

(1886) 06 CAL CK 0005
In the Calcutta High Court

Mahabir Pershad Singh and Another

APPELLANT

Vs

Ram Narain Koer and Others and The Secretary of State for
India in Council and Others

RESPONDENT

Date of Decision : 09-06-1886

Acts Referred:

Public Demands Recovery Act, 1880 — Section 10

Citation : (1886) ILR (Cal) 208

Hon'ble Judges : Wilson, J;Porter, J

Bench : Division Bench

Judgement

Wilson and Porter, JJ.—The present suit is brought by the plaintiffs, who are the owners of a share of the property known as Mehal Roypatti, to set aside a sale for arrears of Government revenue which took place on the 6th of January 1883. A number of points have been raised which must be considered separately.

2. The point which it will be convenient to consider first is this: It is said that there was no authority to sell at all, because there was no arrear in the Government revenue. Of course, if that were so, the sale would be absolutely and totally void. The way it is sought to make out this point is this: There were two mehals, one numbered 3142, and the other 3143. The present plaintiffs were shareholders in each of those mehals. In mehal 3142, there were a number of other shareholders, one of whom had obtained from the Collector the opening of a separate account of revenue in respect of his own share. In mehal 3143 there were also a number of shareholders, and no less than fifteen separate accounts of revenue had been opened in respect of the shares of the different shareholders. On the day fixed for the payment of arrears of Government revenue, before sunset, the 20th September 1882, at the beginning of the day, the Government revenue in respect of mehal 3142 was in arrear. A sum of money, but a sum short of the requisite amount, was paid by the present plaintiffs on that day, undoubtedly, in respect of this mehal. There was also an arrear on that same day in respect of the present plaintiffs' separate account of

revenue for mehal 3143; and that arrear at the beginning of that day amounted to Rs. 240. On that day they paid in Rs. 220 in one sum in respect of mehal 3143. On the same day they paid in another sum of Rs. 20. In all the documents relating to the transaction that sum of Rs. 20 appears as paid in respect of mehal 3143; but it also appears that the other shareholders had paid in more than their proper proportion of revenue. So without reckoning the Rs. 20 which were paid in on that day by the plaintiffs, although there would have been a deficiency on the present plaintiffs' separate account, there would not have been a deficiency, but a credit balance, in respect of the whole mehal. The plaintiffs say that they did not really pay those Rs. 20 in respect of mehal 3143, but that they paid that sum in respect of mehal 3142. That point the lower Court has found against them.

3. The Collectorate documents are clear on this point; and again it is quite clear that that sum of Rs. 20 was the precise sum, which, at the moment it was paid in, was necessary to clear off the arrear on the plaintiffs' separate account in respect of mehal 3143. These two circumstances afford very strong proof that it was in respect of mehal 3143, and not in respect of mehal 3142, that the plaintiffs paid the Ea. 20. We think, therefore, that the lower Court was quite right in rejecting the plaintiffs' evidence, that the Rs. 20 were really paid in respect of mehal 3142. It follows from that, that there was an arrear at sunset of that day in respect of mehal 3142. The first point therefore fails.

4. The next point relates to a contention based on Section 5 of the Revenue gale Act (XI of 1859). Section 5 says that no estate and no share or interest in an estate shall be sold for the recovery of arrears otherwise than after a notification shall have been affixed in certain places for a period not less than fifteen clear days preceding the date fixed for payment, in certain cases: first, where the arrears are other than those of the current year, or of the year immediately preceding; second, where the arrears are due in respect of an estate other than the estate to be sold; third, where the arrears are those of an estate under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

5. It is said that in this case the sale proceedings were void, because the property, on the day fixed for payment and fifteen days before, was under attachment by order of a judicial authority.

6. It is not necessary for us to consider what the legal consequence would be if the case had fallen within Section 5, all the proceedings prescribed not having been taken. We think that the case does not fall within that section. It is said that the property was under attachment by order of a judicial authority because a certificate proceeding for the recovery of arrears of road cess had been taken, and a certificate had been made, and a notice as prescribed by Section 10, Bengal Act VII of 1880 had been issued, and, as contended for by the plaintiffs, served.

