

(1941) 04 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Original Decree No.14 of 1939

(Raja) Kamalaranjan Roy

APPELLANT

Vs

Bholanath Roy Chaudhuri and Others

RESPONDENT

Date of Decision : 21-04-1941

Acts Referred:

Citation : (1941) 04 CAL CK 0002

Final Decision : Dismissed

Judgement

Mitter, J.—In the year 1857, Babu Rajkristo Roy granted a patni taluk to one James Gibson Creg Harclots of ten mahals at an annual rent of Rs. 12,000 odd. Of the mahals so included in the patni grant, there was one mahal of the name of Kismat Kalikapur. The patni potta has not been produced, but a certified copy of the patni kabuliyat has been produced in this case, and marked Exhibit 2. The kabuliyat is a statement of the tenant James Gibson Creg Harclots. In the recital it is stated that sixteen annas share of the other nine mahals and the four anna share of the remaining mahal, namely, Kismat Kalikapur were the secular properties of Nrisingha Roy, the ancestor of Rajkristo Roy and that the sixteen anna share thereof devolved upon the said Rajkristo Roy. It is further stated that the remaining twelve anna share of Kismat Kalikapur was the debutter property of Sree Sree Radha Gobinda Thakur. In respect of a third share of the aforesaid twelve anna share which was stated to be the debutter of the said idol, a suit had been instituted by one Bhubaneswari Debya who obtained a decree in respect of the same, and thereafter made a gift to her son Kali Das Banerjee from whom by a deed of exchange, the said Rajkristo Roy obtained the same. The ten mahals including the sixteen anna share of Kismat Kalikapur formed the subject-matter of the patni, and a consolidated rent of Rs. 12,000 odd was fixed for the said patni taluk. Defendant No. 1, Raja Kamala Ranjan Roy is the successor in interest of Babu Rajkristo Roy who from the evidence appears to be his great grandfather. The patni taluk had devolved upon Golap Kumari Bibi, Jagat Sing Sreemal and Bhupat Sing Sreemal who are Defendants Nos. 2 to 4 in the suit from which this appeal arises. The Plaintiffs are the dar-patnidars in respect of the said patni

mahals.

2. There being arrears of patni rent for the year 1342 B.S. Raja Kamala Ranjan Roy made an application for the sale of the patni taluk under Regulation VIII of 1819 on the 15th April, 1936. The arrears due for the year 1342 B.S. not having been paid on or before the date fixed for the astam sale, the patni taluk was put up for sale and was purchased by the zemindar Raja Kamala Ranjan Roy, Defendant No. 1, for a sum of Rs. 31,000. The dar-patnidars then instituted this suit on the 15th May, 1937, under the provisions of sec. 14 of Regulation VIII of 1819.

3. The specific grounds on which they challenged the sale in the Court below are (I) that the application for sale was not maintainable inasmuch as (a) Defendant No. 1 in his personal capacity was not the sole landlord and (6) that the application for sale which had been put in by his revenue agent Ambujakshya Chatterjee was on the basis of a vakalatnama which had not been validly executed by Raja Kamala Ranjan Roy; (II) that the Mofussil service was not in accordance with law, inasmuch (a) the notice of the sale was not published at the Cutchery at Atgram; and (6) that even if a publication at that Cutchery was not required under the Patni Regulation, the village Atgram where the notice was published, was not the principal village of the Patni mahals; (III) that there was no proper publication at the notice board of the Collector's Cutchery; (IV) that the signatures of substantial persons were not taken when the notice was published at village Atgram; and (V) that the notice of the sale was not read aloud by the Collector or his officer at the time when the sale was actually held.

