
(1915) 01 PRI CK 0005

In the Privy Council

Case No : Privy Council Appeal No. 21 of 1912

Ravaneshwar Prasad Singh and others

APPELLANT

Vs

Baijnath Ram Goenka and others

RESPONDENT

Date of Decision : 19-01-1915

Acts Referred:

Citation : (1915) AIR(PC) 24

Hon'ble Judges : Ameer Ali, John Edge, Shaw, Lords Dunedin, JJ.

Advocate : Hunter, Watkins, T.L. Wilson and Co., Dube, De Gruyther, A.M. Dunne, Earle Richards, for the Appearing Parties.

Judgement

Mr. Ameer Ali, J.

This is an appeal from a judgment and decree of the High Court of Bengal, dated the 1st of May 1907, and the question for determination relates to the validity of a sale for arrears of revenue, held under Act XI of 1859 of a share of an estate called Mahal Bisthazari situated in the district of Monghyr.

The case offers an illustration of the extreme complexity of the land-system existing in Bengal. A 15 annas 6 dams share of Mahal Bisthazari seems to have been in existence as an independent fiscal unit for a considerable time. It includes 360 villages, and in the Collector's register is entered as being Touzih No. 336, which marks its position as a separate revenue-paying estate.

As is usually the case in Bengal and elsewhere in India, a large number of persons possess proprietary rights in this mahal; they own specific shares, some in one village only, others in several villages. Ordinarily the whole estate held in this wise is liable to be put up for sale for default in the payment of Government revenue. But Act XI of 1859, which lays down the rules for the realization of the revenue payable to the State, provides (by section 10) that "a recorded sharer of a joint estate held in common tenancy," or (by section 11), "a recorded sharer of a joint share whose share consists of a specific portion of the land of the estate," may apply to the Collector to open a separate account for the payment of his

share of the revenue separately from the others. These separate accounts in respect of separate shares ensure that no share of an estate other than the one in respect of which the default had occurred should be exposed to sale (section 13) until and unless the highest offer for that share does not equal the amount of the arrear (section 14), when the whole estate becomes liable to be put up to sale.

In accordance with the provisions of sections 10 and 11 of Act 11 of 1859, 148 owners of specific but undivided shares in Mahal Bisthazari applied for and obtained from the Collector separation of accounts.

This left, however, a large residue, commonly called the *ijmali* or joint share, the owners of which remained jointly liable for the revenue due in respect thereof.

In August 1901, this *ijmali* share was found to be in arrears for the March and June kist or instalments of Government revenue, amounting to Rs. 604, and it was advertised for sale on the 9th September 1901. An application appears to have been made to the Collector for postponement of the sale, which, however, was refused, and the sale was held on the advertised date, when the property was purchased by the defendant - respondent, Baijnath Goenka, for a sum of Rs. 33,500.

An appeal to the Commissioner of the Division, preferred by the owners of the *ijmali* share, under section 25 of the Act, having been dismissed, the plaintiffs brought their suit in the Court of the Subordinate Judge of Monghyr for the annulment of the sale. The grounds on which they base their action are exactly the same as those they urged before the Commissioner. These grounds are set forth with sufficient distinctness in the 18th paragraph of the plaint, sub-clause (e), which is in these terms :-

"That the description of the *ijmali* share given in column 5 of the said notification was incorrect, insufficient, and misleading, and having regard to the nature of the interest included in the said *ijmali* account and to the fact that it was constantly fluctuating, a fuller and more specific description thereof, with particular reference to the villages and the diverse interests making it up, should have been given, all materials for the same being available to the Collector in his office. The omission to give such detailed description of the *ijmali* account has largely affected the sale and value of the property sold."

Shortly stated, the points at issue resolve themselves into two questions - one of law and the other of fact : (i) Whether, having regard to the purpose in view, the specification of the property in the sale-notification was in accordance with the provisions of the law; and (ii) whether, in case the requirements of the law had not been complied with, the plaintiffs, by reason of the irregularity, had sustained injury.

The trial Judge found both questions in favour of the plaintiffs. He held in effect that the specification was insufficient and defective, and that in consequence

thereof the property was sold at a gross under value. He accordingly made a decree annulling the sale. The High Court, on appeal, came to a directly opposite conclusion on both points, and reversing his judgment, have dismissed the plaintiffs' action.

In these circumstances it becomes necessary, in their Lordships' opinion, to consider carefully the description or specification which the Trial Judge holds to be insufficient and irregular and which the High Court, on the other hand, regards as sufficiently complying with the requirements of the law.

