demands Recovery Act, In connexion with this matter reference might be made to the case in *Prafulla Nath Tagore v. Satyabhushan Das* AIR

1929 PC 171 a decision of their Lordships of the Judicial Committee of the Privy Council. Lord Atkin in expressing the view of their Lordships made this observation:

It seems to their Lordships clear that the provisions of the Act (i.e., the Bengal Tenancy Act) are devised for the purpose of protecting the persons interested in each separate tenure put up for sale. A sub-tenure holder may have to pay the arrears due upon the whole tenure under which he holds, but no more; and it would defeat the objects of the Act, if several tenures could be lumped together in one order for sale, so that a sub-tenure holder, to get protection, would have to pay the arrears not only on the specific tenure under which he held, but on other tenures with which he had no connexion.

11. Then referring to the decisions in India Lord Atkin proceeds to say as follows:

It appears to have been the view of the High Court, following other decisions in India to the like effect, that such a suit can never result in a decree or decrees to sell the tenures separately so as to give the purchaser power to annul the incumbrances on each separate tenure.

Then later:

It would be a misfortune to find a system of procedure so rigid as to lead to an illogical and inconvenient result; and their Lordships are not prepared to hold that this defect exists. But obviously if the original suit is brought in respect of separate tenures, the plaintiff must see that the subsequent process takes such a form that the tenures are in fact sold separately, so that each may be redeemed separately by the incumbrancers of such separate part pursuant to Section 170.

The next question is whether all the necessary parties were served with the proceedings. It has been seen that the heirs of Jadubans were served. But it is contended that Shamnarain and Dipnarain, sons of Raghubans, Bachu, Shamnarain's son, and Alakhnarain, son of Harbans Lal, were necessary parties as being interested in the tenure.

12. As the Judge in the Court below points out, Harbana, Raghubans and Jadubans were the recorded tenants; Raghubans and his sons were joint, Raghubans being the karta; also Raghubans was the karta and manager of Harbans' sons after Harbans was dead, and that Raghubans was also the guardian of the son of Jadubans. The karta effectively represented the family even although not expressly named as the karta see *Lalchand Thakur and Others Vs. Sheogobind Thakur*, . In these circumstances, the interests of the parties not actually named in the proceedings were duly represented.

13. It was contended that the principle of representation did not apply to certificate proceedings. There are decisions under the old law to the effect that the doctrine of representation has no place in certificate proceedings. But Section 158-B which is now found at the beginning of Chap. 14, Bihar Tenancy Act, places certificates for arrears of rent, as regards the passing of a tenure or

holding on an execution sale, on the same footing as decrees for the same, provided they are signed on the requisition, or in favour, of a sole landlord or the entire body of landlords; and it is settled law that for the execution of a decree for arrears of rent to have the important consequences described in Chap. 14 ordinarily all the tenants are necessary parties but that where one of a number of tenants is put forward by the rest as their representative, he can be regarded as the sole tenant for purposes of Chap. 14.

14. The most important of the consequences in question are found in Section 159 from Chap. 14, and Sub-section (3) of Section 26 of the present Public Demands Recovery Act, attaches the same consequences to certificate sales of tenures and holdings. Section 158-A(7), Bihar Tenancy Act, operates to connect Section 158-B of that Act with Section 26(3), Public Demands Recovery Act. The question of representation is therefore no longer to be regarded as foreign to certificate proceedings.

The fact of the charge subsisting at the time of the purchase by the plaintiff respondents in execution of their mortgage decree is in my judgment conclusive against the claim they make in their suit. Before dealing with that question in some detail I propose to refer to another matter--the maintainability of the suit.

15. From one point of view, it would have been sufficient for the Judge in the Court below to dismiss this suit in limine. The relief claimed in the plaint as will be seen is for an injunction restraining the defendants from putting these tenures up for sale. That is a claim which cannot succeed. The defendants, even if the plaintiffs are right in their allegations as to the effect of the certificate proceedings, are entitled to put the property up for sale.

