

(1946) 07 CAL CK 0002
In the Calcutta High Court

Mafzalar Rahman Choudhury and Others	APPELLANT
Vs	
Sreejukta Karimannessa Begum and Others	RESPONDENT

Date of Decision : 31-07-1946

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Public Demands Recovery Act — Section 7

Citation : AIR 1947 Cal 241

Hon'ble Judges : Sharpe, J

Bench : Division Bench

Judgement

Sharpe, J.—This appeal is by the plaintiffs and arises out of a suit brought by them for a declaration that the certificate sale in respect of the taluk described in the schedule to the plaint was fraudulent, irregular and without jurisdiction, and for restraining defendant 1, who is a ward of Court represented by the General Manager, Court of Wards, Chittagong, from interfering with their right in the disputed land and from settling the land with any other persons. The ease for the plaintiffs was that defendants 2, 3, 5, 9, 12 and 13, in collusion with the officers of the Court of Wards, got certificate cases 719 of 1931-32 and 1732 of 1933-81 instituted and the taluk put up to certificate sale by suppression of the notices prescribed by Section 7, Public Demands Recovery Act, and the sale proclamation. Certain of the plaintiffs and other necessary parties were not, it was alleged, made parties in the certificate easements or served with any notices in connexion with the sale, and it was claimed that the amalgamation of the dues on account of the two certificate easements which related to different rents, lands, and certificate debtors, was entirely illegal and improper, and the sale held in consequence thereof was without jurisdiction. As a result of all these irregularities and illegalities, the taluk was purchased for one pice by the certificate holder, the Court of Wards, causing serious injury and loss to the plaintiffs who with defendants 2 11 were owners of the taluk held under defendant 1.

2. The suit was contested by defendant 1 alone. He denied the allegation of the

plaintiffs, and contended that there were originally two taluks which had been amalgamated into one taluk with the consent of all the recorded tenants in the last R. Section operations, and that the rents of the two taluks, which had been previously Rs. 42-7 6 and Rs. 12-13-0 respectively, were amalgamated into one rent of Rs. 55-4-6. All necessary persons were made parties, no fraud was practised, there was no suppression of notices or sale proclamations, and there was no collusion between the officers of the Wards Estate and any of the defendants. It was also claimed that the suit was not maintainable because no notice had been served on defendant 1 as required by the provisions of Section 80, Civil P.C.

3. The learned Munsif who tried the suit held that plaintiff 1 was a party in both the certificate cases, that the other plaintiffs 2-7 were not recorded in the R.S. Khatians and were not therefore necessary parties in these cases, and that the certificate cases and the sale were not bad for any defect of parties. He found further that there was no fraud or illegality in the cases or in the sale and consequently dismissed the suit, holding however that the suit was maintainable without service of a notice on defendant 1 u/s 80, Civil P.C. On appeal, the learned Subordinate Judge held also that the certificate sale was neither fraudulent nor without jurisdiction and was not liable to be set aside. He held further that the suit was not maintainable because of non-service of the notice prescribed by Section 80. Consequently he dismissed the appeal.

4. For the appellants in this Court, Mr. Chakravarty has urged three points, (1) that the sale was without jurisdiction, (2) that on the findings of the lower Courts, the title of plain-tin"s 27, should have been declared, and (3) that the finding of the lower appellate Court in regard to the necessity for service of a notice u/s 80, Civil P.C., is erroneous.

5. With regard to the first point, no arguments were advanced against the findings of the Courts below that no fraud had been proved or that there was no suppression of necessary notices or of the sale proclamations. Mr. Chakravarty"s contentions were that the holding of one sale in respect of the dues of the two certificates on account of the arrears for the different Jamas and in which it had been found that the certificate debtors were not the same, was wholly illegal and without jurisdiction. In order to appreciate these contention"s, it will be necessary to state the facts more fully.

6. A certificate was applied for on 9-9-1931 for the arrears of rent for 1336-37 B.S. of the taluk Hari Ali of which the annual jama was Rs. 42-7-6 and the case was No. 719 of 1931-1932. The order sheet of that case, Ex. C(1), shows that all the usual steps preparatory to sale of the taluk were taken and that after various unsuccessful attempts it was put up to sale on 20-4-1936. On that date there were no bidders and the sale was adjourned to 4-5-1936 on which date it was purchased by the certificate holder for one pice. An appeal was preferred to the Collector alleging various irregularities in connection with i he sale but the appeal was dismissed on 30-6-1936 and the sale was confirmed on 15-7-1936.

