(1889) 11 PRI CK 0012

In the Privy Council

Mahabir Pershad APPELLANT

Vs

Moheswar Nath Sahai and another RESPONDENT

Date of Decision : 20-11-1889

Acts Referred:

Citation : (1890) 17 ILRPC 584

Hon'ble Judges : Hobhouse, B. Peacock, R. Couch, JJ.

Judgement

Hobhouse, J. 1. The sole question in this appeal is whether the purchaser, whom the defendant represents, acquired the entirety of the 5 annas 4 pie which were put up to sale in execution, or only such share as the judgment-debtor, Moheswar Nath, would take on a partition. Other questions have been raised in the Courts below which are not relevant to this appeal. It has been considered whether the sale was necessary for the benefit of the family estate.; but the question is whether the plaintiff, who is the son of the judgment-debtor, can set up his right as a co-sharer to impeach a sale decreed against his father for the purpose of defraying the debts of his father and grandfather. He can only do so on condition that he shows the debts to have been contracted for immoral purposes, and that issue has been found against him in this suit. Again, the first Court then examined the circumstances at considerable length to show that the purchaser bought the property subject to encumbrances, and that his purchase-money ought not to have been applied, as the Court in fact applied it, to the payment of those encumbrances. But if the plaintiff could have raised any such case as that, he must have done so in a suit differently framed in point of parties, of allegations, of prayer, of issue, and of proofs. Except for the issue raised as to immorality, this suit is solely for the purpose of treating the defendant as nothing more than a co-sharer in the estate, and the decree which the plaintiff'' has obtained does so treat him 2. There have been of late years a great number of suits of this kind, and some difficulties have been felt as to the proper mode of treating them. It is to be hoped that recent decisions by this Committee have lessened these difficulties. At all events, their Lordships feel none in this case, treating it on the principles laid down in the cases of Nauomi

