(1914) 06 CAL CK 0006

In the Calcutta High Court

Case No : Appeals from Appellate Decrees Nos. 609 to 633 & 635 of 1911

Uma Charan Mandal and Others — APPELLANT

Vs

Midnapore Zemindary Co. — RESPONDENT

Date of Decision : 01-06-1914

Acts Referred:

Citation : (1914) 06 CAL CK 0006

Final Decision : Allowed

Judgement

1. This is an appeal by the Defendants in a suit for annulment of an under-tenure, and for possession thereof by a purchaser at a sale in execution of a decree for arrears of rent under the Bengal Sales of Under-tenures Act of 1865. The circumstances under which the sale took place may be briefly narrated. The Plaintiffs Company are the successors-in-interest of Robert Watson & Co., who obtained on the 8th March 1885 a putni taluk in Barahabhoom from Raja Brojo Kishoro Singh Deo, the then zamindar. Under the putni there was a tenure, originally held by one Sarupganjan Sinha, which had subsequently passed into the hands of Raja Jagabandhu Singh. The Defendants are in occupation of the disputed lands as under-tenure-holders under the latter. The tenure-holder made default in payment of rent, with the result that the company, as putnidars, brought a suit against him for arrears and obtained a decree. At the sale which was held in execution of the decree, the company became the purchasers of the defaulting tenure on the 7th December 1908. The sale was confirmed on the 16th December 1908, and the company commenced this action, on the 28th May 1909, for recovery of possession on declaration that the under-tenure held by the Defendants had been extinguished as the result of the rent-sale. The Defendants resisted the claim substantially on two grounds, namely, first, that the Plaintiffs were not the purchasers of an entire tenure sold for its own arrears and were consequently mot entitled to treat the under-tenure as cancelled under sec. 16 of Act VIII of 1865 (B. C.); and, secondly, that the sale had been brought about and accomplished under circumstances which made it in essence a private sale and disentitled the purchaser to claim the privileges accorded by law to a

purchaser of an entire tenure at a real sale held under the provisions of the Bengal Rent Law. The first of these grounds raises a question of considerable nicety by no means free from difficulty, namely, did Sarupganjan Sinha hold one or two tenures and what was the legal effect of the deed of compromise, dated the 6th March 1884, on his title? But it is not necessary to examine this aspect of the matter, because the Appellants are entitled, in our opinion, to succeed in their second contention. The District Judge has in concurrence with the Subordinate Judge found that the tenure-holder Raja Jagabandhu Singh was determined to get rid of the property and was anxious to make the best possible bargain for it. The company were ready to take the property by private purchase for Rs. 36,000; this was not acceptable to the Raja who had fixed the, minimum price at Rs. 40,000. This the company would not pay, unless they could get a clear title by purchase at the rent, sale, that is, a title free from the in cumbrances of the under-tenure-holders. It was finally agreed on the day of sale that the company should bid up to Rs. 40,000, and that the Raja should allow the sale to proceed, although he was well able to save the property from sale by deposit of the small sum of Rs. 200 for which the rent-decree had been made. It was also arranged that at the sale, a pleader of the Court, Babu Satis Chandra Singh, should offer bids up to Rs. 39,000 so as to lead up to the prearranged bid of Rs. 40,000, on behalf of the company. The bid by Satis Chandra Singh was wholly fictitious; he never intended to buy the property, but offered the bid of Rs. 39,000 so that the company might at once follow up with a bid for Rs. 40,000. The arrangement as made antecedent to the sale was carried out in every detail, and the company became the purchasers of the tenure at the sale. The question arises, whether in the events which have, happened, they are entitled to claim the, privileges of a purchaser at a rent-sale, or whether they are not in the position of private purchasers of the property.

