(1914) 08 CAL CK 0018

In the Calcutta High Court

Rai Baij Nath Goenka Bahadur — APPELLANT

Vs

Nand Kumar Singh, Raghuraj Singh and Others, Sheoadhin Singh and Baijanath Singh — RESPONDENT

Date of Decision : 19-08-1914

Acts Referred:
Bengal Land Revenue Sales Act, 1859 — Section 34

Citation : AIR 1915 Cal 411(2) : 28 Ind. Cas. 876

Hon'ble Judges : Walmsley, J;D. Chatterjee, J

Bench : Division Bench

Judgement

Walmsley, J.—These appeal arise under the following circumstances. An estate belonging to the respondents was sold for arrears of revenue under Act XI (B.C.) of 18.59 by the Collector of Monghyr, on January 2nd, 1900. The proprietors preferred appeals to the Commissioner of Revenue, and he passed orders on March 21st, 1900, setting aside the sale. On the application of the auction-purchasers, now the appellants, the Commissioner reviewed his order of March 21st and on June 21st, 1900, cancelled his order setting aside the sale, and instead, affirmed the sale.

2. On June 20th 1901, the first respondent instituted a suit against the auction-purchasers (making his co-proprietors parties), praying for a declaration that the Commissioner''s order reviewing his ''first order was ultra vires, for recovery of possession of his share of the estate, and for '' mesne profits, he also asked for the sale to be set aside if it was hold that the Commissioner''s second order was not ultra vires, and did have the effect of affirming the sale. The Court of first instance held that the suit was barred by limitation, but on appeal to this Court, it was held that the suit was within time, and the case was remanded for. trial upon other issues. On remand, the suit was decided in favour of the plaintiffs, now respondents, the co-sharers having become co-plaintiffs. There was again an appeal to this Court; the main question was whether the Commissioner had power to review his order setting aside the sale; it was held that he had no

power to do so, and on that ground the appeal was dismissed. The first appellant then preferred an appeal to the Privy Council and judgment was delivered on February 11th, 1913. It was very brief, so I quote it in full: Their Lordships are clearly of opinion that the order of the 21st of March 1900 was final and conclusive, and that so far as the Commissioner was concerned, he had no power to review that order in the way in which he ha3 reviewed it. That is the only point in the case. They will humbly advise His Majesty that the appeal ought to be dismissed." On the 27th of September 1913, the respondent No. 1 applied for execution of the decree which it had taken so long to obtain. Three other applications were made by his co-sharers and they were dealt with together. Various objections were taken by the appellants, but the principal one was that the applications for execution were barred by limitation. The learned Subordinate Judge overruled this objection, and allowed execution to proceed. An appeal has been preferred by the auction-purchasers in each of the four execution cases.

3. The only point which has been pressed before us is that the applications are time-barred. It is contended that as the judgment of the Privy Council was delivered on February 11th, 1913, and the first respondent''s application for execution was not made until September 27th, 1913, that is after an interval of more than six months, the applications for execution are barred by Section 34 of Act XI (B.C.) of 1859. That section runs as follows: "if a sale-made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party, in whose favour such decree was passed, shall lose all benefit therefrom."

4. It is contended for the appellant auction-purchasers that the sale was a sale made under the Act, and that it has been annulled by a final decree of Civil Court. Reference is made to the case of Sreemuni Lal Ghose v. Shama Soonduree Dasses 12 W.R. 276 but fail to see what assistance it gives to the appellants. In that case a sale was held to be null and void, because it had been made when no arrears of revenue were due; when the Court was asked to make a special declaration that the sale was annulled, their Lordships said, That appears to us to be unnecessary. For the purposes of Section 34 of Act XL of 1859, we consider that the sale is already annulled by the decree for possession." They cannot have been thinking of the period of limitation prescribed by Section 34 but only of the opening words of that section, and what they meant was that a sale which is null and void requires no formal annulment and that a decree directing the original proprietor to be put in possession is all that is necessary for destroying the effects of the void sale.

5. It appears to me that the appellants'' contention fails for two reasons. The first is, that the judgment of the Privy Council was not the final decree of a Civil Court annulling a sale made under the Act. The decree of this Court was to this effect: (1) the order of the Commissioner dated June 21st, 1900, was declared ultra vires and ineffectual; (2) the order of March 21st, 1900, setting aside the sale

was upheld and confirmed; (3) possession and mesne profits were awarded to the old proprietors. Their Lordships of the Privy Council said that the order passed by the Commissioner on March 21st 1900 was final and they dismissed the appeal. Neither Court, therefore, set aside the sale: what they said was that the Commissioner had set aside the sale, and that order must stand good. As the Privy Council''s judgment is not a final order annulling the sale, it does not fall within Section 34.

6. The second reason is that Section 34 refers to cases brought before the Civils Courts u/s 33 of the Act. The earlier section sets out the grounds on which a Civil Court may annul a sale held under the Act, with certain conditions as to limitation and other matters. Then Section 34 says, if a sale made under this Act be annulled by a final decree of Civil Court, application for execution of such decree shall be made within six months." The two sections must be taken as closely related to one another, and the rule of limitation as applying only to suits brought u/s 33. It appears to me, however, that the respondent''s suit was not a suit u/s 33; the plaint, no doubt, did contain allegations such as are appropriate in a suit for the annulment of a sale; but the chief contention throughout all the litigation was that the sale had been set aside by the Commissioner, and that there was no subsisting sale to be annulled. On this ground, I hold that the suit was not one u/s 33 of the Act, and was, therefore, not subject to the special rule of limitation provided by Section 34.

7. It is not asserted that the applications for execution are barred by the general rules of limitation.

8. I would, therefore, dismiss the appeals.

Chatterjee, J.

9. I agree. Costs one gold mohur in each case.