4. The learned Subordinate Judge overruled point I (a). He gave effect to the Plaintiffs' contention with regard to point I (b), and expressed no opinion on point II (a), as that point does not appear to have been urged before him. With regard to point II (b) he found that notice of the sale was in fact published in village Atgram, but that publication was not legal because Atgram was not the principal village within the patni mahal, as the adjoining village Toilpara was the principal village. With regard to point IV he found that the publication of the notice at village Atgram was in the presence of persons who could be regarded as substantial persons. With regard to point (III) he found that the application together with the notice of the sale had, in fact, been stuck up at the notice board fixed on the verandah of the Collector's Cutchery, but that publication was not in accordance with law, because the notices of many astam sales were lumped together in bundles and placed inside the notice board which had been locked up within a wire-netting lid; that the notices of different patni sales could not be read without opening the lid which was locked up; and the members of the public could not approach the notice board as the Collector's personal guard who used to sit near the notice board drove away the public who came near the place where he was sitting at times. With regard to point (V) he found that the notice of the sale was not read aloud by the Collector's Peshkar at the time when the sale was being held. In this view he reversed the sale. The zemindar

Defendant No. 1 has preferred this appeal and has challenged all the findings of the learned Subordinate Judge which have been recorded against him.

5. The learned Advocate appearing for the dar-patnidars Respondents has maintained that those findings of the learned Subordinate Judge are correct, and he has gone further and urged that the finding of the learned Subordinate Judge on point I (a) is a wrong finding. We think that the learned Subordinate Judge has taken a very narrow view of some of the points in the case, and he has based some of his findings not on evidence but on conjectures. We shall now deal with the points urged by the respective Advocates of the parties in the order we have indicated above.

6. Sec. 8 of the Patni Regulation gives a right to the zemindars, that is, the proprietors under direct engagements with the Government, to apply for sale of a defaulting patni. In the application that was presented by the Mukhtear Ambujakshya Chatterjee under sec. 8, Defendant No. 1 applied in his personal capacity only and not as shebait of the deity also. It is urged that that application was not maintainable, inasmuch as the idol Sree Sree Radha Gobinda Thakur whose shebait Defendant No. 1 is, was also the proprietor of a part of the zemindary included in the patni, viz., twelve anna share of Kismat Kalikapur. In support of the contention that the said idol was the proprietor of twelve anna share of Kismat Kalikapur, the learned Advocate appearing on behalf of the dar-patnidars Respondents has placed reliance upon the recitals in the patni kabuliyat Exhibit 2, which we have set out in some detail, in the earlier part of our judgment. That is the only evidence in support of the contention that the idol is the proprietor of the aforesaid share of Kismat Kalikapur. In the first place the kabuliyat contains the statement of tenant. The patni potta has not been produced. There is, therefore, no statement by the zemindar Rajkristo Roy to the effect that twelve anna share of the property was the property of the idol. The deed of endowment has not been produced. Even if the recital be evidence against Rajkrishta and Defendant No. 1 as his representative, the statements in the said recital, do not unequivocally indicate that of the said share, the idol was the owner. As the learned Subordinate Judge has observed, and we think correctly, that the statements may be explained on the ground that there was a charge for Deb seba on that share of Kismat Kalikapur. In our judgment even that has not been established, for we find in the "D" Register kept by the Collector under Act VII of 1876, that the idol is not recorded as the proprietor. The whole of Kismat Kalikapur has been recorded as the personal property of Defendant No. 1. The learned Subordinate Judge has also referred to a suit instituted by the darpatnidars themselves against Raja Kamala Ranjan in which they took up the position that all the mahals included in the patni were the secular properties of the Raja. The learned Subordinate Judge has also found, and that finding has not been challenged before us, that Kismat Kalikapur, sixteen anna share thereof, together with all the nine mahals included in the patni, had along been treated by the Raja and his ancestors as secular property. We accordingly accept this finding of the learned Subordinate Judge and overrule

the point I (a) urged by the learned Advocate for the Respondents.