7. We think that this contention fails for two reasons first, the notice which is referred to does not amount to an attachment by order of a judicial authority. Bengal Act VII of 1880, which, by its terms, is incorporated with the two earlier Acts upon the like subject, provides for certificates in various cases. In Section 5 for a certificate of the balance left due after a revenue sale; in Section 7 for a certificate of debts due and payable to the Collector in a variety of cases; and in Section 9 for a certificate in cases of Government debts payable to persons other than the Collector, or in cases of debts due to managers on behalf of the Court of Wards, In each of these cases the certificate is given the effect of a decree for the purpose of execution. We then come_ to Section 10. That section says that when a certificate in any of the cases I have referred to "shall have been filed, the Collector shall issue to the judgment-debtor a copy of such certificate and a notice in Form 4 in the second schedule annexed to this Act"; and "from and after the service of such notice, such certificate shall bind all Immovable property of such judgment-debtor situate within the jurisdiction of such Collector in the same manner and with like effect as if such Immovable property had been attached under the provisions of Section 274 of the Civil Procedure Code". In other words, when once a certificate is filed, then notice is to issue. The notice is a notice informing the person concerned that a certificate has been filed; that if he denies his liability he must show cause why the certificate should not be executed; that if he does not show cause it will be executed; and it prohibits him from alienating his property. When that notice is served, the certificate is to bind Immovable property to the same extent as if it were an attachment issued u/s 274 of the Code of Civil Procedure.

8. The certificate procedure in its very nature is clearly not a judicial procedure. There is no examining of the parties. There is no giving to any of them an opportunity to be heard. It is clearly an executive act, and that is what it is intended to be. The certificate and notice are clearly not judicial but executive acts. Prima facie, therefore, the attachment, which is the result of those acts, is not a judicial but an executive proceeding. Then when we look at Section 23 we find that the Collector, in the discharge of his functions under Bengal Act VII of 1880, is to be "deemed to be a person acting judicially within the meaning of Act XVIII of 1850", that is, for the purpose of protecting him from personal liability his action is to be regarded as judicial. For these reasons we think that the attachment is not a judicial attachment.

9. In the next place, if it were a judicial attachment, it would be necessary for the present plaintiffs, who rely upon it, to show that at the time in question there was an actual valid attachment of this nature in force. This is not the case of a person who has in ignorance acquired a title upon which he might rely. It is the case of a defaulting party setting up his own default of payment of road cess and the proceedings taken against his property in consequence. It is clear, therefore, that he is bound to show that everything was done regularly. What Section 10 directs is that a notice should be served, the contents of which I have described. The mode of serving the notice is prescribed by Section 5 of Bengal Act VII of

1868: "Every notice in and by this Act, or by the said Act XI of 1859, directed to be served, shall be served by delivering to the person to whom it may be directed, a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, to some adult male member of his family, or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last known place of abode of such person." There was no attempt whatever to serve the notice issued u/s 10 in any of the ways contemplated by Section 5, It was treated as if it were an attachment by which the Collector was to take possession of the property. There was no personal service, and no attempt to serve sale notice at the dwelling-place. There was simply a proclamation by the peadah of the terms of the notice, and a sticking up of the notice in a conspicuous place. Inasmuch, therefore, as the notice was not properly served there was no attachment.

10. The next objection is of a more serious character. It is said that the provisions of Section 6 of Act XI of 1859 have not been complied with, and further that on the authority of the recent Full Bench case of Lala Mobaruk Lal v. The Secretary of State ILR Cal. 200 any defect in the notice u/s 6 is fatal to the whole of the sale proceedings.

11. It is not necessary for us to consider whether that Full Bench case does or does not go the full length of this contention, because it appears to us that there was no defect in the sale proclamation in this case. Two alleged defects are relied upon: First, it is said that the sale proclamation was faulty, because it mentioned as the registered owner a person long since dead and nobody else; and, secondly, that it did not sufficiently describe the share of the property to be sold. What it did do was this: It described the serial number. It stated correctly the towzi number. It stated correctly the name of the mehal, and the pergunnah in which the mehal was situated. Then in the column, "name of proprietor mentioned in the sherista", it gave the name of Ghinu Singh. It may be taken that Ghinu Singh had been the registered proprietor, and that he had long since been dead. This was the ground of the objection founded on the name of the person in the sale proclamation, and it was sought to strengthen the objection by showing that, although the names of the present plaintiffs had not been entered in the register, yet an order had been passed for entering them in the register under the Land Registration Act of 1876. But the words of the section are plain. What is required is that the notice shall specify the estate or the shares in the estate to be sold. It is nowhere said that it is necessary to specify the owners of the estate, or the owners of the shares in the estate. And it has been held by this Court that that is the true view of the effect of the section. The point came before this Court in the case of the Secretary of State v. Rashbehari Mukerjee ILR Cal. 591, and it was there held that the omission of the names of some of the recorded proprietors was not a fatal objection u/s 6, the reason being that what the law required was the specification of the estate to be sold, not the specification of the owners of the estate. That case applies to this. Then, with regard to the second objection u/s 6, that is, that the estate or share in the

estate sold was not sufficiently specified, it is necessary to look at the facts. The mehal in question bears the towzi number, as I have said, 3142. Its name is Mehal Eoypatti. Its sudder jumma is Rs. 2,028 odd. One of the shareholders in the estate had before the period in question obtained from the Collector the opening of a separate account of revenue in his name, and the separate jumma assessed upon him in that separate account was Rs. 788 odd, leaving a balance of Rs. 1,240 odd, as the jumma of the non-ijmali portion. What the sale notification did was this. It stated correctly the towzi number and the name of the mehal. It cannot, therefore, be said that it did not specify the estate, because "estate" ordinarily means "mehal." The term "estate" does apply to a portion of a mehal with regard to which a separate account is opened, but it does not apply to an undivided portion of a mehal as to which separate accounts are not kept.

12. Then it is said that the share in the estate is not specified. What is specified is this: The whole of the sudder jumma is specified. The jumma of the portion in respect of which a separate account was opened is specified, and the jumma of the ijmali portion is specified. *Prima facie*, therefore", the sale notification does specify the share in the estate, because, where a separate account is opened u/s 10 of Act XI of 1859, it is only the jumma that has been separated. Therefore the estate is specified, and as to the thing which has been divided the division is specified. But it is said that in this particular case the matter is different, that the division of the jumma does not show the shares in the estate, the shareholders not holding similar shares in all the mouzahs making up the estate. But does that affect the shares of the estate, that is, the shares of the mehal? We think it does not. "Estate" has been defined in Bengal Act VII of 1868. The words of Section 6 point throughout to estates and shares of estates, not to particular properties which make up estates. Then we must remember that the Collector, when he acts under Sections 10 and 11, may or may not know the shares in the mouzahs making up an estate. What is to be stated to him is the shares of the estate, and if the parties do not dispute the shares in that estate as they did not in this case, he assesses the revenue accordingly and opens separate accounts. But in such a case, the Collector has no reason for inquiring what the shares of the parties may be in the mouzahs, if the shares in the mouzahs be different from the shares in the estate. The authorities are to the same effect. In the case of *Amirunnessa Khatoon v. The Secretary of State* ILR Cal. 63 heard before Garth, C.J., and Macpherson, J., it was held that it was unnecessary to specify in the notification of sale the names of the mouzahs included in the property sought to be sold. If in selling an estate it is unnecessary to specify the mouzahs of which that estate is made up, why should it be necessary, when selling a share in an estate, to specify the shares or mouzahs of which that share is made up?

13. The objection based on Section 6 therefore fails.

14. The next objection taken is u/s 5. It is said that the property being under attachment in the way that I have already described was not liable to be sold at

all, because, first, it was under the management of the Court of Wards. On the evidence it appears to us perfectly clear, as it did to the Court below, that it was not under the management of the Court of Wards.

15. It is then said that it was not liable to be sold because it was held under attachment by the Revenue authorities by order of a judicial authority. But it is very clear that; what that section points to is not an attachment in the sense in which the term is used in the Code of Civil Procedure, but an attachment such as is provided for in the Criminal Procedure Code, which takes the property out of the possession of the ordinary owner and places it into the possession of the Collector. The distinction is pointed out by the Privy Council in the case of *Bunwari Lall Sahu v. Mohabir Persad Singh* 12 B.L.R. 297.

16. For these reasons we are unable to agree with the lower Court in the view which it took with regard to the effect in this case of Section 5 and of Section 6. We agree with the lower Court in all those points in which it decided against the contention of the plaintiffs.

17. The result is that in our judgment all the objections to the sale fail, that is to say, all the objections which a Court of law can give any effect to.

18. If, as suggested by the respondents' vakeel before us, this is a case of special hardship to the plaintiffs either from their being infants, or, for any other reason, the Court of law have not the power to interfere. If there be any power for such a contention, it is a matter for the consideration of the local Government.

19. The decision of the lower Court must be set aside, and the suit dismissed with costs in both Courts.

20. This judgment will govern the other two cases, namely, the appeals from Original Decrees Nos. 359 and 360 of 1885.