

(1904) 08 CAL CK 0011

In the Calcutta High Court

Case No : Appeal from Appellate Decree no. 1507 of 1902

Syed Shah Hamid Hossein Sajada Nasin

APPELLANT

Vs

Chowdhry Shaikh Mukhdun Raza

RESPONDENT

Date of Decision : 25-08-1904

Acts Referred:

Citation : (1904) 08 CAL CK 0011

Final Decision : Allowed

Judgement

Maclean, C.J.—This is a suit to set aside a revenue sale under Act XI of 1859 and it comes before us on second appeal. The question we have to decide is whether, upon the facts found by the District Judge, the revenue can properly be said to have been in arrear so as to justify the sale. The last day for paying in the revenue was the 28th March 1898, and the money was remitted by the Plaintiff by a money-order on the 26th March and it reached the Collectorate in due time on the 28th. It appears that in this district there are two estates, one called Narsingha, Towzi No. 2894, the registered owner being Golam Najaf and the revenue being Rs. 24-4. The other is called estate Naughar, Towzi No. 2897, the registered owners being Ram Saran Singh and others and the revenue being Rs. 16. The Plaintiff sent a revenue money-order for Rs. 24-4, but he gave the Town number as 2897 and the proprietor's name as Haidar Ali Sajjada Nashin who was the successor in title of the registered owner of estate Narsingha, named Golam Najaf. The Collector credited Rs. 24-4, the money so put in, to the account of estate Naughar No. 2897. It is clear, whether it was the fault of the Plaintiff or it was the fault of the clerks in the Collectorate, that the revenue was credited to a wrong estate for although there is an estate called Narsingha, Towzi No. 2894, and there is another estate called Naughar, Towzi No. 2897, there is no estate known as Narsingha, Towzi No. 2897. The Plaintiff, the remitter, made two mistakes, a mistake in the Towzi number and a mistake in the name of the registered owner, though he was right as to the name of the estate and as to the amount of the revenue payable in respect of that estate. It is clear that, on the 28th March, there was in the hands of the Collector the amount which was due

for arrears of revenue in respect of estate Narsingha, namely, Rs. 24-4. It is equally clear that anybody reading the revenue money-order would see that there was an error upon the face of it, the error being that the wrong Towzi number was given. In these circumstances it was, we think, clearly the duty of the officers of the Collectorate, under Rule 29 of the Land Revenue Rules on the land revenue and cesses in Bengal, to have done what that rule prescribes which would have invited the attention of the Plaintiff to the mistake which he had made in the Towzi number and would have given him an opportunity of rectifying that mistake. But the officers did nothing of the sort. They simply sent back a receipt which did not refer to the mistake and which, to some extent, may be regarded as having lulled the Plaintiff into a sense of false security; I mean, upon receiving that receipt, he would think that the matter was all right and that the payment was properly made.

2. The sale took place on the 8th June 1898, on the footing that there was an arrear of revenue due and, on the 23rd June 1899, an appeal to the Commissioner was dismissed. This suit was then instituted on the 20th January 1900. The question is whether, in these circumstances, it can fairly be said as against the Plaintiff that there was an arrear of revenue on the sun-set day, that is, on the 28th March 1898. That the Plaintiff fully intended to pay the revenue there can be no doubt and there can be no doubt that he thought that he had paid it. As I have said, the money due for revenue was certainly then in the coffers of the Collectorate--the money actually due for arrears of revenue of this particular estate Narsingha--and if the officers of the Collectorate had done what the rules prescribe, there is no doubt whatever that this sum would have been duly and properly credited to that estate and no sale could have been properly effected. In these circumstances it seems difficult to say that there was an arrear which would justify the sale. The facts were perhaps rather stronger in the case in the Privy Council of *Balkishen Das V. Simpson* ILR 25 Cal. 833 (1898), but the principle under-lying that case appears to us to apply to the present. In that case the Collector made a mistake in debiting a wrong amount to the estate owned by the then Plaintiff and it was held in effect that, as the true amount has reached the Collectorate, it could not be said that there was any arrear. So here. The money had reached the Collectorate in time and though, no doubt the Plaintiff made a mistake in mentioning a wrong Towzi number. If the Collectorate officers had complied with the rules, the mistake would have been rectified. The Defendant relies upon the third paragraph endorsed on the back of the money-order which says in effect that the remitter is to be liable for any mistake and that the Collectorate is to be guided by the Towzi number. I do not think that this endorsement can relieve the Collectorate from doing that which the rules say their officers ought to have done. Rule 29 implies that there may be a mistake on the part of the remitter and the rule is framed so that his attention may be called to the mistake with a view to its rectification. It would be going too far, we think, to hold that the endorsement on the back of the money-order frees the Collectorate from the duty imposed upon it by Rule 29. The appeal therefore

must be allowed, the decisions of the lower Courts must be reversed and a decree passed in favour of the Plaintiff setting aside the sale with costs in all the Courts.