7. The vakalatnama on the basis of which the application under sec. 8 of Regulation VIII of 1819 was presented by the Revenue Agent Ambujakshya is Exhibit E. The date of the vakalatnama is 13th April, 1936. The vakalatnama was accepted by the Revenue Agent Ambujakshya on the 15th April, 1936, and was filed with the astam application on that very date. The vakalatnama was not signed by Kumar Kamala Ranjan as he then was, but was signed by his manager Jogendra Nath Mukherji who held a power which authorised him to sign on behalf of Kamala Ranjan. It was sent to him (Jogendra) at Cossimbazar and then sent back by post to the Revenue Agent Ambujakshya at Suri. The evidence is that a letter from Cossimbazar takes two days to reach Suri, and a letter from Suri to Cossimbazar can be transmitted in a day. There is further evidence that the Mukhtear's clerk sent the vakalatnama from Suri to Cossimbazar to be signed by, or, on behalf of Kamala Ranjan after duly filling up the body. From the fact that the date 13th April, 1936, appears on the vakalatnama at its end, the learned Subordinate Judge has come to the conclusion that a filled up vakalatnama could not have been sent to Cossimbazar on the 13th April and then received back at Suri on the 15th April, as the time that would be taken up in sending the vakalatnama from Suri to Cossimbazar and back from Cossimbazar to Suri would not take two but three days at least. From this fact he has come to the conclusion that a blank sheet of paper was sent from Suri to Cossimbazar and that blank sheet was signed at Cossimbazar by Kamala Ranjan's manager Jogendra Nath Mukherji, and transmitted to Suri where, after it was received, the body was written up. The whole basis of this series of findings of the Subordinate Judge is based on the date 13th April, 1936, after the word "finis." In our judgment this is pure conjecture, and it is to some extent against the weight of evidence. The positive evidence is that the Mukhtear's clerk filled up the vakalatnama, sent it to Cossimbazar where it was signed by the manager Jogendra Nath Mukherjee and again transmitted by post to Suri and that he had put the date, viz., "13-4-36" on the date he received the vakalatnama back from Cossimbazar. We must give effect to that evidence. Even if it, for arguments' sake, be held that Jogendra had signed a blank piece of paper intended to be used as a vakalatnama for the purpose of supporting an application under sec. 8 of the Patni Regulation, we do not see how the application under sec. 8 which was put in on the 15th April, 1936, accompanied by a vakalatnama could be said to be an application not authorised by the zemindar Kumar Kamala Ranjan. We accordingly do not agree with the Subordinate Judge on this point, and must hold that the application which was presented was an application duly authorised by the zemindar Kamala Ranjan. Kumar Kamala Ranjan's estate was under the Court of Wards, and the printed form which was used for the purpose of making applications for astam sales at the time when the estate was under the Court of Wards, was used for the application in question with necessary amendments. On the face of the application, it was an application by Kumar Kamala Ranjan Roy, for at the right

hand corner at the top" of the paper are these words: "Kumar Kamala Ranjan Roy by Ambujakshya Chatterjee, Revenue Agent. 15-4-36." In the body, however, the name of Jogendra Nath Mukherjee has not been struck out. The printed form in use when the estate was in charge of the Court of Wards was in this form: " Petition of Jogendra Nath Mukherjee, manager of Kumar Kamala Ranjan Roy of Cossimbazar, Dihi Berhampur town, District Murshidabad." The words " of Jogendra Nath Mukherjee " were struck out. The word " manager "ought to have been struck out but that was not done through oversight. It is on the basis of this that a contention was raised that the application was not really by Kumar Kamala Ranjan but by his manager. We do not see any substance in this contention. It is quite clear from the application that it was an application by the Kumar who was, as we have found, the sixteen anna proprietor of the mahals let out in patni in the year 1857.

