Madan Mohan Lal Vs Abdul Razaque Khan and Others

Court: Patna High Court

Date of Decision: May 7, 1924

Acts Referred: Bengal Land Registration Act, 1876 â€" Section 70
Bengal Land Revenue Sales Act, 1859 â€" Section 10, 13

Citation: 88 Ind. Cas. 465

Hon'ble Judges: Ross, J; Das, J

Bench: Division Bench

Judgement

Ross, J.
This is an appeal by defendant No. 3 against a decree passed by the Subordinate Judge of Gaya in favour of the plaintiffs.

2. The facts are these Mahal Pankardih Malehari, Tauzi No. 4687 consists of 213 villages owned by a large number of proprietors many of whom

have had separate accounts opened from time, to time. In 1918 the residuary share comprised shares in 96 villages. This share had been in arrears

since before 1908 but separate accounts continued to be opened until 1917. In 1916 the arrears were Rs. 4,019-6-7 and, in that year the

Collector apportioned Rs. 780-12-0 out of these arrears to the separate accounts that had been opened during the period in which the residuary

share had been in arrears. On the 8th of June 1917 and on the 17th of January 1918 the residuary share was sold for arrears of Government

revenue. Both the sales were set aside. Eventually on the 23rd of September 1918 when the arrears were Rs. 4,961-11-7, the share was sold and

purchased by defendant No. 1, a servant and benamidar of defendant No. 3, for Rs. 9,500. Three appeals were preferred to the Commissioner of

Revenue, against the sale by certain of the plaintiffs in the present suits. These appeals were, dismissed. A sale certificate was granted and delivery

of possession was given in 1918. Thereafter ten suits, out of which these ten appeals have arisen, were instituted by some of the proprietors of the

residuary share covering some 40 villages out of the 96.

3. The plaintiffs in their plaints impugned the revenue sale on various grounds. Some of these grounds they have failed to establish and there is no

cross-appeal. I am, therefore, concerned only with the grounds on which they have succeeded in getting the sale set aside. These grounds are two;

one of which covers all the cases while the other affects three cases only.

4. The first ground is that separate accounts were opened illegally by the Collector, while the residuary share was in arrears, without realization of

the arrears, but after deduction of what is described in the plaint as an imaginary portion of the arrears: and the Collector was not legally authorized

to sell by auction only those ijmali shares which were found existing subsequent to the default in place of those which existed at the time of the

default. At the trial the answer of the defendant was that the proprietors who got separate accounts opened paid their portion of the arrears due,

but even if they did not do so, the sale cannot be challenged on this ground. The plaintiff"s case was that the Collector had no power to apportion

the arrears between the separate accounts and the residuary share; that even if he had this power the arrears had not been apportioned correctly,

that the residuary share had been sold for an arrear greater than was due from it; and that what ought to have been sold was the residuary share as

it stood when the share fell into arrears, and not the residuary share as it stood at the time of the sale. In Suit No. 33 of 1919 (First Appeal No.

139 of 1921), Suit No. 282 of 1219 (First Appeal No. 140 of 1921) and Suit No. 54 of 1919 (First Appeal No. 141 of 1921) the plaintiffs" case

was that the residuary share which was sold included shares belonging to these plaintiffs which were protected by separate accounts.

5. The learned Subordinate Judge in dealing with the main ground on which the suits were brought examined the accounts of the estate from the

June kist of 1913 when the Government revenue of the residuary share was Rs. 2,273-8-0 and the arrears were Rs. 2,086-13-11. He continued

the examination down to the time of the sale when the Government revenue had been reduced to Rs. 852-13-0 and the arrears had increased to

Rs. 4,961-10-7. As a result of his examination he found that whereas Rs. 1,383-13-0 ought to have been apportioned out of the arrears to the

separate accounts, the Collector had apportioned only Rs. 780-12-0. The arrears for which the residuary share was sold, therefore, exceeded the

true arrears by Rs. 603-1-0. He held, therefore, that the sale was without jurisdiction. He further held, however, that the procedure by way of

apportionment of arrears between the separate accounts and the residuary share was unwarranted by law, and, that if a separate account was to

be opened while the residuary account was in arrears, this could only be properly done if an account of the payments made by the co-proprietors

had first been taken; and that the shares which were separated by opening of separate accounts were also liable to be sold jointly with the

residuary share.