2. The principles applicable to cases of this description have been laid down in cases of the highest authority. In Sree Nath Ghosh v. Hurnath Dutt 38 W. R. 240 (1872), this Court was called upon to consider the effect of a sale of a tenure under the Rent Law, brought about designedly to get rid of an under-lessee. There the tenure-holder had deliberately defaulted to pay the superior landlord his just dues, with the intention that a decree might be obtained against him and his tenures sold so that the under-tenure might be extinguished. The plan succeeded, the decree was made and was executed. The purchase was settled from before the sale and the price also was fixed beforehand. Under these circumstances, the Court held that although the sale was held under the provisions of the Rent Law, it had no higher effect than a private alienation, because it was in essence a transfer under pre-arranged conditions to a purchaser who was a party to the arrangement. Mr. Justice Markby accepted the principle recognised in Graham v. Allsop [1848] 3 Exch. 186; 77 R. R. 592, that an intermediate landlord is bound to protect his own tenant from all paramount claims, and held that he may be deemed to have committed an act of fraud against this under-lessee when he entered into an agreement with another

person to get rid of an, unrecorded co-sharer in the forced and fictitious sale for arrears of rent. The same principle was applied in the case of Kishore Chunder Sein v. Kally Kinkar Paul (3) where default was willfully made by the record tenant and the tenure sold to a pre-arranged purchaser with a view to get rid of an unrecorded co-sharer in the property. The Court held that as the sale was not in essence a public sale, but only a device to give to what was really a private transaction the incidents of a public sale, it must be treated as a private sale only. It is worthy of note that in the cases of Sree Nath Ghosh v. Hurnath Dutt 18 W. B. 240 (1872), and Kishore Chunder v. Kally Kinkar 20 W.R. 333(1873), this Court merely applied the doctrine laid down by their Lordships of the Judicial Committee in Nawab Sidhee Nuzur Ally v. Ojoodhyaram Khan 10 M. I. A. 540 (1866), where an attempt was made to destroy the rights of a mortgagee by recourse to the device of a sale for arrears of revenue, at which the purchase was to be made by a purchaser with whom the terms had been settled in advance. If was held that the Court will strip off all disguises from a case of this character, look at the transaction as it really is and treat the sale as a private sale, because it was a mere device for the achievement of an ulterior purpose and never really meant to be a sale under the revenue laws for realisation of arrears of revenue. Whatever may be the forms gone through, no one will be allowed, by means of a fictitious auction sale, to cause loss to another and benefit to himself. The same principle was recently applied in the case of Harendralal v. Salimulla 12 C. L. J. 336 (1910), where an attempt was made to destroy the rights of under-tenure-holders by means of a sale for arrears of revenue; the proprietor willfully defaulted to pay the Government revenue, and arranged to have the property purchased by a person with whom all the terms were carefully pre-arranged and who agreed on those terms to offer bids at the sale which would inevitably follow the default. An analogous principle has been applied in the cases, of Harendmlal v. Purna Chandra 15 C. L. J. 132(1910), Ram Prasad v. Pawan Singh 18 C. L. J. 97 (1907), Janki v. Debi 15 C. W. N. 776 (1910), and Faizur Rahman v. Mimansa Khatan 18 C. L. J. 111; s. c. 17 C. W. N. 1233 (1913). In the case before us, the default was willfully made; the sale was deliberately brought about, though the judgment-debtor was able to pay the judgment-debt; the purchasers and the price to be paid by them were settled in advance; here we have all the characteristics of a private sale. It was clearly an abuse of statutory provisions for sale of tenures in execution of decrees for rent, to bring about designedly a sale under such circumstances, so that the rights of under-tenure-holders might be destroyed, an unencumbered title conveyed to the purchaser, and the maximum of benefit conferred upon the defaulter. The transaction in all its characteristics was a private sale, and if we were to regard it as a real rent-sale, we would have to hold that an unscrupulous tenure-holder may successfully avail himself of the stringent provisions of the Rent Law, solely with a view to injure subordinate tenure-holders and to profit by their detriment, while providing, by means of a secret arrangement with the intending purchaser, ample safeguards against any possible loss to himself by the transaction. The conclusion appears to be irresistible that the Plaintiffs must be treated as in no better position than purchasers by a private transfer. In this view, their claim for annulment of the under-tenure of the Defendants cannot be sustained.

3. The result is that this appeal is allowed and the suit dismissed with costs in all the Courts.

S. A.''s Nos. 610 to 633 and 635 of 1911 :--

It is conceded that the above judgment will govern these appeals. They will consequently be allowed, and the suits from which they arise will stand dismissed with costs throughout.

