

(1887) 07 CAL CK 0005
In the Calcutta High Court

Maseyk

APPELLANT

Vs

Steel and Co. and Another

RESPONDENT

Date of Decision : 11-07-1887

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19

Citation : (1887) ILR (Cal) 661

Hon'ble Judges : W. Comer Petheram, C.J.; Ghose, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—This is an application which arises out of a suit brought by Messrs. Steel and Co., against Mr. Maseyk for the purpose of realizing a sum of money secured by the mortgage of a number of properties. The properties consist of five mehals situate in the Nyadumka and Rajshaye districts and thirty-two pieces of land, known as jagirs.

2. The suit was brought in the Rajshaye Court under the provisions of Section 19 of the Code of Civil Procedure, which gives jurisdiction to a Court to entertain a suit in respect of properties partly situated within its territorial limits and partly out of it, where the same relief is sought in respect of the whole of the properties, and a decree was obtained in the suit that a certain sum of money was due, and directing the sale of the properties.

3. In pursuance of that decree the properties were sold by the Rajshaye Court, in which the suit was brought.

4. Two of the mehals were situate entirely outside the Rajshaye district. The sales as regards them have been set aside for that reason, and no question arises upon this appeal with reference to them. The mehal which is known as No. 120 is registered in the Nyadumka Collectorate, and is situate partly within the Nyadumka Collectorate and partly within the Rajshaye Collectorate. As regards this mehal the sale has not been set aside, and a part of this appeal is directed against the order which confirms the sale of this mehal, and it proceeds upon the

ground that the property is not wholly situate within the Eajshaye district. The rest of the order relates to that portion of the property which is known as the jagirs. As I said just now there are thirty-two jagirs. Of these three are found to be in Nyadumka, and with regard to these three the sale has been set aside, but twenty-nine are found to be situate in Rajshaye, and the sale of these has not been interfered with, but is now attacked on the ground that the proclamation has not been shown to be served upon the land itself. I propose to deal with the question of these jagirs first. These jagirs appear to be pieces of land granted, many years ago, to soldiers retiring from the service as a reward for their military services. At that time, no doubt, each plot of land was properly marked out, and each recipient knew exactly what was the land assigned to him, but these soldiers have disappeared long ago, and probably they sold their holdings to somebody, and they have now found their way into the hands of Mr. Maseyk. In the course of time the boundaries of these jagirs were lost, and the only thing that is known is that they were situate in a certain district and formed part of the same plain. I may say here that the loss of the demarcations of these plots has become more complete by the fact that the land was diluviated, and they have re-formed by the action of the river, so that it is practically impossible to say what were the boundaries of each particular plot, but it is known that they all formed part of a particular tract of land, and it appears that the sale proclamation; was stuck up on this land.

5. Under the circumstances we think that that is all that it was possible to do, and all that could reasonably be expected to be done.

6. The lower Court has found that there was no service upon the land for the reason that each plot was not capable of being distinguished one from another; but, as I have said, it was for this very reason that service on each plot could not be effected. But, apart from this consideration, the Court below has found that the jagirs have not been proved to have been sold for an inadequate price, and we see no reason to differ from that conclusion, and we, therefore, think that, so far as these properties were concerned, the sale was perfectly good, and the appeal in that respect must be dismissed.

7. Then comes the question as to the sale of mehal No. 120, which is situated partly within the Rajshaye district, and partly within the Nyadumka district, in the Collectorate of which district it is registered.

8. The suit was brought in the Rajshaye district, and the decree for the sale of the mortgaged property was obtained in the Rajshaye district, and the sale of this property was held by an officer of the Court of Rajshaye, acting under the instructions or the decree of the Court. It is attacked now upon the ground that the Court has no power to execute its decree outside its own territorial limits, but that, when it is necessary to execute a decree outside of its limits, it must be sent to the district within the limits of which the property is situated.

9. A good many cases have been cited on this point. I do not think it is necessary

for me to consider these cases in detail, because I do not think they deal with the question raised in this case. In this particular case the decree, which is sought to be executed, is a mortgage decree, which finds that a certain sum of money is due from the mortgagor to the mortgagee and directs that the property included in the mortgage shall be sold and the proceeds applied in the payment of the mortgage-debt, and, if there is any residue, it shall be paid to the mortgagor. It is under the provisions of that decree, which is practically a decree for specific performance of the contract between the mortgagor and mortgagee, that this sale has been ordered and has been carried out, and it seems to me that the authority given by Section 19 of the CPC must include the authority to make an order of this kind, that the property shall be sold, and to direct the mode in which the sale shall take place. And this does nothing more, because it directs that the property shall be sold and the money received and handed over in the way directed to the mortgagor and mortgagee. The question as to the mode in which the purchaser is to get possession of the property purchased by him is a totally different matter, and it is not until the purchaser seeks to obtain possession of his purchase that this question could arise. The practice of the High Court here has been cited, and it seems to me that it makes the thing abundantly clear. It appears that, when a decree of this kind is pronounced by this Court and when a sale is ordered, the sale is carried out by the Registrar of the Court. He conducts the sale and receives the money, and it is then distributed by him or by the Court in due proportion to the parties entitled to it. But where the sale takes place in execution of a money decree under which property is attached and is sold to-satisfy a money decree the procedure is totally different. In that case this Court could not execute its decree upon property outside the jurisdiction of this Court for the simple reason that in that case the property would be attached and sold by the Sheriff of Calcutta, but the Sheriff of Calcutta could not hold the sale in that case, because he could not go outside his jurisdiction for the purpose of selling the property which he had to sell.

