
(1902) 03 CAL CK 0011
In the Calcutta High Court

Lachmi Narain Singh

APPELLANT

Vs

Nand Kishore Lal Das

RESPONDENT

Date of Decision : 19-03-1902

Acts Referred:

Public Demands Recovery Act, 1880 — Section 7(1)
Transfer of Property Act, 1882 — Section 99

Citation : (1902) ILR (Cal) 537

Hon'ble Judges : Mitra, J; Brett, J

Bench : Division Bench

Judgement

Brett and Mitra, JJ.—On the 5th September 1889, the Government advanced to defendant No. 1 (Raghunandan Sahi) a certain sum of money as tuccavi under the Agriculturists' Loans Act (XII of 1884), and the defendant executed a bond in favour of the Government, hypothecating his nagdi malikana right to eight annas of taluk Banapur, bearing towji No. 1109, of the Mozufferpore Collectorate. On failure of the defendant to repay the money in time, the Collector of Mozufferpore filed on the 20th April 1854 a certificate for the sum of Rs. 1,733-14-6 u/s 7, Sub-section (1) of the Public Demands Recovery Act (Bengal Act VII of 1880). The property covered by the bond was sold under the said certificate on the 29th January 1897, and was purchased by defendant No. 3, Nandkishore Lal, for Rs. 395. The sale was confirmed on the 8th April 1897. There is nothing in the record now to show what amount was actually due to Government on the date of sale, and, if the amount exceeded Rs. 395, when and how the excess was Recovered or whether any portion of the debt is still subsisting. The bond itself is not a part of the record.

2. Before the commencement of the certificate proceedings" defendant No. 1 had mortgaged to the plaintiff by a bond dated the 7th August 1893, for Rs. 2,500, the property already mortgaged by him by the bond of the 5th September 1889 as also three other properties. Out of the sum thus advanced by the plaintiff, Rs. 1,145-8 was deposited in the Collectorate in part satisfaction of the first mortgage. The present action is based on the bond of the 7th August 1893,

defendant No. 3 being made a party in the suit on the allegation that he has purchased the said property subject to lien in favour of the plaintiff.

3. The contention of defendant No. 3 is that the property having been hypothecated by the bond on which the certificate proceedings were based, he is not only the purchaser of the equity of redemption of defendant No. 1, but is also the assignee of the mortgage right of the Government, notwithstanding that the sale took place under the Public Demands Recovery Act.

4. The Subordinate Judge held that the certificate under Act VII (B.C.) of 1880 had the force of a decree for money, and the sale thereunder conveyed only the right, title, and interest of the judgment-debtor, defendant No. 1, and accordingly he directed that there should be a decree for sale in favour of the plaintiff. On appeal by defendant No. 3, the District Judge has modified that decree. We have not been able to follow exactly the drift of the modification, and the learned Vakeel, who has appeared in support of it, has not attempted to explain it.

5. The plaintiff has now appealed. It has been contended for him that a sale under a certificate filed under the Public Demands Recovery Act could have no other effect than to convey to the purchaser the right, title, and interest of the judgment-debtor as it existed at the date of attachment, i.e., the date of the service of the certificate u/s 10 of the Act. It has also been contended that, having regard to the provisions of Section 99 of the Transfer of Property Act (IV of 1882), the Government as a mortgagee could not sell the hypothecated property except under a decree passed under that Act, and that therefore the sale to defendant No. 3 was void, and that at all events the sale could not operate as an assignment of the lien which the Government could have enforced, but did not enforce. For the respondent it has been argued that Section 99 of the Transfer of Property Act cannot affect the statutory right of the Government under the Public Demands Recovery Act; and that, although a sale under a certificate filed under the latter Act ordinarily operates as a conveyance of the right, title, and interest of the judgment-debtor, the proceedings leading to the sale in the present case having been for money recoverable u/s 5 of Act XII of 1884 as arrears of land revenue, and the property having been expressly hypothecated lie, as the purchaser at the auction-sale, is entitled to the position of a prior mortgagee with respect to the sum of Rs. 395, which went towards the satisfaction of the mortgage-debt. It has also been suggested that Act VII (B.C.) of 1880 did in express terms reserve to Government the powers conferred by Acts XI of 1859 and VII (B.C.) of 1868, and Section 2 of the Act provided that these Acts should be construed as one, and that the sale therefore had the effect of a sale for arrears of land revenue.

