(1937) 04 AHC CK 0044

In the Allahabad High Court

Secretary of State APPELLANT

Vs

Mahashey Ram Bharosey Lal RESPONDENT

Date of Decision : 06-04-1937

Acts Referred:

Citation : AIR 1937 All 678

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Iqbal Ahmad, J.—This is a defendant''s appeal and arises out of a suit for recovery of Rs. 30-11-0 which was paid under protest on behalf of plaintiff-respondent on account of alleged arrears of revenue of certain zamindari property and on account of the process fee for the issue of a warrant for the arrest of plaintiff-respondent and costs of attachment and pound charges of the cattle of the plaintiff-respondent. The facts are not in dispute and are as follows : A 5-biswa zamindari share in village Karanpur was owned by a lady named Mt. Bhoopan Dei. In the year 1927 Bhoopan Dei mortgaged that share to one Jado Earn by means of a deed of usufructuary mortgage. In accordance with the terms of the mortgage deed the mortgagor was not entitled to redeem the mortgage for a period of 7% years. The mortgagee''s name was entered in the revenue papers and he entered in possession of the property mortgaged and was in possession during the period for which the revenue was in arrears.

2. In the year 1931 the equity of redemption in the 5-biswa share that belonged to Bhoopan Dei was put to sale and purchased by Ram Bharose Lal, plaintiff-respondent, and Ram Bharose''s name was entered in the revenue papers as the owner of the equity of redemption. A sum of about Rs. 25 was due on account of land revenue of the 5-biswa share in August 1931 and, for the realization of this amount, the Tahsildar, on 10th August issued a warrant of arrest and Ran Bharose Lal was arrested and detained in prison. Further, under the orders of the Subdivisional Officer the cattle of Ram Bharose Lal were attached and kept in

pound. On 10th August the plaintiff sent a notice to the Tahsildar from the look up protesting against his arrest and detention and he sent similar notices on 11th August to higher revenue officials. Kanhaiya Lal, the son of the plaintiff, also applied to the Sub-divisional Officer for the release of his father but the Sub-divisional Officer refused to accede to the application unless the revenue was paid. Kanhaiya Lal communicated this order of the Sub-divisional Officer to the plaintiff in the look up and the plaintiff directed Kanhaiya Lal to pay the amount demanded under protest. Kanhaiya Lal, on 15th August, paid under protest in all a sum of Rs. 30-11-0 to the Sub-divisional Officer and then the plaintiff was released. The protest was contained in a written application that was signed by Kanhaiya Lal and was presented before the Sub-divisional Officer at the time of the payment.

3. The suit giving rise to the present appeal was brought by the plaintiff-respondent on the allegation that he was not liable to pay the amount due on account of land revenue and that the amount paid by Kanhaiya Lal was wrongly realized. The defendant, the Secy of State for India in Council, resisted the suit inter alia on the following grounds : (1) that the land-revenue realised was due from Ran Bharose Lal, and (2) that the suit was barred by Section 233(m), Land Revenue Act (Act 3 of 1901). The trial Court gave effect to these pleas and dismissed the suit. But on appeal by the plaintiff, the lower Appellate Court overruled the pleas urged in defence and decreed the plaintiff''s claim. The defendant has come up in second appeal to this Court and it is argued on his behalf that the lower Appellate Court was wrong in law in repelling the contentions noted above. In my judgment, the decree of the lower Appellate Court is perfectly correct and ought to be affirmed. It is provided by Section 142, Land Revenue Act that

all the proprietors of a mahal are jointly and severally responsible to Government for the revenue for the time being assessed thereon....

4. But there is an Explanation appended to the section which has an important bearing on the decision of this appeal. The Explanation runs as follows:

Proprietor in this Chapter means a person in proprietary possession for his own benefit, and includes a mortgagee and a lessee of proprietary rights.

5. The plaintiff as the owner of the equity of redemption is no doubt, in one sense, one of the proprietors of the mahal but in accordance with the definition of the word "proprietor" contained in the Explanation, the plaintiff cannot be held to be a proprietor within the meaning of Section 142. Though the plaintiff''s name is recorded in the revenue papers as the owner of the equity of redemption of the 5-biswa share, that share is in the actual possession of the usufructuary mortgagee. The plaintiff therefore is not in possession of that share "for his own benefit" and is not a "proprietor" in the sense in which that word is used in Section 142. The usufructuary mortgagee was in the year 1931 in "proprietary possession for his own benefit" and was therefore responsible to Govern, ment

for the revenue as one of the "proprietors" of the mahal. By Section 142, the responsibility for land revenue is cast only on a person who is "in proprietary possession" of a mahal or portion thereof, "for his own benefit". It follows that a mortgagor who has mortgaged his share in the mahal and delivered possession to the mortgagee is not liable for the land revenue so long as possession remains with the mortgagee. The lower Appellate Court was therefore right in holding that the plaintiff was not liable for the arrears of revenue which was realized from him.

6. The other contention advanced on behalf of the defendant, viz. that Section 233(m), Land Revenue Act, was a bar to the suit, is also without substance. It is provided by Section 233(m) that:

No person shall institute any suit or other proceeding in the civil Court with respect to claims connected with, or arising out of the collection of revenue (other than claims u/s 183), or any process enforced on account of an arrear of revenue.

7. It is clear that in accordance with this provision, suits that come within the purview of Section 183 of the Act are not barred. It has therefore to be considered whether or not the suit filed by the plaintiff-respondent was one u/s 183 of the Act. That section runs as follows:

183. Whenever proceedings are taken under this Chapter against any person for the recovery of any arrear of revenue, he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed, and the person against whom such proceedings were taken may sue the Government in the civil Court for the amount so paid.... No protest under this section shall enable the person making the same to sue in the civil Court, unless it is made at the time of payment in. writing and signed by such person or by an agent duly authorized on his behalf.

8. It is conceded that proceedings for realization of revenue were taken against the plaintiff and that the payment to the Sub-divisional Officer was under protest. But it is contended that the protest was not in the manner provided by the section and it is therefore urged that the suit was not maintainable. It is a fact that the application containing the protest was not signed by the plaintiff himself and was signed by his son Kanhaiya Lal. It has been found by the lower Appellate Court that Kanhaiya Lal was instructed and authorized by the plaintiff to make the payment under protest. The question then arises whether this verbal authority given by the plaintiff to Kanhaiya Lal constituted the latter "an agent duly authorized" on behalf of the plaintiff. It is argued on behalf of the defendant-appellant that the agent contemplated by Section 183 is an agents appointed by a written power of attorney. It is urged that by using the word "duly" before the word "authorized" in the section, the Legislature intended to lay down that the agent''s authority must be evidenced by a written document. I am unable to agree with this contention. The word "duly" has been used in the section with a,

view to provide that the authority given to the agent must be valid authority and not one given as the result of exercise of coercion, undue influence or fraud, etc. The word "duly" in my judgment cannot be held to be synonymous with the words s "by writing". If the Legislature intended that the agent contemplated by Section 183; must be an agent appointed by writing, nothing would have been easier for the Legislature than to say so in so many words. To give effect to the contention of the defendant-appellant would be to introduce in the section after the words "duly authorized" words to the effect "by writing" words which are not there and this is not permissible. The suit filed by the plaintiff therefore was a suit in accordance with the provisions of Section 183 and was maintainable. The appeal must there-fore fail and is dismissed with costs.

