(1929) 06 CAL CK 0034

In the Calcutta High Court

Khyarennessa Choudhurani and Another APPELLANT

Vs

Satya Bhanu Ghosal and Others RESPONDENT

Date of Decision : 12-06-1929

Acts Referred:

Bengal Patni Taluks Regulation, 1819 — Section 8(3)

Citation : AIR 1930 Cal 599

Hon'ble Judges : Mitter, J;Graham, J

Bench : Full Bench

Judgement

Mitter, J.—In this case the appellants who were the plaintiffs below challenge the validity of the sale of a patni taluq held u/s 14, Reg. 8 of 1819. The sale took place on 19th November 1923 for the arrears due for the first six months of the year 1330 B.S. and the patni taluq was purchased by Kalachand Roy, 2nd party defendant, now respondent. The patni which is held under the Zemindari of Kumar Satya Bhusan Ghosal and others who are the first party defendants belong to plaintiffs and pro forma defendants 11 to 21. Plaintiffs'' share in the patni is seven annas and that of the pro forma defendants nine annas. The nine annas share holders have not joined with the plaintiffs in the suit to set aside the sale.

2. The Subordinate Judge of Tipperah who tried the Suit has refused to set aside the sale and has dismissed plaintiffs'' suit. On appeal to the learned Additional District Judge of Tipperah this decision has been affirmed. The plaintiffs have appealed to this Court.

3. There are four grounds upon which this appeal rests. We shall deal with the grounds in the order they were dealt with by the learned advocate for the appellants. The first ground taken is that at the date of the sale under the regulation there was in fact another order existing for the sale of the same property and that therefore nothing passed by the subsequent sale which is now in question. It appears that the estate of the first party defendants (the Ghosals) is under the managment of the Court of Wards. The Court of Wards under the

certificate procedure as laid down in the Public Demands Recovery Act (3 of 1913) B.C., sold the patni in question on 29th October 1923 and the Court of Wards purchased the property for the nominal sum of Re. 1. The sale was for the arrears of patni rent of 1328 and 1329 B.S. Three days before this sale the Court of Wards presented to the Collector a petition with a statement of the balances of amount of rent for the sale of the patni taluq on the 1st Agrahayan 1330 u/s 8, Clause 3, Patni Regulatiion. In pursuance of these summary proceedings the patni was sold on 19th November 1923. On 28th November 1923 the certificate sale was set aside on the deposit by plaintiff 1 of the amount required to be deposited within 30 days of the date of sale. The certificate sale was therefore never confirmed or made absolute. It is argued, however, for the appellant that the certificate sale was a good sale until it was set aside on 28th November and therefore the sale of the patni u/s 14 on 19th November passed no title to the purchaser defendant. In support of this contention reliance has been placed on the decision of this Court in Pran Gour Mazumdar v. Hemanta Kumari Debi [1886] 12 Cal. 597. We are of opinion that the principle of this decision cannot apply to the facts of the present case. The decision in the case cited rested on an application of the law as laid down in Section 316, Act 10 of 1879, before it was amended by Act 12, 1879. Under Act 10 of 1877 the title of the purchaser accrued from the date oi the sale and not from the date of the confirmation of sale as was the case when the amending Act of 1879 was passed. Under the Public Demands Recovery Act the title to immovable property rests in the purchaser after the sale has become absolute when it relates shack to the date of the sale. Section 20(2), Public Demands Act, runs as follows:

Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser''s right, title and interest shall be deemed to have vested in him from the time the property is sold am not from the time when the sale become absolute.