Babuasin v. Modhun Mohun L.R. 13 I.A. 1 : I.L.R. 13 Cal. 21 and Bhagbut Persad Singh v. Girja Koer L.R. 15 I.A. 99 : I.L.R. 15 Cal. 717; and addressing themselves to the question of fact whether the thing meant to be sold and bought was the entirety of the estate or only a share in it. 3. It would he more convenient if the record contained the whole of the'' proceedings in the execution and sale, because they must always be important evidence, often the best, as to the nature of the thing sold. In this case the application for attachment and sale, and the orders made thereon, and the notification of sale, are not to he found, and their Lordships are left to infer their tenor from an adverse petition presented on behalf of the plaintiff, and from the sale certificate. The difficulty is increased by the circumstance that there were three, or probably four, decrees then standing against Moheswar; whereas the sale proceeded on one of them, founded on a mortgage to one Chowaram of only a fraction of the estate. From the pleadings and judgments, their Lordships conclude that in some way not explained the various creditors combined to have the estate sold for the common benefit. At all events, no difficulty on this score has been felt in the. Courts below. 4. Chowaram''s decree, dated 7th March 1874, is for the realisation of a sum of money out of the property mortgaged to him by Moheswar, viz., "my rights and interest in 6 pie out of 5 annas i pie of the entire 16 annas" of the estate in question. 5. The day fixed for the sale was the 5th January 1875. On the 4th January 1875 the plaintiff filed a plaint against Chowaram and Moheswar, in which after alleging fraud and immorality, he claimed that "the ancestral property of the plaintiff, which he has inherited from his grandfather, ought not to be sold in satisfaction of such illegal and personal debts;" and he prayed for a declaration protecting his estate. On the next day the plaintiff''s pleader presented a petition in the execution proceeding, stating that the 5 annas 4 pie share of mouzah Udoypore, &c, "which is the ancestral property of my client, is to be sold to-day in this Court." The petition then states the suit commenced the day before, and prays postponement of the sale till the suit should be disposed of. That petition was rejected, not on the ground that the thing to be sold was only the share of Moheswar, which could not prejudice the plaintiff, but on this ground, that "the plaintiff is at liberty, in case of the sale taking place, to make the purchaser a defendant in his suit, so that he (the purchaser) may defend the right purchased by him." 6. It is hardly possible to make it clearer that all parties, judgment-creditors, judgment-debtor, the plaintiff and his advisers, and the Court itself, considered that the thing put up to sale was the entirety of the estate. 7. The sale certificate was issued on the 6th February 1875 to the vakil of Chowaram, the decree-holder. After stating that all the "right, interest and connection which the judgment-debtor had in the property" had been purchased from the decree-holder," and "that in future the certificate shall be considered as a good evidence of transfer of the right and interest of the judgment-debtor," it describes the property thus-"Five annas four pie of mouzah Udoypore alias Maharajgunge; pergunnah Cherand, which belonged to the judgment-debtor, Rai Moheswar Nath, is sold (for) Rs. 10,000." included within the limits of a permanently-settled estate. The terms of the 1st section point to this and nothing more, and the details of the legislation support the same conclusion. It is only to lands "gained" from the sea or river by alluvion or dereliction that the legislation is applicable. Their Lordships have shown from an examination of the previous legislation the construction which must be putupon these words, that they must be limited to lands gained since the period of the settlement. It is only in relation to these lands, therefore, that the previous enactments are to cease to have effect. The 3rd section empowers the Government of Bengal, in any district in which a survey has been completed and approved by the Government, to direct decennially a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the last previous survey, and to cause new maps to be made according to such new survey. Section 6 provides that whenever, on inspection of any such new map, it shall appear to the local revenue authorities that land has been added to any estate paying revenue directly to Government, they shall without delay duly assess the same according to the rules in force for assessing alluvial increments." 8. Their Lordships cannot think that it was intended by such a provision as this to deal with the case of lands in permanent settlement which had become derelict of the sea or a river. They cannot be said to have been "added" to the estate to which they already belonged. Considering the solemn assurance given by the Government to the owners of permanently-settled estates that they should not be liable to further assessment in respect thereof, their Lordships find it impossible to hold that it was ever intended by this enactment to subject them to an added assessment in respect of land for which they were already assessed because they had had the misfortune to be practically deprived of it for a time by an incursion of the sea or river. And no violence is done to the language of the enactment by rejecting a construction which leads to such a conclusion. On the contrary, it would be straining the language unnaturally to include such a case as that with which their Lordships are dealing. If, indeed, such legislation as is contained in the preceding Section 5 had been in force from the outset, so that as soon as land had been washed away from a permanently-settled estate there had been a proportionate reduction of the revenue payable to the Government, it would not have been unreasonable to regard the land when again free from water as land "added" to the estate, and to assess it accordingly. And it may be that when the new map shows that land has been washed away from a settled estate since the previous survey, a proportionate abatement ought to be made under the Act of 1847. Upon this it is unnecessary to pronounce an opinion. It is clear that the Act provides no machinery for making such abatement where the land was covered with water at the time of the original survey. It is only "when on inspection of the new map" it appears that land has been washed away that there is any legislative authority for making an abatement. 9. Their Lordships arrive then at the conclusion that the first question propounded by the Divisional Bench of the High Court ought to be answered, as all the Judges have answered it, in the negative. 10. But then it is said that the local revenue authorities having assessed the land, and the Board of Revenue having made an order confirming their action, such order is, by the very terms of Section 6, made final, and that there is an express provision in Section 9 that no action in any Court of Justice shall lie against the Government or any of its officers on account of anything done in good faith in the exercise of the powers conferred by this Act. Their Lordships cannot conceive that it was intended by these enactments to deprive the owner of a permanently-settled estate of the protection assured to him by the Regulation of 1819. When once the conclusion has been reached that the provisions of the Act of 1847 are inapplicable to the case of re-formed land being part of a settled estate in respect of which the full assessment has continued to be paid, it appears to follow that neither the local revenue authorities nor the Board of Revenue can effectually render such land liable to assessment. It has been shown that under the previous legislation the owner of such lands was expressly given an appeal to the Civil Court as a protection against any attempt of the revenue authorities to subject him to additional assessment. The provisions contained in Clause 31 of the Regulation of 1819 are in no way repealed or affected by the Act of 1847. The action of the revenue authorities was, therefore, in their Lordships'' opinion, wholly illegal and invalid. Their Lordships cannot hold that the Board of Revenue can, by purporting to exercise a jurisdiction which they did not possess, make their order upon such a matter final, and exempt themselves From the control of the Civil Court. It is argued that where the acts done were within the powers conferred by the Act of 1847 the protection afforded by section 9 would he unnecessary, and that it must be applicable to acts done in assumed exercise of the powers conferred but really in excess of them. But full effect can be given to this section without holding that it deprives the owner of a permanently-settled estate of that right of appeal which is given to him in order that he may have determined in a Civil Court "the justness of the demand" of the revenue authorities. 11. The case, as it appears to their Lordships, may be shortly put thus. The Board of Revenue have, in violation of the right solemnly secured to the owner of a permanently-setted estate, claimed to subject his land to an additional assessment, a claim which has been declared by legislation to be wholly illegal and invalid. Thereupon the owner exercises the right conferred upon him by the Regulation of 1819, and appeals by suit to the Court of Judicature to reverse the decision of the revenue authorities. In bar of this suit the answer set up is that a subsequent law empowers the revenue authorities to assess by new machinery, lands of a description within which thy land in question does not fall, and makes the orders of the Board of Revenue thereupon final. Their Lordships are at a loss to see how this can he any answer. If it had been intended to take a way from the proprietors of estates the power, by application to the Courts, to obtain immediate redress in any case in which "the revenue authorities shall violate or encroach on the rights secured to them by the permanent settlement," it would have been done in express terms and not by such enactments as are contained in the Act of 1847. It seems to their Lordships that it would be an erroneous interpretation of that statute to hold that it rendered the Board of Revenue supreme, and enabled them to make valid and effectual a proceeding on their part which the law had declared to be wholly illegal and invalid. 12. Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal