
(1896) 12 AHC CK 0023
In the Allahabad High Court

Mahadei

APPELLANT

Vs

Shiam Lal and Others

RESPONDENT

Date of Decision : 01-12-1896

Acts Referred:

Citation : (1897) ILR (All) 127

Hon'ble Judges : John Edge, J;Burkitt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Edge, Kt., C.J. and Burkitt, J.—This appeal has arisen in a suit which was brought to recover certain movable property, alleged to belong to the plaintiff, which had been sold for an arrear of revenue due by some of the defendants, or for the value of the property, and to have the sale set aside. The first Court dismissed the suit on the ground that the jurisdiction of the Civil Court was barred by Section 241 of Act No. XIX of 1873. The Lower Appellate Court, taking a different view of the law, set aside the decision of the first Court and made an order of remand u/s 562 of the Code of Civil Procedure. From that order one of the defendants, the Secretary of State for India in Council, has appealed.

2. It seems a hardship that a person whose cattle, or other movable property, have been sold for an arrear of land revenue due by another person, and in respect of land with which the owner of the movable property is not concerned, should be debarred of his right of suit in a Civil Court and should be left to such proceedings by appeal or otherwise as may be open to him in the Courts of Revenue. However, we cannot decide this case on questions of hardship. We have to decide it according to the construction of the Statute. This clearly was a claim not only connected with, but arising out of, a process enforced on account of an arrear of revenue. The sale which it is claimed to set aside was a sale for arrears of revenue, and the claim was one within Section 181 of Act No. XIX of 1873. The claim in this case consequently falls within either Clause (i) or Clause (i) of Section 241 of Act No. XIX of 1873. There is nothing in either of those clauses to

suggest that the exclusion of jurisdiction is limited to claims made by the person who is actually in default in payment of his land revenue. It appears to have been the intention of the Legislature to reserve to the jurisdiction of Courts of Revenue all such claims. We find on referring to Act No. XII of 1881, in the somewhat analogous case of an illegal distress for rent, that the suit of the person injured, although the distrainer may have acted fraudulently and without title, is by the operation of Sections 87 and 93 of that Act reserved exclusively for the jurisdiction of Courts of Revenue.

3. For these reasons we are of opinion that the decree of the first Court was right. We set aside the order of the Lower Appellate Court remanding the suit, and we restore the decree of the first Court. The suit will stand dismissed with costs in all Courts.