8. The evidence is that there is no Cutchery of the patnidar on any land of the patni taluks, but there is a Cutchery of the dar-patnidars in the village Atgram. The publication of the notice of the sale was not affixed on that Cutchery but on a Bakul tree at a short distance from the Cutchery, which was at a prominent place of that village, namely, at the crossing of four roads and near the village temple. It is contended that there being a Cutchery of the dar-patnidars in a village included in the patni, it was incumbent on the zemindar to publish the notice of the sale at that Cutchery.

9. The manner in which Mofussil notices are to be served is regulated by the provisions of sec. 8 (second) of the Patni Regulation, which runs thus:

a similar notice shall be stack up at the Suddar Cutchery of the zemindar himself, and; a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the Cutchery, or at the principal town or, village upon the land of the defaulter.

10. The regularity of the service at the Sudder Cutchery of the zemindar has not been challenged before us. With regard to the service at the Mofussil, the meaning of this part of the Regulation appears to us to be that it does not authorise two alternative methods of service to be chosen at the option of the zemindar. If there is a Cutchery in existence which satisfies the description given in that part of the section, the publication must be at that Cutchery. If there is no Cutchery on the land of the defaulter, that is to say, a Cutchery of the patnidar on the land of the patni taluk, it is then and then only that it would be open to the zemindar to publish at the principal town or village of patni mahal; *Maharani of Burdwan v. Mritunjoy Singh* L.R. 14 I.A. 30 : s.c. ILR 14 Cal 365 (1887). In our judgment, the Cutchery on the land of the defaulter, that is to say, on the land of the patni taluk, must be a Cutchery of the patnidar. If there be no Cutchery of the patnidar on the land of the patni, but there are Cutcherries of the dar-patnidars or subordinate tenure-holders or others holding under the patnidar, the zemindar is not required to effect the Mofussil service on such Cutcherries. In this part of the Regulation, the legislature contemplates the zemindar and

patnidar only, and the word Mofussil has been used in contradiction of the word Sudder used in that very paragraph. Sudder Cutchery there means, as the section itself indicates, the Cutchery of the zemindar. The Mofussil Cutchery means the Cutchery of the patnidar. This is how the matter was treated in the case of Maharani of Burdwan v. Mritunjoy Singh L.R. 14 IndAp 30; ILR 14 Cal. 365 (1887) and that view has since been followed by this Court, Kumar Sourish Chandra Roy Bahadur v. Soroj Ranjan Sinha 38 C.W.N. 707 (1934). We accordingly hold that the service was regular, provided the notice was published at the principal town or village of the patni mahal. That depends upon a question of fact, namely, whether Atgram is the principal village within the patni.

11. The case of the Plaintiffs is that Tailpara is the principal village and not Atgram. The evidence is that Tailpara is a village of larger area and the hastabud of that village is about thirty three per cent. more than that of Atgram. In our judgment, neither the area nor the hastabud can be regarded as the true or only criterion for deciding the question whether a village is to be regarded as the principal village within the meaning of sec. 8 of the Regulation. The hastabud may depend on there being more arable land in the village. The area of the village may be very large, but the habitation may be sparse, the agricultural land may be more fertile and of larger area than those in any other village and so may bring more income to the landlord. There are villages in Bengal which are mostly composed of arable land but the huts of the tenants may be a few in number. It is not such a village that the Regulation contemplates in which notice of the sale shall have to be published in case there is no Cutchery of the patnidar on any land in the patni mahal. The importance of the village seems to us to be the guiding test. In the case before us, we think, there is no evidence as to the nature of the village Tailpara except that it covers a larger area and it has a greater hastabud. Whereas in the village Atgram we find the following things. It is a village of eight paras which indicate that it is a populous village. There is a co-operative bank, school, dar-patni-dars" Cutchery, chandimandap, Kalibari (a place of public worship) and a pucca District Board well. These things show the importance of the village Atgram. None of these are in the village Tailpara. We, therefore, hold that Atgram is the principal village in the patni taluk.