6. On the second ground, which was confined to three cases only, the learned Subordinate Judge found that the shares of the plaintiffs in Suit No.

33 of 1919 in villages Lawahar. Karangarh and Kothi Khas were protected by separate accounts Nos. 34 and 50; and that in Suits Nos. 282 and

54 of 1919 the plaintiffs owned certain pokhta share in villages Simri, Karhani and Amnabad amounting to 1 anna 12 dams or 4 annas 18 dams

and 13 kowris kham which were protected by separate accounts, whereas in the Collector"s registers these shares were shown as 1 anna 12

dams kham with the result that a portion was included in the residuary estate which ought to have been fully protected by the separate accounts. In

the result, the learned Subordinate Judge passed a decree declaring that the sale of the properties of the plaintiffs held on the 23rd December 1918

was null and void and beyond the jurisdiction of the Collector to hold and that the auction purchasers defendants acquired no title by their

purchase. He passed a decree for recovery of possession in favour of the plaintiffs.

7. On behalf of the appellant it is contended in the first place that it, is not the function of the Civil Court to check the accounts of the Collector on

what must be imperfect materials, and that these accounts must be presumed to be correct except perhaps in a case where it can be shown that in

fact there were no arrears due. It is true that the learned Subordinate Judge has gone into the question whether the arrears were correctly

apportioned between the new separate accounts and the remaining residuary share; but this was in reality a subsidiary matter, because the main

position taken up by the learned Subordinate Judge was that apportionment could not be made at all and that if a separate account is to be opened

while the residuary share is in arrears, this can only be done after an account has been taken of the payments made by the different co-proprietors

since the time when the residuary share fell into arrears. The respondents further contend that the opening of a separate account while the residuary

share is in arrears affords no protection at all and that the share which ought to be sold is the share as it stood when the share fell into arrears. The

learned Counsel for the appellant on the other hand argues that although there is no legal obligation on the Collector to apportion the arrears, this is

an equitable and just procedure sanctioned by revenue practice, and that the Civil Court has no right to go behind the apportionment as made.

8. In order to deal with this argument it is necessary to consider the relevant sections of the Revenue Sales Act and of the Bengal Land Registration

Act. The sections relating to the opening of separate accounts are Sections 10 and 11 of Act XI of 1859 and Section 70 of the Bengal Land

Registration Act (Bengal Act VII of 1876). Without going into the details which differentiate these sections, what they require generally is that

when a recorded sharer of a joint estate desires to pay his share of the Government revenue separately, he may, submit to the Collector a written

application that effect"" which ""must contain a specification of the share held in the estate by the applicant"" and in the case where: ""the share consists

of a specific portion of the land of the estate specification of the land and of the boundaries and extent thereof, together with a statement of the

amount of sadar jama heretofore paid on account of it."" The Collector is then required to publish in certain places a copy of the application; and: ""if

within six weeks from the date of the publication of these notices no objection is made by any other recorded sharer the Collector shall open a

separate account with the applicant and shall credit separately to his share all payments made by him on account of it. The date on which the

Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the

applicant commence."" Section 12 provides that ""if any recorded proprietor of the estate...object that the applicant has no right to the share claimed

by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of

an estate, that the amount of sadar jama stated by the applicant to have been heretofore paid on account of such portion of land is not the amount

which has been recognized by the other sharers as the jama thereof the Collector shall refer the parties to the Civil Court and shall suspend

proceedings until the question at issue is judicially determined."" Section 74 of Act VII of 1876 contains a similar provision. Now at this point a

question arises whether the Collector has any discretion to refuse to open a separate account when the residuary share is in arrears. On behalf of

the appellant it is contended that if Section 12 was not there, it could not be said that the Collector could not deal with objections, that the fact that

Section 12 provides for the disposal of three particular kinds of objections by the Civil Court, must not be taken to imply that the Legislature

contemplated no other kind of objection and that any proprietor may raise the objection that the residuary account is in arrears and if the objection

is not raised it must be taken that the parties acquiesce and the Collector is entitled to open a separate account. For the respondents it is argued

that the Collector has no power to deal with objections; that they are for the Civil Court and that the question of arrears does not concern the

Collector as the law gives ample security for the revenue. It is not perhaps necessary to decide the question, but it may be pointed out that the

three kinds of objections specified in Section 12 are the only objections that could be made to the only statements that the application is to contain.

