
(1897) 03 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 881 of 1895

Saroda Charan Bandopadhyaya

APPELLANT

Vs

Kista Mohun Bhattacharjee and others

RESPONDENT

Date of Decision : 30-03-1897

Acts Referred:

Citation : (1897) 03 CAL CK 0004

Final Decision : Dismissed

Judgement

Maclean, C.J. and Banerjee, J. concurring.

1. This is an appeal by the Defendant No. 4, in a suit by the Plaintiff, to set aside the sale of certain property made on the 28th September 1891, which was brought by the Appellant for some Rs. 18 or 19. The ground, upon which the Plaintiff alleged that the sale was invalid, was, that the notice which is required to be given under sec. 10 of Act VII (B.C.) of 1880 was not served upon him. It is found, as a fact, by the lower Appellate Court, that such notice was not served upon him. That being so, and it being compulsory on the Collector to serve that notice upon the Plaintiff, who was alleged to be in arrear in respect of a certain cess, the whole proceedings, which resulted in the sale which the Plaintiff now seeks to set aside, are invalidated. When the Act says that a notice shall be served, and the whole proceedings proceed upon the footing that such notice has been duly served, and it then turns out that it has not been so served, it seems to me that all subsequent proceedings based upon and resulting from such notice having been served, must be invalid. In this view, I think the Court below was perfectly right in setting aside the sale. But conceding this, it has been argued before us for the Appellant, that the Plaintiff's claim was barred by the statute of limitation. It was alleged that the case came under article 14 of Schedule II of the Limitation Act. I do not think that the case comes under that article This is a suit to set aside a sale not to set aside " any act or order of an officer, of Government in his official capacity," not otherwise expressly provided for by the Limitation Act. On the contrary, I think it comes under the class of suits for which

no period of limitation is specifically provided for elsewhere in the Act, and consequently comes under article 120. That article gives a period of six years, within which the suit may be brought, and the suit here was brought within that period. But the ingenuity of the Appellant is far from exhausted. He urged that sub-section (b), sec. 8 of Act VII (B.C.) of 1880, applied to this case, and that consequently the suit ought to have been brought within a year from the service of the notice referred to in that section. But looking at that section, I do not think that contention can be successfully maintained. That section says:--"Such judgment-debtor may, at any time within one year after the service upon him of such notice as is mentioned in sec. 10, bring a suit in the Civil Court to contest his liability to pay the amount stated in the said certificate, and to have such certificate cancelled," that is, the suit may be brought within a year from the service of the notice. But in this case the notice was never served, and if the notice be not served then the section can have no application, because there is no point of time from which the limitation of one year is to commence to run. If the notice be not served, I do not think that the section can apply to a suit to set aside a sale upon the ground of non-service of such notice. No doubt, the prayer of the plaint asks to have the certificate set aside, but merely, I think, as incidental to setting aside the sale upon the ground I have stated, which is the real foundation of the suit. I do not think that the argument based on sub-section (b) of the section to which I have referred can prevail. On these grounds, I think that the judgment of the Court below is right, and the appeal must be dismissed with costs.