Act 11 of 1859 is a stringent enactment for the realization of arrears of revenue; at the same time it provides certain safeguards for the protection of the interests of the defaulter so that he may not be unnecessarily prejudiced. Among these safeguards are the provisions of sections 5 and 6 for the issue of notifications of sales specifying the properties to be sold, and their due publication in accordance with the law. And an exact compliance with its requirements is considered so important by the Government that the Board of Revenue has issued special rules, with forms of notification necessary in the case of estates or shares of estates advertised for sale. The object of the law as well as of the Board's rules requiring specification of the properties to be sold is clearly to enable likely purchasers among the public to know exactly what was going to be sold, and to ensure thereby reasonable competition. When an estate is advertised for sale it is not difficult to specify it; in the case of shares of estates the work of specification requires care and attention. No hard-and-fast rule can be laid down with regard to its sufficiency, for it must vary according to the facts of each particular case.

In the present case the notification under sections 6 and 13 of the Act was affixed in the Collector's office and in the court of the Judge of the district; and as the revenue payable in respect of the ijmalī share exceeded Rs. 500, it was also published in the Calcutta Gazette, which is the official gazette prescribed in the Act. In this notification, which bears date the 7th of August 1901, what purports to be a specification of the share to be sold is in these terms; "ijmalī share which cannot be specified excluding the separate accounts number-" "Then follows a long list of the 148 separate accounts already referred to. And at the end the following words occur : "All other shares besides that specified are excluded from the sale."

In the sale notification issued on the 6th of August 1901, which was apparently the one affixed in the Collector's office, the entry in column 5 (the specification column) is as follows :-

"The ijmalī share cannot be particularised owing to separate accounts having been opened. The shares to be sold are those (sic) given in a separate sheet after excluding the shares in respect of which the separate accounts have been opened."

The learned Judges of the High Court have given in their judgment a translation of the vernacular words in the notice. It is not necessary to consider whether

their rendering is quite correct. For, the fact remains that admittedly there was no specification of the share to be sold beyond what has already been stated. The intending purchaser was left to gather for himself by going through an elaborate process of elimination of the property that was advertised for sale, and for which he was expected to bid. It is to be observed that the publication of the notice in the Calcutta Gazette is prescribed with the object of inviting purchasers from other quarters and thus not confining the bidding to speculative money-lenders and Mukhtears of the neighbourhood, which is hardly likely where the notification gives little or no particulars, as in this instance, in respect of the property advertised for sale.

The cases to which their Lordships' attention has been invited give, in their opinion, no assistance in determination of the point at issue here. As already observed, each case must depend on its own particular facts; (a), what has to be considered is whether, having regard to all the circumstances, the specification was sufficiently definite and clear to induce likely buyers to appear and bid at the sale. It is not enough that they may go and obtain the requisite information from the Collector's office. In their Lordships' opinion (a2) the particulars in the notice should be sufficient in themselves to tell purchasers what they are invited to bid for.

Their Lordships, therefore, have no hesitation in agreeing with the Trial Judge that the notification in this case was insufficient and irregular, and not in compliance with the requirements of the law.

Section 33 provides that no sale should be set aside on the ground that it was made contrary to the provisions of the Act, unless the plaintiff proves that he has sustained "substantial injury" by reason of the irregularity complained of. The Trial Judge found that (b) the property was worth a lakh of rupees, and that in consequence of the irregularity in the sale notification the defendant was enabled to buy it for one-third of its value.

The learned Judges of the High Court, after an elaborate calculation, thought that, considering the mortgages on the property, it had fetched at the sale a fair value. In view of this divergence of opinion their Lordships have examined the evidence for themselves, and they have come to the conclusion that the view of the Trial Judge, both as regards the value and the fact that the lowness of the price was due to the defectiveness of the notice, was well-founded. With respect to the value, the weight of evidence is clearly on the side of the plaintiffs; whilst a reference to the bid-sheet and the testimony of Balmukund and Korban Ali leave little room for doubt that the low figure at which the property was knocked down was directly due to the paucity of genuine or substantial bidders in consequence of the absence of proper specification in the sale-notification.

Their Lordships cannot help regretting that the Commissioner did not annul the sale on the appeal preferred to him, which would have saved a long and harassing litigation extending over 12 years.

Their Lordships are of opinion that the judgment and decree of the High Court ought to be set aside and the decree of the Subordinate Judge restored, save and except as to villages Matasi and Mirzaganj, in regard to which the claim is permitted to be withdrawn, with liberty to the appellants to institute a fresh suit in respect thereof, if so advised. The respondents must pay the costs of this appeal and of the appeal in the High Court. And their Lordships will humbly advise His Majesty accordingly.