It would seem to follow from this that if no such objection is made the Collector is bound to open a separate account whether the share from which

the separate account is to be opened is in arrears or not at the time. No inference, therefore, unfavourable to the respondents, can, in my opinion,

be drawn from the fact that when the separate accounts were opened no objection was raised on the ground of the existence of arrears.

9. The next question is whether the Collector"s procedure in dealing with the arrears was correct, and if not, whether this in itself affects his

jurisdiction to sell the residuary share.

10. There is no special procedure appointed by the Act for dealing with the case where the residuary share is in arrears possibly because it was

not contemplated that there should be arrears, or because the security of the revenue is not affected by the opening of a separate account. There is

no authority in the Statute for apportioning the arrears, whether after taking an account, as the learned Subordinate Judge has suggested, should be

done, or merely according to the ratio between the Government revenue assessed on the separate account and that remaining to be assessed on

the residuary share. It is true that this latter method appears to be authorized by the practice of the Revenue Courts see the letter from the

Commissioner of the Patna Division to the Collector of Gaya (Ex. GG)]. The justice of such a method may be open to question because it may be

that the proprietor who is applying for a separate account has been punctual in his payments and normally it would be the proprietor who was

punctual in his payments who would seek protection against the less punctual proprietors by opening a separate account (see the preamble to Act

XI of 1859). But so far as this is a matter of accounts it would be merely an irregularity which at the most might give ground for impugning a sale

u/s 33 of the Act. But I do not see how the defect in the method of dealing with the arrears can affect the jurisdiction of the Collector to sell a share

which admittedly was in arrears and was liable to sale.

11. But there is another aspect of this matter and it is upon this aspect that the respondents specially insist. They contend that there is no means of

dealing with arrears and that no means is necessary because the opening of a separate account when the residuary share is in arrears has no effect

at all the share which is to be sold when it eventually become liable to sale is the share as it stood when it fell into arrears. The consequence is that

the Collector has in effect split up the revenue unit which he ought to have sold and which was liable for the arreras and has sold a part of it for an

arrear for which it was only partially responsible; this, it is contended he had no jurisdiction to do and the sale is bad on this ground apart from

Section 33 altogether. On the first part of this argument it is contended that if the share of A, B, C and D is liable for a debt, that debt, cannot be

thrown"" upon the share of B, C, and D while the share of A is saved from liability by being separated out after the debt had been incurred. It

seems clear on general grounds that the residuary share as it stood when the debt was incurred would be charged as a whole with that debt and

that no part of it could escape from the charge by subsequent separation. The question is whether the Sale, Law prevents the application of this

principle. The section relevant to this question is Section 13 which provides that: ""Whenever the Collector shall have ordered a separate account or

accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector...in the first place shall put

up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due."" Section

14 then further provides for the contingency that the highest offer for the share may not equal, the amount of the arrear, and, for the liability of the

whole estate to be sold in such a case. It is argued for the respondents that Section 13 contemplates the case of an estate becoming liable to sale

for arrears of revenue after the separate account has been opened; that it deals with the case where the Collector shall have ordered a separate

account to be opened and that in such a case, if the estate shall become liable to sale, then certain consequences follow; and that there is nothing in

this section to protect a separate account which has been opened after the liability to sale arose, because the section does, not deal with such a

case. But the section does lay down a general rule and it must be construed so as to express a general rule. The learned Counsel for the appellant

contends that all that the Collector has to do is to look at the separate accounts as they stand and if he finds that any separate account is not in

arrear, he is not entitled to sell that share; he can only sell the share from which according to the separate accounts an arrear of revenue is due. He

points out that the Collector is not permitted to sell a share merely because that share is in arrears; but he can only sell if the estate is in general

arrear. It must be shown, therefore, that the estate as a whole is in arrears and liable to sale; and it is contended that the date on which this liability

to sale arose must be the date which will fix the extent of the residuary share of the estate to be put up for sale, if it is that share which is in arrears,

as in the present case. This contention appears to be sound. The argument accepts the main position of the other side, but seeks to escape from

the effects of that concession by throwing the date after the period when the separate accounts in question were opened. It is contended in short

that although the residuary share may have been in arrears, and in considerable arrears, since 1908, there is nothing in this record to show that the