4. It is clear from this that it is only when the sale becomes absolute that the property vests in the purchaser. Bu though the property does not vest in the purchaser until the sale has become absolute, when it does vest in him it shall be deemed to have vested on the sale becoming absolute from the time when it was sold. The provisions of Section 61 Civil P.C., may be compared with Section 20 Clause (2), Public Demands Recovery Act and we think that both u/s 65 an u/s 20 title does not vest in the purchaser until the sale is made absolute. In this case the sale was never confirmed and therefore title did not vest in the zamindar defendant on 29th October and consequently the sale in question at a subsequent; date was a good one. In support of the view we take reference may be made to the decision of the Judicial Committee of the Privy Council in the case of Jeuna Bahu v. Parmeswar AIR 1918 P.C. 159. Dealing with a contention of the kind raised by the, first ground their Lordships, in agreement with the High Court, held that the second sale was not bad. The judgment of the High Court is to be found at Jeuna, Bahu v. Parmeshwar AIR 1918 P.C. 159. The following passage from the judgment of the High Court, to which our attention has been

drawn by Mr. Gupta who appears for the respondents, may be usefully referred to as bearing on the present controversy:

As regards the second ground reliance has bean placed on the decision of this Court in Pran Gour Mazumdar v. Hemanta Kumari Debi [1886] 12 Cal. 597. The facts of that case are somewhat similar to the facts of the present case. It appears that the respondent Hemanta Kumari had obtained two decrees for rent, in execution of one of which she sold the property in dispute in that case. Daring the pendency of the proceedings to set aside the sale and before confirmation thereof she caused the sale of the same property under her second decree. The Court held that the second sale was void an ineffectual, and therefore, should be set aside. It is contended before us that the same principle should apply to the present casa and that, as long as the proceedings for setting aside the sale at the instance of Tripe were not concluded in favour of the judgment-debtor these properties could not be sold at the instance of Thomas & Co. We are of opinion, as has been pointed out in the later case of Prem Chand Pal v. Purnima Dasi [188] 15 Cal. 546, by one of the learned Judges who had decided the above case, that the decision in that case rested on an application of the law as laid down in Section 816, Act 10, 1877, before it was amended by Act 12 1879. Beverley, J., in the later case of Premchand Pal v. Purnima Dasi [188] 15 Cal. 546, in which he, with his learned colleague practically differed from the principle laid down in Pran Gour Mazumdar v. Hemanta Kumari Debi [1886] 12 Cal. 597, said : "But as one of the Judges who decided the case of Pran Gour Mazumdar v. Hemanta Kumari Debi [1886] 12 Cal. 597, I wish to say that that case appears to have been argued and decided on the supposition that it was governed by Section 316, Act 10, 1877 before that section was amended by Act 12, 1879. The rule of law as laid down in Act 10 of 1877, as also the decision before the amending Act of 1879 was passed, was that the title of the purchaser accrued from the date of the sale and not from the date of the confirmation of the sale as laid down by the amending Act of 1879. If that was so and that was undoubtedly the law before 1879, the law which was applied in the case of Fran flour Mazumdar v. Hemanta Kumari Debi [1886] 12 Cal. 597 the purchaser at the second sale obtained no title. There was nothing to sell. But under the amending Act 12 of 1879 and Act 12 of 1882 the title of the purchaser dates from the date of the confirmation of sale. The sale in execution, therefore, did not of itself vest in the purchaser a right to the property. The right to the property continued in the judgment-debtor whose property was sold until confirmation and there is no reason why, under the present Code i.e., Section 316 of Act 14 of 1882, we should hold that there was nothing which could be sold in the execution of the decree of Thomas & Co.

5. This conclusion of the learned Judges of the High Court was affirmed by their Lordships of the Judicial Committee for their Lordships say:

The High Court dealt effectively with the contention that in these circumstances there was nothing that could be sold on 15th December 1891, and to their judgment their Lordships have nothing to add.

