
(1937) 06 CAL CK 0019
In the Calcutta High Court

Makbul Ali Chowdhury and Others

APPELLANT

Vs

Amrita Lal Ghose and Others

RESPONDENT

Date of Decision : 03-06-1937

Acts Referred:

Bengal Land Revenue Sales Act, 1859 — Section 33

Citation : AIR 1937 Cal 703

Hon'ble Judges : S.K. Ghose, J;Patterson, J

Bench : Full Bench

Judgement

S.K. Ghose, J.—This appeal arises out of a suit for a declaration that a revenue sale was premature, void and irregular in law, and for confirmation of the plaintiffs' possession and in the alternative for a kobala from defendants 1 and 2 in respect of the plaintiffs' share. The case made in the plaint is that the Taraf named Taraf Golami appertained to Taraf 1877 Kismat Mohang Safi and Rs. 26-3-9 is the revenue payable; out of this Rs. 6-11-8 is payable on 28th September and Rupees 19-10-10 is payable on 28th March. It appears from the "financial ledger" of the year 1932-1933 that towards the close of the said financial year a sum of annas 5 and pies 2 was paid in advance on account of revenue. The Government however caused the mehal to be sold in auction on 7th January 1933 on the ground that a sum of Rs. 6-3-9 which was in arrears on or before 31st August was the arrears of revenue which has not been paid on 28th September 1932, the last date of payment. It is alleged that defendant 2 purchased the mehal in auction in the benami of defendant 1. The plaintiffs' case is that the mehal was not in arrears on or before 31st August 1932. According to the plaintiffs' case the amount of kist payable on 28th September becomes an arrear of revenue on 1st October and 28th March is the next date of the payment of such arrears. Consequently the auction sale of 7th January 1933 was premature and illegal. Plaintiff 3 and some other co-sharer plaintiffs preferred an appeal before the Commissioner but were unsuccessful. The plaintiffs accordingly bring the suit with the prayer as stated above. The suit is contested by defendant 1 who traversed the grounds alleged in the plaint and states that the kists for the

payment of the revenue of the mehal are four in number and not two as alleged by the plaintiffs. The aforesaid auction sale was held for arrears of revenue amounting to Rs. 6-3-9 on a deduction from the sum of Rs. 6-8-11 payable in the March or Chaitra Kist. Therefore the arrear was in the month of Baisakh and the last date for the payment of the same was 28th September. The payment not having been made, the auction sale was held properly on 7th January 1933 on this point, as also on other points. The learned Judge has held in favour of the defence and dismissed the suit. Hence this appeal by the plaintiffs.

2. The only ground upon which the appeal is sought to be supported is that there was no arrear for which the revenue sale could be held. This was not taken in the grounds of appeal before the Commissioner. In order to avoid the operation of Section 33, Revenue Sales Act, it is contended for the appellants that the sale in this case must be held to be a nullity, because there was no arrears at all. Therefore the question upon which the decision of this appeal must turn is whether there was any arrear at all as alleged by the plaintiffs. As mentioned already, according to the plaintiffs there were two "kists", namely 28th September and 28th March. According to the defence these were not the kists for the payment of revenue according to the engagement, but these were only the latest dates of payment the revenue itself being payable in four instalments. Now it is to be remembered that in these cases it is necessary to find out three factors: first, the date of payment of instalment in accordance with the lease, secondly the date on which an instalment remaining unpaid would be an arrear of revenue in accordance with Section 2, Land Revenue Sales Act, and thirdly the latest date of payment as fixed by the Board of Revenue in accordance with Section 3 of the Act: *Amrita Lal Roy v. Secy. of State* (1918) 35 C L J 221 and *Bhama Kant Lal v. Kashi Nath Singh* AIR 1926 Pat 549 a Patna case which followed the Calcutta case. It has also been pointed out that the word "kist" in the touji ledger is misleading because by a rule inserted in the Touji Manual the word "kist" is used in that Manual to indicate the latest date of payment under Act 11 of 1859 and not the kist of the settlement doul, while at the same time the latest dates of payments were entered in the instalment columns of both the Touji Ledger and "Roll" Board Manual, 1933 p. *Jadunandan Singh Vs. Srimati Savitri Devi and Others*, and *Nanak Prasad Sahu v. Mt. Kaseda Kumri* AIR 1936 Pat 260.

