
(1873) 12 PRI CK 0001

Privy Council

Case No: None

Bunwaree Lall Sahoo

APPELLANT

Vs

Mohabeer Proshad
Singh; Kumla Proshad
Singh; Ram Tuhul
Singh and
Deenobundhoo Singh

RESPONDENT

Date of Decision: Dec. 18, 1873

Citation: (1873) 1 IndApp 89

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

James W. Colvile, J.

1. These cases, in which the parties are the same and the facts are the same, turn upon a point of law which admits of being very shortly stated. The Plaintiffs bring their suit for the purpose of setting aside a sale for arrears of Government revenue. The Plaintiffs are the owners of separate shares of the estate in question." Certain decrees had been obtained against the Plaintiffs, and attachments had been issued under Act VIII. of 1859, some years prior to the sale in question. Upon the application of the Plaintiffs themselves, a surburakur or manager was appointed for the purpose of liquidating the debts. It does not appear to their Lordships that anything turns upon the appointment of this surburakar. It was, indeed, argued in the Court below, though scarcely contended for here, that the appointment of the surburakar superseded the attachment. Their Lordships are of opinion that the attachments were not so superseded, but were in force.

2. That being so, the estate being thus under attachment, with the exception of one portion belonging to a party of the name of Gooroodoyal, the question arises whether or not the provisions of Section 5 of Act XI. of 1859 apply to this case? This enactment provides, " that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after

a notification in the language of the district, specifying the nature and the amount of the arrear or demand, and the latest date on which the payment thereof shall be received, shall have been affixed, for a period of not less than fifteen clear days preceding the day fixed for the payment, according to Section 3 of this Act, in the office of the collector or other officer duly authorized to hold sales under this Act in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Moonsiff Court and Police Thanna of the division in which the estate or share of an estate to which the notification relates is situated." There is no question that this notice was not in point of fact given. The only question that arises is, whether this section applies to the sale of this estate, and in order to determine this it is necessary to read to the end of the section. The arrears or demands described below are: "First, arrears other than those of the current year or of the year immediately preceding. Secondly, arrears due on account of estates other than that to be sold." " Thirdly, arrears of estates under attachment by order of any judicial authority, or managed by the collector in accordance with such order." The arrears for which the estate in question was sold were neither of the first nor of the second descriptions; the only question is whether they fall within the third.

3. Now in this case the estates were not held under attachment by the collector of the district, and it has been argued that this provision applies only to the case of estates being held under attachment by the collector. But their Lordships are of opinion that to place such a construction upon the words of the Act would unduly limit their plain meaning, and it may be observed that this is to a great extent a remedial Act passed for the benefit of the subject, and in order to relax the stringency of the former statutes, whereby the Crown was empowered to sell estates for non-payment of revenue. The words of the Act are, " arrears of estates under attachment by order of any judicial authority." These words would prima facie apply to all attachments by judicial authority under Act VIII. of 1859, which had been passed some two months before in the same session of the Legislature; and it is difficult to suppose that the Legislature having passed that Act should in a subsequent statute referring to attachments intend to omit a reference to attachments which their previous legislation had regulated.

4. But it has been said that the second portion of this sentence must limit the construction of the first. That the words "or managed by the collector in accordance with such order" must y refer to attachments as well as to the mere management by the collector of estates; but it appears to their Lordships that no such construction necessarily follows. They think that the first part of the clause, " arrears of estates under attachment by order of any judicial authority," should be read by itself, and thus would have the general significance which I have before expressed. The terms "managed by the collector in accordance with such order" would refer to cases in which the collector may manage estates by an order of judicial authority, which may or may not be an order for an attachment. By this construction both parts of the sentence would cohere; and it does not appear to their Lordships that the latter words narrow the plain and obvious meaning of the former.

5. An argument has been drawn from Section 17 for the purpose of limiting the meaning of the words in Section 5; but their Lordships would observe in the first place, that Section 17 refers to a different subject matter. It refers, not to notices to be given, but to certain cases in which estates are not liable to sale at all. The words relied upon are these: "and no estate held under attachment, or managed by a revenue officer in pursuance of an order of judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrue." It may be that in this section the words " held under attachment," may refer to " held under attachment by a revenue officer;" and it may be observed that where the Legislature intend to express this meaning they have used apt words; they have used the words "held under attachment by a revenue officer;" but the circumstance of their having used these words in this section, and having omitted them in the former, tends to strengthen the inference that their meaning in the former was different from what it was in the latter section. The words of the Act being plain, it is not necessary to speculate upon the reasons which may have induced the Legislature to pass them; but if such reasons were to be sought, one has not far to go for them. A creditor obtaining an attachment under Act VIII. had an inchoate interest in the land; his debtor could not alienate it, and no judgment creditor, even if his judgment were prior, who obtained subsequent execution, would have any rights against him. It may be said that the estate was virtually in the custody of the law. That being so, the judgment creditor had an obvious interest in knowing whether or not the revenue was paid; in other words, in knowing whether or not the estate in which he had an interest was forfeited. It may well be that the Legislature may have thought that, under those circumstances, he was entitled to be informed whether the estate was or was not liable to forfeiture, in order that he might step in, as he might under Section 9 of the same Act, and pay the revenue and prevent the forfeiture.

6. It has been further argued that the words "arrears of estates under attachment" must refer to estates the whole of which are under attachment, and that if any portion or any share of an estate, however small, is not under an attachment, the clause does not apply. In their Lordships' opinion, this would be to place again an unduly narrow construction and to limit the meaning of plain words. It appears to their Lordships that an estate any portion of which is under attachment cannot be said to be free from attachment, and is, in fact, subject to attachment. The reasons why the Legislature should direct information to be given to a creditor would apply as much to the case of the creditor having a lien on a small, as to one having a lien on the whole or a large part of the estate.

7. Entertaining this view, their Lordships are of opinion that the judgment of the High Court was right, and they will humbly advise Her Majesty that this judgment be affirmed and the appeal dismissed, with costs ⁽¹⁾.

⁽¹⁾ It is worthy of notice that Act. I. of 1845, Section 5 (upon which Section 5 of Act XL of 1859 has been modelled) provides in the case of intended sales for the recovery of "arrears of estates under attachment by order of any judicial authority" (saying nothing of

the collector) special notifications nearly the same with those which are required by Act XI. of 1859, Section 5.