6. Having regard to these considerations we are of opinion that the first ground is not tenable and must fail.

7. The second ground taken is that the notice u/s 8, Clause (3), Regn. 8, 1819 is defective in essential particulars and this defect is sufficient to vitiate the sale. This ground was not taken in either of the Courts nor was it taken in the memorandum of appeal, but we have allowed the appellant to take this point. It was said that the objection arose upon the notice which the zamindar himself gave and did not raise any matter for enquiry. In the case before us six months'' arrears of rent having become due Clause 3, Section 8, is applicable. That clause is in these terms:

On the first day of Kartick in the middle of the year, the zamindar shall be at liberty to present a similar petition with a statement of any balances that may be dua on account of the rent of the current year up to the end of the month of Aswin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Agrahayan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartick, to less than one-fourth, or a four anna proportion of the total demand of the zamindar, according to the kistibundi, calculated from the commencement of the year to the last day of Kartick.

8. It is said that there has been a non-compliance with this clause in : (1) that the notice states that not only the balances due on account of rent of current year but also the cess and interest on the same which have been included in the advertised balance should be paid. The rent of Rs. 775 for the Aswin lust is shown in addition to cess as the advertised balance and there has been a non-compliance of the terms of the regulation; (2) the amount which shall reduce the intermediate demand for the month of Kartick to less than one-fourth has not been shown; (3) the date on which the advertised balance has to be paid has not been mentioned in the notice. In support of the contention that the notice is essentially defective and is fatal to the sale reliance has been placed on the decision of the Judicial Committee in Ashanulla Khan v. Hart Charan Mazumdar [1893] 20 Cal. 86. That case is obviously distinguishable, for in that case the notice did not contain the intimation that payment of three-fourths of the arrears would prevent a sale but contained a distinct statement that unless the whole of the arrears were paid the sale would take place. In short the notice followed the terms of Clause (2) of Section 8 whereas the case was under Clause 3. In these circumstances their Lordships of the Judicial Committee held that the notice was defective in essential particulars and the sale could not be sustained. In the present case the intimation as required by Section 8, Clause 3, was conveyed by the notice and it was said either the whole of the advertised balance or three-fourths of arrear should be paid. A translation of notice is given below:

Whereas on an application for sale of the mahal described in the schedule below for realization of arrear rent cess, interest, etc., relating to the aforesaid estate under Act 8, 1819 and Act 9, 1880. Monday the third Agrahayan 1330 corresponding to 19th November 1923 has been fixed as the date of sale in the kutcherry of the Collector of District Tipperah, information is given by this proclamation that if the whole arrears described in the schedule or the 12 annas of the arrears up to Kartick kist together with interest in arrears and all costs be not paid by the defaulter, the defaulting Mahal will be sold on the data fixed in the kutcherry of the Collector of the said district. Any one who is willing to purchase the same, may attend the said kutcherry on that date and purchase it and deposit the proper advance money and the balance of the purchase-money according to law, otherwise the law shall come into force. Finish. Dated the 9th Kartick 1330 B.S.

____ _________ Touzi|Lot|Number of|Name of |Name of|Sadar|Extent of|Description| Extent of No. |No.|register-|Mahal. |the pr-|Jama.|value to |of thetotal|amount due | |ed Zamin-| |oprieto| |be soldin|dues. | ___________________________ ____ No. |397|No. 10 | Mouza |Sm.Kha-|1550/-|Sixteen|Rent due up |Rs.as.ps. 208 | |Pergana |Khatra | irun- | |annas. |to aswin | | | | |nessa | | | No. | |Taluk. |Rudrara-|Bibiand| | | kist 1330. |775 0 0 1457 | | |m pur, |others.| | |After deduc-| | | |Sherpur,| | | | ting the pay| | | |Moricha | | | |ments made | 34 14 0 | | |in Dist-| | | |Claim: | 177 15 6 | | |rict Ti-| | | |Interest. | | | |ppearah.| | | |Cess, | | | | | | | | | Interest. | 2 10 9 | | | | | | | | |__________ | | | | | | | | 990 8 3 __________ 775 0 0 34 14 0 177 15 6 2 10 9 __________ 990 8 3 9. It is true that the amount of the three-fourths arrear was not stated, but Section 8 has to be read with Section 10 of the Regulation and the amount could certainly be ascertained and verified on the date of the sale. The plaintiffs who are the patnidars would certainly know what the Kartick kist would be and the amount could be easily worked out. With regard to the defect about including the cess in the advertised balance the patni pattah has not been produced and we do not know if under the engagements entered into by the patnidar the cess subsequently to be levied were to be regarded as part of the fixed rental, and we find that the form of notice in general use which has been sanctioned by the Board of Revenue includes the cess in the advertised balance. Besides the cess which is not considerable is shown separately from the rent. The plaintiffs might have deposited the balance of rent before the date of the sale and might have insisted on the sale being stayed. I do not think this is a defect in the essential part of the notice. With regard to the date when the balance was to be paid the notice states by the plainest implication that arrears were to be paid by the first Agrahayan. We think the notice was in substantial conformity with Section 8, Clause 3 and this ground of appeal must fail.