16. Whether the right, title and interest of the certificate, debtors or something more passes in such sale is another question. However, the first relief claimed may be treated as a claim for a declaration that the certificate sale, if held, would have the effect of a sale in execution of a decree for money in contradistinction to a sale in execution of a decree for rent. Whether the plaintiff is entitled to bring this action as being a representative of the certificate-debtor (if he is, he certainly is not so entitled) will depend upon the view taken of the question of the charge and whether it subsisted at the time of the purchase by the plaintiffs. By Section 46, Public Demands Recovery Act, every question between the certificate-holder and the certificate-debtor or their representatives relating to making execution, discharge or satisfaction of a certificate duly filed under the Act or relating to the confirmation or setting aside by an order under the Act of a sale in execution of such certificate, shall be deter, mined not by suit but by order of the Certificate Officer. Suits on the ground of fraud are expressly saved. Fraud as the ground of this suit has been given up. If therefore the plaintiffs are to be considered representatives of the judgment-debtor the suit would not be maintainable. Section 21 provides for claims to the property attached by persons other than the certificate-debtor or by some person other than one holding property in trust for the judgment-debtor and Section 25 allows of a suit by a

person against whom an order is made under the preceding section.

17. Reverting to the question of the charge and whether it was subsisting at the time of the plaintiffs' purchase, it will be observed that by Section 26, Sub-section 3, there is an exception to the general rule under the Public Demands recovery Act that only the right, title and interest in the judgment-debtor passes at such sale. The exception is that in areas where Chap. 14, Ben. Ten Act, applies (and it applies in the area in which the land in dispute is situate) where the land is sold in execution of a decree for rent the tenure or holding subject to the provisions of Section 22, Ben. Ten Act, passes to the purchaser, subject to protected interests as defined in the Chapter but with power to annul the interests defined in the Chapter as encumbrances.

18. There are other provisions in the section (provisos) with which we are not immediately concerned. The effect therefore is that this sale if it should take place will have the effect of a rent sale so long as the conditions laid down in the Act are complied with. It is to be noticed that the section does not state that Chap. 14, Ben. Ten. Act, applies, but that in areas to which that Chapter applies certain results shall obtain, although Section 22 of the Act expressly applies. With the pro-visions of that section (Section 22), we have no concern in this appeal.

19. The matter therefore resolves itself into the simple question, was there a charge upon the tenure at the time of the plaintiffs' purchase. Reliance was placed upon the decision of their Lordships of the Judicial Committee of the Privy Council in *Forbes v. Bahadur Singh* AIR 1914 PC 111 for the contention that no charge came into existence until the decree. Their Lordships were dealing in that case with the construction of Section 65 of the Ben. Ten. Act, but the case is not in point. By Section 8, sub-Clause (b), Public Demands recovery Act, the charge exists as from the date of the service of notice under the preceding section. In the case before us, notice had been served some time prior to the date on which the plaintiffs purchased in execution of the mortgage decree.

20. The same considerations apply also to the contention that the proceedings were not maintainable as the relationship of landlord and tenant had ceased to exist before the sale could take place. In *Jitendra Nath Ghosh v. Monmohan Ghose* AIR 1980 PC 193 their Lordships of the Judicial Committee held that by reason of the provisions of the Ben. Ten. Act as regards notification of transfers to the landlord of permanent tenures, such transfers cannot be ignored unless it be proved by the landlord that no such notice was given; and that a landlord cannot obtain a rent decree against a person whom he chooses to record as tenants and that such a decree obtained is not binding on the unimpleaded transferees. The contention here is that so soon as the plaintiffs purchased the tenure the relationship of landlord and tenant ceased to exist between the defendants and the mortgagor, and therefore the certificate proceedings could have the effect only of a money decree. The short answer to these contentions is that the charge came into existence prior to the purchase by the plaintiffs; that

this was so as I have already held in spite of the amendments to the proceedings; and that the charge subsisting as it did the sale if held will have the effect of a rent sale subject to the provisions of Section 22, Ben. Ten. Act. In my judgment, the appeal succeeds. The decision of the Judge in the Court below must be reversed and the suit dismissed with costs throughout.

Dhavle, J.

21. I agree.