6. We think these contentions of the learned Vakeel for the respondent are not sound, and that the plaintiff is entitled to a decree for sale, on the basis of defendant No. 3 being merely a purchaser of the equity of redemption of the mortgagor at the date of the service of the certificate under the Public Demands Recovery Act. The purchase by defendant No. 3 did not vest him with the right

which the Government had as mortgagee--a right which was either abandoned or extinguished by the sale.

7. Section 5. of Act XII of 1884 (Agriculturists' Loans Act) provides that every loan made under its provisions with all interests (if any) chargeable thereon, and the costs (if any) incurred in recovering the same shall be recoverable as if they were arrears of land revenue. Such loans were known in the Regulations and the older Act as tuccavi. Act XI of 1859 (Section 5), and Act VII (B.C.) of 1868 (Section 1) made reference to tuccavi as revenue within the meaning of these Acts and recoverable as such, and it would seem that the Government could have recourse to those Acts for recovery of tuccavi advances. But these Acts, as they now stand after the repeal of some of their sections, provide no machinery for the sale of any Immovable property, except estates and tenures. The Public Demands Recovery Act (Bengal Act VII of 1880), which has now been repealed by Act I (B.C) of 1895, laid down an easy and simple procedure to be followed by a collector of land revenue for the recovery of tuccavi advances. There is nothing, however, in these Acts which debars the Government from instituting a suit u/s 67 of the Transfer of Property Act (IV of 1882) on a mortgage executed in its favour, such as we have in the present case. The Government could have brought the property hypothecated to sale under that Act in a suit properly framed, making the puisne mortgagee (the plaintiff in the present case) a party, and given to the purchaser the benefit of its own mortgage, or the property free of all incumbrances. But the procedure laid down in that Act appears to be regarded as cumbrous and dilatory by the fiscal authorities. The recourse to the Public Demands Recovery Act must lead to the consequences laid down in it. Every certificate made under the provisions of Section 7 (Sub-section 1) of Act VII (B.C.) of 1880 has, as regards the remedies for enforcing the same, the force and effect of a decree of a Civil Court wherein the Secretary of State for India in Council is deemed to be the decree-holder and the person named as debtor is the judgment-debtor. By Section 8, Clause (b) of the Act, the certificate as soon as it becomes absolute has "to all intents and purposes the same force and effect as a final decree of a Civil Court." Section 10 of the Act and Form No. 4, referred to therein, speak of the execution of the certificate in the same manner as if it were a decree of a Civil Court and attachment of the Immovable property of the judgment-debtor under the provisions of Section 274 of the Code of Civil Procedure. u/s 19 the certificate is enforceable by the ways and means laid down in the CPC for the enforcement and execution of a decree for money. It seems to us that the attachment and sale under the Public Demands Recovery Act of Immovable property hypothecated to Government are of the same nature and effect as attachment and sale referred to in Section 99 of the Transfer of Property Act. But it is not necessary for us to decide in this case whether the sale held on the 29th January 1897 at the instance of the Secretary of State for India in Council is void, as contended for by Babu Umakali Mookerjee for the appellant. The judgment-debtor (defendant No. 1) never contested the legality of the sale. All that we decide is that nothing but the judgment-debtor's right, title, and

interest in the property at the date of the service of the notice u/s 10 of the Public Demands Recovery Act could and did pass to the purchaser (defendant No. 3). In the view we take we follow Mahomed Abdul Hai v. Gujraj Sahai I. L. R. (1893) Cal. 826. and Baijnath Sahai v. Ramgut Singh I. L. R. (1896) Cal. 775.

8. The learned Vakeel for the respondent has not referred to any authority directly supporting the proposition that a sale under the Public Demands Recovery Act on a certificate based on a mortgage in favour of the Government has the effect of an assignment of the mortgage interest to the purchaser. The cases cited by him--Emam Momtazooddeen Mahomed v. Raj Coomar Dass (1875) 14 B. L. R. 408. and Narsidas Jitram v. Joglekar I. L. R. (1879) Bom. 57.--were decided in 1875 and 1879, respectively. Under the Transfer of Property Act, a mortgagee is debarred from selling the property mortgaged except by means of a suit under that Act, and we think that the rule laid down in those cases is no longer law. It seems to us that the Legislature practically adopted the view taken by the High Court of Allahabad in Khub Chand v. Kalian Das I. L. R. (1876) All. 240., in which the law as laid down in the Calcutta and Bombay High Courts was dissented from. The Legislature went further and prohibited sales of mortgaged properties under decrees for money at the instance of mortgagees.

9. The decree made by the lower Appellate Court should, therefore, be set aside and that of the Subordinate Judge restored with costs.