estate whole became liable to sale for arrears before June 1917 when it was actually put up for sale. The Sale Law contemplates that an estate in

arrears should be sold as soon as possible after the liability to sale has arisen by failure to pay the arrears on the latest day of payment; and it must

be presumed that inasmuch as the estate was not put up for sale until June 1917, it did not become liable to sale before that date. In any case it is

for the plaintiffs to show that the estate became liable for sale before the separate accounts in question were opened. They have not shown that the

estate became liable to sale before June 1917, or that any separate account was opened after March 1917, and they must, therefore, accept what

the separate accounts show at that date and consequently the sale was properly held according to the provisions of Section 13. The apportionment

of arrears was made in 1916 and, therefore, cannot affect the question. Section 13 lays down what the Collector has to do at the time when he

takes action under that section and he is bound by what the separate accounts show at that point of time. The co-sharers may have rights of

contribution inter se, but that is not a matter with which the Collector is concerned. The point of time which determined the action of the Collector

in the present case was June 1917 and no separate account was opened after that date and, therefore, the residuary share as it stood at that time

was properly put up for sale. It may be that the arrears shown at that date as due by the residuary share had in fact come down from an earlier

period when the residuary share was larger in extent; that is a matter which may give rise to a claim for contribution, but the Collector is bound by

what his accounts show as they stand. The argument for the respondents is that the residuary share which was sold in 1918 was not the share from

which the arrears were due. Between September 1913 and September 1915 at least eighteen separate accounts were opened, viz., separate

accounts 368, 370, 372, 374, 379, 380, 381, 382, 383, 386, 388 to 395. These all formed part of the residuary share and were opened out of it

and were responsible in part of the arrears for which the sale took place. Therefore, the sale of the residuary share as it stood in 1918 for these

arrears was without jurisdiction. Now it is admitted that when the estate became liable to sale, the share which according to the separate accounts

was liable to sale for an arrear of revenue was the share that had to be put up for sale. The phrase ""according to the separate accounts"" is

construed by the respondents as requiring the Collector to trace the arrear back to its origin, taking into consideration all the separate accounts

which had been opened since the arrear began and to determine what the share then was and to put that up for sale. This does not seem to me to

be the natural force of the words but a strained and artificial sense. It is pointed that this is the view which has been adopted by the Board of

Revenue in the rule relating to Wards estates quoted by the learned Subordinate Judge framed under Sections 23 to 26 of Act IX (B.C.) of 1879.

That rule, however, is not binding on the Civil Court in construing Section 13 of the Revenue Sale Law. It leads to obvious difficulties. Thus in the

present case, in 1913 when arrears were Rs. 2,2051-6 separate accounts Nos. 368, 370, 372 and 374 were opened and separate accounts Nos.

16, 17, 22, 56, 66, 89, 163, 182 and 191 were closed. In January 1914 separate account No. 363 was closed. In March 1914 when the arrears

were Rs. 2,493-12-9 separate accounts 377 and 378 were opened and in June 1914 when the arrears were Rs. 2,782-9-9 separate accounts

379, 380, 381, 382 and 383 were opened. In September 1914 separate account 276 was closed. In January 1915 separate accounts 386 and

388 were opened, the arrears being then Rs. 2,680-9-5. In March 1915 separate accounts Nos. 389 and 390 were opened when the arrears

were Rs. 3,057-1-11. In June 1915 when the arrears were Rs. 3,326-2 8 separate account 391 was opened and in September 1915 separate

accounts 392 to 395 were opened when the arrears were Rs. 3,356-0-6. It is difficult to see on what principle these separate accounts which have

had a separate existence which sets them free from the burden of the accumulating arrears can be held liable to sale for an arrear much greater than

any arrear for which they could be held responsible. Again, for ought we know the separate accounts which have been opened may have been

formed partly out of the residuary share and partly by amalgamation with other separate accounts. On what principle are they to be disintegrated?

It seems, therefore, that the construction for which the respondents contend is not practicable. The explanation must be this that the Collector is

concerned with the collection of the revenue, and sales take place with this object in view, the co-sharers being left to the ordinary remedies for

enforcing their rights inter se. I hold, therefore, that the Collector was entitled to put up for sale in June 1918 the residuary share as it stood at that

date for the arrears then shown against it in the Collector''s books.