7. According to the evidence for defendant 1, which has been accepted by both the lower-Courts, there were two jamas for the same taluk Hari Ali, and about 1931 at the time of the Rule 8 operations the two were amalgamated into one with a total rent of Rs. 55.4-6 with the consent of the parties. A certificate was filed on 14-11-1933 in respect of the arrears of rent for the year 1338-39 B.S. of the amalgamated jama. The case was numbered 1732 of 1933-34. In that case too the necessary steps preparatory to sale-were taken, vide order sheet, Ex. C. The sale was fixed for 8-7-1935 but on that date there were no bidders and, on the prayer of the certificate holder for a fresh sale along with the dues of case No. 719 of 1931-32, the sale was adjourned to 5-8-1935. Thereafter the orders in regard to the sale are to be found in the order sheet Ex. C(1). On 5-8-1935 there were no bidders and on the prayer of the certificate holder the dues of certificate case No. 1732 of 1933 34 were added to those of certificate case No. 719 of 1931-32, and fresh sale proclamation was issued for sale of the amalgamated taluk for the total amount of the two certificates. A further unsuccessful, attempt to sell was held on 20-1-1936, and then after issue of another fresh sale proclamation,, the amalgamated taluk was as already stated sold on 4-5-1936 to the certificate holder for one pice.

8. It is contended by Mr. Chakravarty that the selling of the taluk in one sale on account of the dues of two certificates is entirely unwarranted, especially as, he claims, the certificate-debtors in the two certificates were different according to the findings of the Courts below.

9. The taluks originally belonged to one Bazlar Eahman, and on his death, his widow Atimanessa who was the original plaintiff 1, and his sons and daughter, who have been made?-defendants, became the recorded tenants. Plaintiffs 2-7 also claim an interest, but it has been found by both the Courts below that they were not recorded as tenants and that the interest, if any, which they possessed will not be affected by the sale in dispute. It has been found also, and it is not disputed, that some of the other defendants, daughters of Bazlar Rahman were not made parties in either of the certificate cases, but since they have raised no objection to the sale and have claimed no relief their omission is not material for the decision of the present-matter. It is however claimed by Mr. Chakravarty that according to the findings of the lower Courts, plaintiff 1 was made a party in the first certificate case, but not her son, who is defendant 3, and that plaintiff 1 was not a party in the second certificate though her son, defendant 3, was a party. In support of his arguments, Mr. Chakravarty has referred to the provisions of the Public Demands Recovery Act generally and in particular to the provisions of Sections 3(1), 5, 6, 7, 8, 9, 11, 14, 17, 18, 20, 22, 23 and 26. He has pointed out that in all these sections the reference is specifically to "a certificate" and that no one can be a "certificate debtor" in respect of any dues unless his name is mentioned "as a debtor in a certificate filed under this Act" (Section 3(1)). He has emphasised especially that where the debtors of the two certificates are not identical, there will be substantial and practical difficulties in utilising the provisions of Sections 22 and 23 of the Act,

and that the result would be that a person who is a debtor in respect of one certificate only would be compelled, when applying for the setting aside of a sale held in execution of the certificates, to deposit the entire amount on account of which the property had been sold, though he may not be liable at all for the payment of a portion thereof. Other difficulties will, he maintains, arise in the disposal of the proceeds of execution under the provisions of Section 26(1).

10. Since the main objections are based on the contention that the parties in the two certificate case³ are not identical, it has to be determined first how far that objection is justified, and whether it is really material. The Courts below have not given any serious attention to the case of defendant 3, since he has claimed no relief, and has made no objection. The trial Court has found that the name of Atimonnessa, plaintiff 1, is not in the requisition, Ex. 1, for the case No. 719, but he has pointed out that that requisition is not a complete document, and, as a matter of fact, it appears that there is a note therein that there are other debtors. He has pointed out also that in the notice issued under Rule 46 in case No. 719 of 1931-32, the name of Atimonnessa appears, and that the copy of the Sale Register, Ex. F, which relates to both the certificate cases shows that both Atimonnessa and her son Manirajamma were debtors. On a consideration of the entire evidence, he has come to a clear finding that Atimonnessa was a party in both the certificate cases. The findings of the appellate Court on this question appears however to be rather confused. He has observed in one portion of his judgment that the deceased plaintiff 1, Atimonnessa was not a party in the second certificate case but this apparently is a mistake, since her name appears in the application, Ex. 1(a), which relates to certificate case No. 1732 of 1933-34; and later he has noted that the son and widow of Bazlar Rahman were made parties in the second certificate case. With regard to the first certificate case he remarks only that defendants 3 and 14-17 were not made parties, and later he notes that the widow of Bazlar Rahman was mentioned in the sale proclamation, Ex. 2(a), issued in the first certificate case. He does not find anywhere that Atimonnessa was not a party in the first certificate case; on the other hand, his observations taken in conjunction with the conclusions reached indicate sufficiently his agreement with the finding of the trial Court that plaintiff 1 was a party in both cases. He has of course found that defendant 3, son of Bazlar Rahman, was not a party in the first case, but evidently this was not a question which was directly investigated in the Courts below, and it was not one which was required to be decided. Mr. Chatterji who appeared for the respondent has pointed out that defendant 3 was the appellant to the Collector in the application for setting aside the sale, and he has not therefore made any objection or claimed any relief in this suit, so the question whether he was or was not a party does not fall to be decided and is not material. This is a view with which I agree, and having regard to the view taken above that the findings of both Courts are the plaintiff was a certificate debtor in each of the certificate cases, the main difficulties which might be caused by the realisation of the amounts due under two certificates by one execution sale and the main objection to such a

procedure will disappear.