10. It seems to me that this analogy makes this case absolutely clear. But in the mofussil they have neither a Registrar nor a Sheriff, and with the machinery the Courts have they have to do both duties. If it is a money decree the officer of the Court has to attach the property in accordance with the provisions of the law, and has to proceed to sell the property and to give possession of it in his capacity of officer of the Court, which corresponds with that of Sheriff of Calcutta, and in doing that his powers would be limited by the territorial jurisdiction of the Court of which he is an officer. But, when it comes to selling property which is ordered to be sold in pursuance of a contract between the parties, the Court may by its decree order that that contract shall be specifically performed, because the parties could not sell the property or lay down the mode in which it should be sold. The Court in its decree directs the mode and appoints the person who is to carry out the sale. If the sale was to take place here the person appointed would be the Registrar. In the mofussil, where there is no

Registrar, the only convenient person is the Nazir, who takes action in the matter.

11. It seems to me then that the procedure in execution of money decrees, and the local limits of the Court, have no reference to sales of this kind. Consequently, in my opinion, the Rajshaye Court was perfectly within its jurisdiction when it directed that the sale of this property should be carried out in the way it was carried out.

12. Some of the cases cited by Mr. Woodroffe and examined by Mr. Evans uphold that view; and with reference to these cases it is only necessary for me to say that I entirely agree with them. In some of those cases it was held that, where a sale takes place under a money decree of property partly within the local jurisdiction of the Court, whose decree was being executed, and partly without its jurisdiction, the sale of the property without the jurisdiction of the Court executing the decree was valid and binding in consequence of the provisions of Sections 19 and 223. As I said just now I do not think it is necessary that that point should be discussed, and I only wish to guard myself by saying that I am not prepared to accept that view of the law. If I thought it was necessary to decide that point in this case, I should have felt it my duty to refer that point to a Full Bench. That is all that it is necessary to say here.

13. As I said before I think the case of a sale of this kind under a mortgage decree is absolutely and entirely different from a sale under a money decree.

14. For these reasons I think that the appeal as to the sale of mehal No. 120 should also be dismissed.

Ghose, J.

15. I concur generally in the judgment pronounced by the Chief Justice. It is undisputed that u/s 19 of the CPC the Rajshaye Court had full jurisdiction to take cognizance of the suit that was brought before it, and to pronounce a decree. Now the decree that was passed was a decree ordering the sale of the properties comprised in the mortgage-deed. It appears that some of the properties comprised in that deed were situate wholly beyond the local jurisdiction of the Rajshaye Court, and one of them, and that is one of the properties with which we are dealing, viz., mehal No. 120, was situate partly within the jurisdiction of the Rajshaye Court and partly within the jurisdiction of the Nyadumka Court; and the question raised before us by Mr. Woodroffe for the appellant is, whether or not the Rajshaye Court had authority to sell the said mehal No. 120 or, at any rate, that portion of it which is situate on the other bank of the river Pudma, that is to say on the Nyadumka side. Now it seems to me in the first place that, if the Court which made the decree, had jurisdiction to entertain the suit in respect of the whole of the properties comprised in the mortgage-deed, it would also have jurisdiction to sell them in execution of that decree, unless it be shown that that authority has been taken away or curtailed by any of the provisions of the Civil Procedure Code. The only section relied upon in the Code is Section 223, Clause (c) which runs thus : "A decree may be executed either by the Court which