12. The second part of the argument is equally without force. It is admitted that the estate was in general arrears and that the share in arrears

according to the separate accounts was liable to sale. The Collector, therefore, had jurisdiction to sell. If there was any irregularity in the exercise

of the jurisdiction the remedy was provided by Section 33. But where there is jurisdiction, an irregularity in its exercise cannot take the sale outside

the Act. The respondents rely on the decision in Mahant Krishna Dayal Gir v. Syed Abdul Gaffar 40 Ind. Cas. 13 : 2 P.L.J. 402 : 2 P.L.W. 229.

But the facts of that, case were entirely different from the facts of the present case and the question was one of construction of the notice u/s 6 of

the Act, viz., whether the dominant description of the property sold was the word ""ijmal"" or the detailed list of the villages annexed thereto. The

decision on that question cannot throw any light on the present case.

13. I hold, therefore, that the Collector had jurisdiction to sell the property and as the sale is not attacked on any of the grounds stated in Section

33 it must stand.

14. I now turn to the second ground, which concerns three of the cases. The contention of the plaintiffs in Suit No. 33 of 1919 was that the shares

in Lawahar, Karangarh and Kothi Khas were protected by separate accounts Nos. 34 and 50. Now Register D does not show these separate

accounts for any of these three villages. A Rubakar of 1871 (Ex. 57d) shows that a separate account was opened for certain shares in certain

villages in this estate including Lawabar and Karangarh for a share of 1-anna 16 dams 19 kaure, 17 bauri 10 phouri and Kothi for a share of 18

dams 9 kauri 18-bauri 15 phouri. The revenue assessed on this separate account is Rs. 650; and as this is the amount shown against the separate

account No. 34 in the tauzi roll (Ex. Z) it may be taken that separate account which is shown in Ex. Z to have been opened on the 21 March 1871

the date of Ex. 57d, is that separate account. Similarly by a Rubakar Ex. 57c, dated the 14th of September 1874 a separate account was opened

for shares in Lawabar and Karangarh of 1-anna 4-dams and 1-krant which by reference to the tauzi roll Ex. Z is seen to be separate account No.

50. The tauzi roll shows that numerous separate accounts have been opened out of accounts 34 and 50 although these accounts still exist because

Ex. Z shows that a revenue of Rs. 347-1-0 and Rs. 37-13 0 is still assessed on separate accounts 34 and 50 respectively. But the question is

whether, after the subsequent dealings with these separate accounts, what remains contains the three villages in question. The register of separate

accounts Register No. 12A (Ex. 44 to 44b) does not show any separate account 34 so far as Lawabar is concerned. Moreover the total of

separate accounts 249, 317, 318 and 320 which the tauzi roll shows to have been opened out of separate accounts 34 and 50 covers a greater

share in Lawabar than was covered by the original separate accounts 34 and 50.

15. With regard to Karangarh, separate account 50 does not appear. Separate account 395 which has been opened out of both separate accounts

50 and 34 (see Ex. Z) is shown as well as the separate accounts 317, 318 and 320 which were opened out of separate account 34. It is true that

separate account 34 is also shown as covering a share of 1 anna 8 gandas but it is contended that this is an error due to the omission to strike out

this old account from the Register when new accounts were opened out of it. This may be so because the total of the shares in Karangarh opened

out of separate account 34 comes to more than the share originally represented by that account. In Kothi Khas, separate account 34 is still shown

for a share of 18 gandas and odd. Three separate accounts 317, 318 and 320 opened out of separate account 34 total more than the share in

Kothi Khas originally represented by separate account 34. Probably, therefore, the continued appearance of Separate Account 34 in Register

12A is a mistake.

16. It is contended on behalf of the respondents that the continuity of the separate account must be presumed and that the defendant must show

that it went back to the ijmali account or became part of some other account and that it is enough for the plaintiffs to show that a separate account

once existed. In my opinion this argument throws the burden of proof wrongly. It is not for the defendants or the Collector to show what became

of these separate accounts. The burden is on those who callenge the sale to show that these separate accounts which were opened so far back as

1871 and 1874 still exist. The evidence shows that they do not exist in their original form any longer. Register 12A is inaccurate as is admitted by

both sides and the traces of one or other of these accounts in the register cannot be relied upon. Register D does not show their existence and this,

in my opinion, is the best evidence in the case. I hold that the plaintiffs have failed to establish their case on this head.