3. That there has been a confusion for this reason and "kists" in accordance with the settlement have been lost sight of is pointed out by Mukherji, J. in *Radha Gobinda Deb and Another Vs. Girija Prasanna Mookherjee and Another*, . Now in this case, the burden of proving the dates of the instalments in accordance with the lease was undoubtedly on the plaintiffs who were the original maliks. Defendant 1 is an auction purchaser. He has produced the papers which were available in the Collectorate, namely the estate ledger and the notices. Plaintiffs for their part rely on the touji ledger Ex. 1. This ledger shows 2 kists, namely Rs. 6-8-11 on 28th September and Rs. 19-10-10 on 28th March. In accordance with the accounts kept in this ledger, there was a balance of Rs. 6-3-9 at the end of

the second kist namely 28th September 1932. If then the word kists here be taken to be equivalent to the date on which the instalment is payable in accordance with the settlement, then the amount becomes arrear on 1st October and therefore the property could not be put up to sale until 28th March following; the defence on the other hand relies on the estate ledger Ex. C which shows four kists of which the Chaitra kist is for a sum of Rs. 6-8-11. The learned advocate for the plaintiffs-appellants in this Court has sought to repel the value of Ex. C by arguing that this property refers to some other estate, it may be the parent estate out of which touzi 1877 Taraf Golami was carried out. But there is nothing to show this. On the contrary, the amount of revenue payable tallies and it is admitted in the plaint itself that the property in question appertains to Kismat Taraf Golami. In a number of cases it was found that the dates on which the instalments are payable in accordance with the settlement and the latest dates of payment as fixed by the Board of Revenue are the same: AIR 1931 57 (Privy Council); AIR 1932 61 (Privy Council) and Haji Bukah Elahi v. Durlav Chandra Kar (1912) 39 Cal 981. In the last mentioned case the document of settlement was found and there was no difficulty in ascertaining the date of payment. On the other hand in some cases the two sets of dates have not coincided, as for instance, in Radha Gobinda Deb and Another Vs. Girija Prasanna Mookherjee and Another, cited above and in Jagadishwar Narayan v. Md. Hazig Hosain AIR 1926 P C 126.

4. In accordance with the practice mentioned above, the dates that appear as the kist dates on the touzi ledger are really the latest dates of payment as fixed by the Board of Revenue, but it does not follow that these are also the latest dates of payment in accordance with the settlement. That they are not identical is shown by the fact that the entries in the estate ledger Ex. C are inconsistent with those in the touzi ledger. In Jagadishwar Narayan v. Md. Hazig Hosain AIR 1926 P C 126 their Lordships of the Privy Council disapprove of an assumption that the two sets of dates are identical, and in Mahomed Sulaiman v. Birendra Chandra Singh AIR 1922 P C 405 they approve of the presumption that the Collector's book is correctly kept. Mukherji, J. also proceeded on this reasoning in Radha Gobinda Deb and Another Vs. Girija Prasanna Mookherjee and Another, cited above. In the present case the notices (vide Ess. A and B/1) issued under Rs. 6 and 13 and also u/s 7, Revenue Sales Act, show that the arrears were due before 31st August and it was stated that the latest day of payment was 28th September. As mentioned already, we are not in a position to ignore the estate ledger Ex. C and there is no reason to suppose that the proceedings in the Collectorate were wrong. In the present case we are unable to hold that the entries in Ex. C are wrong or that they do not apply to the estate in question. On the other hand the entries in the touzi ledger Ex. 1 can be explained on a supposition that they refer only to the latest dates of payment as fixed by the Board of Revenue. It is significant that the plaintiffs did not take this ground in their appeal to the Commissioner. On the contrary there the position taken was that the revenue was in arrears and it should have been paid by another co-

sharer according to arrangement. All things considered, we must find that the plaintiffs have not succeeded in proving that the arrears were not due or that the sale was a nullity. The appeal therefore fails and it is dismissed with costs.

Patterson, J.

5. I agree.