passed it or by the Court to which it is sent for execution, under the provisions hereinafter contained. The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court if the decree directs the sale of Immovable property situate outside the local limits of the jurisdiction of the Court which passed it." Now it seems to me that, if the argument of Mr. Woodroffe were carried to its legitimate extent, the result would be that neither the Rajshaye Court nor the Nyadumka Court would have jurisdiction to sell this property. But it is contended by Mr. Woodroffe that, because mehal No. 120 was recorded in the Collectorate of Nyadumka, therefore the Nyadumka Court alone had jurisdiction to sell it, and in support of that contention he has cited a case of Kally Prosonno Bose v. Dmonath Mullick 11 B.L.R. 56 : 19 W.R. 434 in which the judgment was delivered by Sir Richard Couch, late Chief Justice of this Court. Now, upon a careful consideration of that case, it will be found that the true question raised before the Court on that occasion was a very different one from the one we have now to consider. It would appear upon the facts as disclosed in the judgment in that case that the property that was sold was situate partly within the jurisdiction of the Court of the 24-Pergunnahs and partly within that of the Nuddea Court. The Court of the 24 Pergunnahs passed the decree upon a mortgage bond, by which the said property was hypothecated, and upon application made by the decree-holder sent the decree for execution to the Nuddea Court, within whose jurisdiction the other portion of the property was situate; and the question that was raised was whether the latter Court acted beyond its jurisdiction in selling the property, and it was held that it had, in the circumstances mentioned in the judgment, authority to sell, one of the circumstances being that the property stood in the Revenue roll of the Collectorate of Nuddea. The suit was for the purpose of recovering, not the whole of the property sold, but that portion of it which was situate beyond the limits of the Nuddea Court and within the limits of the Court of the 24-Pergunnahs; and it was held that the plaintiff could not succeed. The question we have to determine in this case is a different one from that which was considered in that case, it being whether or no the Rajshaye Court, which made the decree in the suit, had authority to sell the property because a portion of it was situate beyond its local jurisdiction, and if it had any authority whether it could sell that portion of it which is situate in the other jurisdiction. Now, if we turn to Section 223,--(c), which is the only section in the Code that has been relied upon, we find that it is only in the case where it may be necessary for the Court which passed the decree to direct that the proceedings be sent to a different Court within the jurisdiction of which the property may be situated that it shall send the decree to that Court for execution, certifying the fact of non-satisfaction of the decree. In the present case, if the Court of Rajshaye had sent the decree to be executed in the Nyadumka Court, the same objection which is now raised for the appellant would arise as to the jurisdiction of the Nyadumka Court, and the only way in which that objection is sought to be met is by affirming that the mehal No. 120 being recorded in the Nyadumka Collectorate, the Nyadumka Court would have jurisdiction to hold the sale. I do not find anything in the CPC or any other law to

warrant such a position. The jurisdiction of the Court is not given by the Collectorate in which the property is registered ; and the point that we have to consider is not whether the Collectorate of Nyadumka had jurisdiction, but whether the Rajshaye Civil Court had jurisdiction to sell the property. If the Rajshaye Court had authority to make the decree, it would have also authority to sell the property, and this would seem to be pretty clear upon the wordings of Form No. 128 in the Fourth Schedule annexed to the Procedure Code ; and the only question is whether this authority has been taken away by Section 223 of the Procedure Code. As I read that section it does not take away that power; it only provides that, when it may be necessary for the Court to send a decree for execution to another Court by reason of the property being situate beyond its local limits, it ought to do so. The question which arises upon this is. when the Legislature uses the words "sale of Immovable property situate outside the local limits of the jurisdiction of the Court which passed it," whether it means the whole of the property or any portion of it. I hardly think that the latter construction is the right construction. I think it contemplates a case where the whole of the property, and not any portion of it, is situate beyond the local limits of the jurisdiction of the Court which passed the decree; or in other words -- (c) of Section 223 ought to be read as follows : "If the decree directs the sale of Immovable property situate wholly outside the local limits of the jurisdiction, &c., &c." This view was also at any rate practically adopted by a Divisional Bench of this Court in the case of Shurroop Chunder Gooho v. Ameerrunnissa Khatoon 8 C. 703, and if it be the right view there could be no doubt as to what the procedure ought to be where an application is made to the Court which made the decree for the purpose of selling the properties comprised in the mortgage deed, some of which may be situate outside the limits of its jurisdiction, while others are partly within and partly out of its jurisdiction. As to the question raised whether the Rajshaye Court had authority to sell that portion of the property which is situate within the jurisdiction of the Nyadumka Court, I think that the observations already made answer it; and I may here add that, although there can be no legal objection to a property being sold by parts, still it seems to me that the Legislature in framing -- (c) of Section 223 could not have intended to deprive the Court of its authority to sell that portion of it which may be situate beyond its local jurisdiction, for it is well known that, if a property is sold in parts, it would, in many instances, lessen its proper price, and if it be a revenue-paying estate, each of the purchasers would, until partition, continue liable for the whole of the revenue. I think upon these considerations we ought to hold that the Rajshaye Civil Court had ample jurisdiction to sell the property No. 120.

16. Two or three other minor points were raised by Mr. Woodroffe and Baboo Hem Chunder Banerjee for the appellant, such as the sufficiency or otherwise of the service of the sale notifications as regards mehal No. 120 and the adequacy of the price fetched for the jagir mehal; but they were disposed of in the course of the argument, and I do not think it necessary to notice them again here. It is sufficient to say that we agree with the lower Court in the view it took of these

questions.