17. In Suit No. 282 of 1919 (First Appeal No. 140 of 1922) the plaintiffs claim that their shares in Mauzas Simri and Kurhani are protected by

separate account 152. Their case is that these villages fall in three mahals namely, Pankhardih Malihari, Garua and Khaira (see Mahalwar Register,

Pargana Sherghati, Ex. 45). Kurhani appears as No. 62 in the register to the extent of 5 annas 6 dams and 2 kowris, and Simri as No. 184 with a

similar share in Mahal Pankhardih Malihari that is to say, one-third of each of these villages belongs to that mahal, and is treated for the purposes

of that mahal as being 16-annas. The documents show that the plaintiff"s purchased 1-anna 12 dams 17 kowris 13-bowris and (1-phouris in these

villages out of 5-annas 6 dams and 2 kowris. Separate account 152 was opened in respect of this share in March 1889. According to ihfe

plaintiffs" case this separate account Might to have been shown in the Collector"s register as being opened in respect of 4 annas 18 dams and 13

kowris, treating the share of these villages in Mahal Punkhardih Malihari as 10 annas; whereas, n fact, it was opened in respect of only 1 anna 12-

dams 17 kouris 13 bouris and 6 phouris, with the result that the difference was left unprotected by the separate account and went into the ijmal

share which was sold for arears of Government revenue The application for the opening of separate account is Ex. 38A. That application was

made u/s 70 of the Land Registration Act. In accordance with the requirements of that section it specified the share of the petitioner as 1 anna 12

dams 17 kauris 13 bouries 6 phouris. It also specified jamas adar of the 16-annas as Rs. 12-4-3 and the proportionate revenue on the share of the

petitioners as Rs. 3-12-9. Consequently it is clear from the Government revenue stated to be due on the share in respect of which the application

was made, that the share referred to in the application was a pokhta share and that the separate account ought to have been opened for 4 annas

18 dams and 13 kowris. The Government revenue on that share has all along been paid and it was only by mistake that in the Collector''s register

the share was entered as a kham share and not pokhta with the result that the greater portion of it was left unprotected.

18. In Suit No. 54 of 1920 (First Appeal No. 144 of 1922) this plaintiff''s case is similar and relates to a similar share in Mouza Amnabad which is

one of the constituent villages of Mahal Pankhardih Malihari and which appertains also to two other mahals, the shares in the three mahals being

equal. The plaintiff purchased 1 anna 12 dams 17 kowris 13 bowris and 6 phouris out of 5 annas 4 pies share in this village and made an

application for the opening of a separate account (Ex. 38) and separate account 158 was* opened u/s 70 of the Land Registration Act. The

petition is not as clear as it might have been. It describes the share as 1 anna 12 dams 17 kowris 13 bowris and 6 phouris out of 16 anuas; but it

states the previous jama sadar to be Rs. 5-13-10 and the proportionate revenue Rs. 1-13-0. The relation between the total jama sadar and the

jama sadar proportionate to the applicant''s clearly shows that the application was made in respect of a pokhta share. The separate account,

therefore, ought to have been opened for 4 annas 18 dams 13 kowris kham share; but, in fact, it was opened in respect of 1 anna 12 dams 17

kowris 13 bowris and 6 phouris kham share. The plaintiff has all along been paying Government revenue on full extent of her interest; but, owing to

the mistake in Collector''s register, that interest has not been fully protected by the separate account which was opened. The contention on behalf

of the appellants is that it is not the duty of the Collector to ascertain whether the share specified in the petition is pokhta or kham; but in my

opinion, the relation between the total jama sadar and the, jama sadar and the jama, sadar assigned in the application to the share in respect of

which the application was made is the determining factor; and the Collector, in opening the separate account, ought to have interpreted the share

according to this proportion.

19. I think, therefore, that the entire shares of the plaintiffs in these suits were protected, and as it is not disputed that the Government revenue had

been fully paid in respect of the entire shares the sale of these shares was without jurisdiction. Moreover the shares sold were in fact no part of the

residuary share and did not pass by the sale of the same. The plaintiff''s are, therefore, entitled to succeed in these two suits and Appeals Nos. 140

and 145 of 1922 must be dismissed with costs. The other appeals are decreed with costs and the suits are dismissed with costs.

Das, J.

20. I agree.