12. The learned Advocate for the Respondents urged that the signatures which were taken by the zemindar's peon were not signatures of substantial people. We cannot agree with this contention. Each one of them is a man of independent means. They have land in the village. Although one of them is a blacksmith by profession, he seems to be a respectable man and has a son who is a graduate and Kabyathirtha. A substantial man within the meaning of the Patni Regulation may not be very rich but if he be a man of independent means, that is enough.

13. Regarding publication at the Collector's Cutchery, it is proved that the application for sale together with the necessary notice was stuck up at the Collector's notice board which was placed at a prominent place of the Collector's Cutchery. The evidence is that as there were many astam applications, they were

placed one over the other in bundles of twenty-five and hung up inside the notice board which is three feet by three feet. It has a lid of wire-netting. The lid is locked up and the key is available from the nazir. This locked up notice board has been placed there for the last twelve or thirteen years in order to prevent the notices being torn up or removed by mischievous people. The evidence further is that when a peon can be spared, he is posted near the notice board with the key, and any person desirous of inspecting the notices can do so by asking the peon to open it, and that if a peon does not happen to be there, he can at mere request obtain the key from the nazir. This system has been going on for a large number of years, and it will be a reasonable inference to draw that it had become generally known to persons who frequent the Collector's Cutchery for the purpose of seeing the applications and notices of astam sales, that the notice board can be opened on mere request. There is no evidence in the case that any particular individual wanted to have the notice board opened for the purpose of looking into the application and the notice of sale in relation to this particular patni. The evidence further is that the Collector Mr. H.C. Bose had a personal guard, and at the time when he used to sit on the ejlas, the guard used to sit on a bench near the notice board and he did not allow any one to approach the notice board unless he came with a peon or an officer of the Collectorate. It does not appear that the personal guard of the Collector used to sit near the notice board during the whole of the office hours; and at a time when he was not there the public could approach the notice board freely. In any case, if he had prevented any body from approaching the notice board at all times, there would have been complaint, but there was no complaint to the Collector to that effect. The evidence is only of a general character, and from that evidence we cannot come to the conclusion that there was no sufficient or adequate display of the application. We accordingly overrule this point also.

14. The last point for consideration is whether the notice was read out at the time of the sale. Without expressing any opinion on the question whether the Regulation requires a notice to be read by the Collector or to be read out by him within the hearing of the people assembled at the sale room, we think that in this case, the evidence makes out that the notice had been read out by the Collector's Assistant. That is the positive evidence of the Mukhtear Ambujakshya Chatterjee, Defendant's witness No. 7. The Collector's Revenue Peshkar Bonbehari Sadhu was examined on behalf of the Defendant. In his examination-in-chief, he was asked a question for the purpose of proving that the formalities preliminary to the sale had been complied with, namely, that he looked into the return of service of notice effected in the Mofussil of the patni taluk, and that he examined the statement of account which the zemindar's agent had to keep ready at hand. In answer to the question of the pleader for Defendant No. 1 he told that he had examined those papers. On a further question as to how he examined those papers, his answer was, that he read those papers. In cross-examination by the Plaintiffs' pleader the matter was not cleared up. No question was put to him as to whether the return of Mofussil service had been

read aloud or not. If it was the case of the Plaintiffs that the said return had not been read out, they ought not to have left it in that vague manner; it was incumbent on them to put a definite question to the witness.

15. In view of these facts we rely upon the statement of Ambujakshya Chatterjee that the return was read and read aloud, and he heard it being read although he could not, as would be natural, follow the reading quite well owing to the noise in the sale room. We accordingly hold that all the material requirements of the Regulation had been complied with. In this view of the matter this appeal is allowed, the judgment and decree of the Court below are set aside and the Plaintiffs' suit dismissed with costs both in this Court and in the Court below to Defendant No. 1, Appellant, only. The other appearing Defendants Respondents are allowed no costs both here and in the lower Court. Hearing-fee including the fee for drawing grounds of appeal is assessed at Rs. 500 (five hundred).