

(1931) 11 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 105 of 1930

Krishna Chandra Bhowmich

APPELLANT

Vs

Pabna Dhana Bhandar Co. Ltd. (in Liquidation) and others

RESPONDENT

Date of Decision : 30-11-1931

Acts Referred:

Citation : (1932) AIR(PC) 61

Hon'ble Judges : George Lowndes, Lancelot Sanderson, Salvesen, Lords Thankerton, JJ.

Advocate : H.R. Majid, B. Dube, for the Appearing Parties.

Judgement

Lord Thankerton

This is an appeal against a judgment and decree, dated 23rd May 1928 of the High Court of Judicature at Fort William in Bengal, which affirmed a judgment and decree, dated 22nd July 1928, of the Subordinate Judge of Pabna, whereby a sale for arrears of revenue was set aside.

There is an estate which forms Touzi No. 10 of the Pabna Collectorate. Respondents 2 to 11, who were the original co-proprietors of a share of this estate, opened a separate account for payment of their share of revenue, known as account No. 10/6, in terms of S. 10, Bengal Revenue Sales Act, 11 of 1859, Thereafter they mortgaged their interest in the separate account along with other property to the respondent company No. 1, who, on 19th November 1923, purchased the property along with others under a mortgage decree of sale obtained by them in 1918. Respondents 2 to 11 then instituted suits to set aside the mortgage sales, and these suits were finally disposed of by compromise on 16th June 1921; under the compromise the sale in respect of No. 10/6 was set aside but respondent 1 retained their mortgage lien thereon.

On 26th June 1924, share No. 10/6 was sold by the Collector of Pabna for arrears of revenue under the Act of 1859, and was bought by the present appellant. After an unsuccessful appeal to the Commissioner of Revenue for the

Division under S. 25 of the Act, respondent 1 brought the present suit on 10th July 1925, in the Court of the Subordinate Judge at Pabna for annulment of the sale, or alternatively for a declaration that the purchase of the appellant is subject to the mortgage lien of respondent 1 and for possession on the basis of that lien. It is not disputed that the conditions precedent to the jurisdiction of the civil Court prescribed by S. 33 of the Act have been complied with in the present suit.

Twelve issues were settled at the trial, but, for the purpose of disposal of this appeal, only two need be referred to, viz.: "

2. Was any arrear due justifying the sale by the Collector ?" " 10. Is the sale liable to be set aside on the ground alleged in the plaint ?" The remaining issues related to various alleged irregularities in the proceedings leading up to the sale and the alternative relief asked for, and these have been dealt with in the Courts below, but their Lordships find it unnecessary to deal with them, as, in their opinion, issue 2 was rightly answered in the negative by both Courts below, though their Lordships have come to that conclusion on somewhat different grounds, following a recent decision of this Board, which is referred to later. The opinions of the Courts below proceeded on a construction of the Act which must now be held to be erroneous, in view of the more recent decision of this Board just referred to.

It will be convenient to refer in the first place to the relevant sections of the Act of 1859. The sale of the separate account No. 10/6 was instituted by the Collector under the authority of S. 13, which provides as follows:

"Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear in due, shall to give in the advertisement of sale prescribed in S. 6 of this Act. The share or shares sold together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto."

It is therefore clear that in order to justify the sale of No. 10/6: (a) the estate must have become liable to sale for arrears of revenue, and (b) an arrear of revenue must be due from No. 10/6 according to the separate account. What is an arrear of revenue is to be found in S. 2, which provides as follows:

"If the whole or a portion of a kist or instalment of any month of the era, according to which the settlement and kistbundi of any mahal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue."

The latest date for payment of arrears and the liability to sale are dealt with in S.3 as follows:

"Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which by the Regulation and Acts in force are direct to be realised in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates, in arrear in those districts except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give, notice of the dates so fixed in the official Gazette, and shall direct corresponding publication to be made as far as regards each district in the language of that district, in the office of the Collector or other officer

The section goes on to provide for notice by the Board of the dates so fixed in the official Gazette and otherwise. It is decided by the judgment of this Board in *Mt. Saraswati Bahuria v. Suraj Narayan Chaudhuri*, AIR 1931 PC 57=130 IC 676=10 Pat 496 (PC) that, before liability to sale attaches, there must be: (1) the whole or a portion of a kist or instalment unpaid, (2) the conversion of such unpaid amount into an arrear on the first of the following month, and (3) the passing of the latest date of payment of such arrear, as fixed under S. 3 and the official notice of the Board of Revenue.

As regards the present case it is agreed that, by notice in the Calcutta Gazette of 10th August 1910, the dates of payment of instalments of revenue and the latest dates for payment of arrears were fixed as 28th June, 28th September 12th January, and 28th March.

The admitted facts in the present case are, first, that the Collectorate account for the third kist of 12th January 1924, showed a credit balance of seven annas four pies on the general account of Touzi No. 10, and a debit balance of Rs. 35-2, in the separate account of No. 10/6, to satisfaction of which the Collector appropriated sufficient of the money deposited with him in terms of S.15 of the Act; secondly, that in the accounts for the fourth kist of 28th March, the general account of Touzi No. 10 showed an unpaid balance of six annas five pies, but the separate account of share No. 10/6 showed that the sum of Rs. 20/13, being the current demand of revenue in respect of the fourth kist, had been paid on 27th March 1924, and there was thus no unpaid balance the separate account in respect of that kist.

Reverting to the provisions of S. 13, the only arrear of revenue of the estate which is said to justify the sale is the unpaid balance at six annas five pies of the fourth kist of 28th March 1924. But this unpaid balance could not be considered an arrear until the first of the following month, i.e., 1st April 1924, and the latest day of payment was accordingly 28th June 1924- two days after the sale took place-and the estate could not become liable to sale for arrears of revenue" until after 28th June 1924. It is therefore clear that the sale of share No. 10/6, was invalid on this ground alone, and it is unnecessary to consider whether No. 10/6

was a share "from which, according to the separate accounts an arrear of revenue may be due" within the meaning of S. 13; but it may be pointed out that the deficiency of Rs.352, shown in the separate account of the January kist could not be considered an arrear until 1st February 1924, and there could be no default in payment until 12th March 1924-and that only on the doubtful assumption that, in a question with the Collector, it remained unpaid after the latter had appropriated part of the deposited money in satisfaction of it. But their Lordships find it unnecessary to consider this question.

Accordingly; their Lordships are of opinion that the sale should be annulled, and they will humbly advise His Majesty that the decree of the High Court of 23rd May 1928, should be affirmed and the appeal dismissed with costs