11. It must be admitted that the procedure adopted in this case is unusual, but having regard to the provisions of Section 37, Public Demands Recovery Act, which specifically include questions relating to execution, discharge or satisfaction of a certificate duly filed under this Act it is clear that this Court will not and cannot interfere unless the sale was without jurisdiction. It is not disputed that the certificates in question were "duly filed under this Act," and consequently mere irregularities, not affecting the merits, would not confer any authority on Civil Courts to set aside the sale. It has been found by the Court below that the proceedings were not tainted with any fraud, and those findings are not challenged. As stated above the further objections are that the sections of the Public Demands Recovery Act refer to "a certificate" and do not appear *prima facie* to contemplate joint execution of more than one certificate. It is however a legal principle of interpretation that words in the singular shall include the plural, and Mr. Chatterji has drawn attention to certain sections of the Act, e.g., 31(2), 32(2) and 87 where, quite obviously, the use of the singular is intended also to include the plural. Although unusual therefore, I do not think it can be said that there is anything inherently irregular or objectionable in the holding of one sale of one property for the satisfaction of the dues of two certificates. The matter might be different if it were established that the certificate debtors were not identical and if one of the persons who was not a debtor in both applied for the setting aside of the sale. That is not however the position in the present case, in which it has been held that plaintiff 1 was a debtor in both and the other plaintiffs were not parties in either and so their interest will not be affected.

12. On the merits, moreover, there is little to be said in support of the plaintiffs' contentions. As Mr. Chatterji has pointed out, there would have been no legal bar to the inclusion in one certificate of a claim for the arrears of 1336-1339, the period covered by the two certificates, or to the putting up to sale of the taluk for such arrears. All that happened was that separate certificates were filed on account of separate portions of this period, and up to the stage of the final issue of the sale proclamation, the certificates proceeded separately, and the property was put up to sale separately for satisfaction of the separate dues but without success. At this stage, the dues of the two certificates were added together and one sale proclamation was issued for the sale of the taluk for the total amount. It has been suggested that if separate sales had been held for the lesser amounts, possibly some bidders would have been forthcoming. The order sheets show that in fact this would not have been the case, and there is no reason to suppose that if the taluk had been sold separately on account of the dues of one certificate, leaving the other arrears to be realised, the certificate debtor would have been at all benefited. As a matter of fact, the sale of the taluk in satisfaction of the entire arrears would seem on the whole to have been beneficial to her. If there had been any surplus left after putting up the taluk to sale in respect of the dues under one certificate, then u/s 37(e) of the Act, the balance, if any, would have

been utilised towards satisfaction of the subsequent arrears, and thereafter the surplus, if any, would have been available for the certificate debtors in accordance with the provisions of Clause (d) of Section 37. If, on the other hand, as seems probable from the facts of this case, the amount realised had not been sufficient to cover the amount due on the second certificate, there would have been more likelihood of an attempt to realise the dues on account of the second certificate by some other means.

13. Having regard to all these facts therefore, there is not in my opinion, any justification for holding that in this case there was any want of jurisdiction in the holding of the sale; at the most it might be said that there was an irregularity which did not affect the merits or in any way prejudice the plaintiffs, and this would not warrant interference by the civil Court, or justify the setting aside of the sale.

14. The second point urged by Mr. Chakravarty does not call for any lengthy discussion. There was no specific prayer for a declaration of the title of the plaintiffs 2-7. No doubt both Courts have held that if they had any title, their interest would not be affected by the sale since they were not parties to either of the certificate cases, but the question of their title was not investigated and there was no issue in regard to it. On the materials available it would not be possible to decide whether they had in fact any title, and there was no reason therefore why a declaration of their title should be made.

15. In view of the previous decisions, it follows that this appeal must be dismissed and there is therefore no need to decide the third point, whether any notice was required to be served under the provisions of Section 80, Civil P.C. on defendant 1, the General Manager of the Court of Wards. Different conclusions have been reached on the question by the lower Courts and it is better that it should remain open. The result is therefore that the appeal is dismissed with costs on respondent 1.