10. The third ground taken is that the learned District Judge has erred in holding that the service of the mofussil notice on the defaulter is an alternative method

of service to that in the kutcherry and this error has affected his decision on the question of service of the mofussil notice. This is not a fair criticism of the judgment of the learned District Judge for he finds that the peon first made enquiry for Mahabat, plaintiffs'' Tahsildar and in the end got the signature of his brother Roshan Ali to the sticking up of the notice at Lalmia''s house. The learned Judge says again that:

the peon swears that he was unable to find Mahabat Ali and the notice was affixed in the presence of his brother. I find that this was good service. He was therefore entitled to take three signatures in place of that of the defaulter''s agent.

11. No exception can be taken to this finding of the learned Judge for the Regulation requires that:

the notice required to be sent into the mofussil shall be served by a single peon who shall bring back the receipt of the defaulter or of his manager for the same or in the event of his inability to procure the signatures of three substantial persons residing on the neighbourhood in attestation of the notice having been brought and published on the spot. (Section 8, Clause 2).

12. Their Lordships of the Judicial Committee of the Privy Council in the case of Maharaja of Burdwnn v. Tara Sundari Devi [1882] 9 Cal. 619 at p. 21 (of 10 I.A.) said:

It seems to their Lordships that the object of the regulation was that due service of publication should not be left matter of controversy. The evidence should be secured immediately afterwards, and exist in writing, and be referred to by the proper officer as part of the foundation of the sale. Accordingly if, immediately upon posting the notice, the peon posting it can find the defaulter or his manager, he is bound to ask for a receipt from the defaulter or his manager, signed under his hand, and if he gets such a receipt there is an end to all questions as to the service. If he does not find the defaulter or his manager, or if that person will not sign a receipt then he is to call in three substantial people of the village to attest the fact, which will be apparent to their eyes, that the notices in question have been published.

13. It is an alternative mode of service in the sense that endeavour must first be made to serve the notice on the defaulter or his manager. It does not mean that one or other alternative methods have to be adopted, it does not mean that the peon is not to make any enquiry about the defaulter or his manager and that it is sufficient compliance with the regulation if without making such enquiry he is to take the signature of three substantial persons. We do not think the learned District Judge meant this, for he rightly approaches the question of the attempt to serve on Mahabhat Ali and failure in that direction first and then deals with the attestation by three substantial persons. This ground of appeal seems to be without substance and must fail. Both the Courts below have concurrently found that although the peon in his report does not state that he could not find

Mahabat Ali he states definitely in his evidence that he searched for him and could not find him. We think the mofussil notice was properly published.

14. The fourth and last ground taken is that the notice was hung up in a jhika tree in the garden of a private individual and this is not a conspicuous place in the village. This is a question of fact and depends on whether the garden is situated in a place to which the public has access. This ground is wholly without substance.

15. The result is that all the grounds urged in appeal fail and the appeal must be dismissed with costs. The costs are to be divided equally between the Court of Wards who was represented by Mr. Surendra Nath Guha, Senior Government Pleader, and the auction purchaser who was represented by learned advocates Mr. Brajalal Chakravarti and Mr. Atul Chandra Gupta.

Graham, J.

16. I agree.

