
(1909) 03 CAL CK 0010

Calcutta High Court

Case No: None

Janakdhari Lal

APPELLANT

Vs

Mohant Gossain Lal
Bhaya Gaywal

RESPONDENT

Date of Decision: March 30, 1909

Citation: (1909) 03 CAL CK 0010

Final Decision: Dismissed

Judgement

1. The subject matter of the litigation out of which the present appeal arises is Mauzah Raghunathpur in the District of Gya. The plaintiff respondent commenced the action for declaration that the sale of the Mauzah held by the Collector under the Public Demands Recovery Act 1895, is a nullity, and for recovery of possession of the property from the purchaser. It appears that on the 26th July 1905, the Collector made a certificate for recovery of its 15 anna 1 as arrears of Road Cess for the June last of that year.

2. The plaintiff deposited in the Treasury two days later the entire amount due. This fact, however, was overlooked, and a notice u/s 10 of the Public Demands Recovery Act of 1895 was served on the 27th August on the basis of the certificate previously made. The property, which is now valued at Rs. 6,000 was sold on the 18th December following, and was purchased by Sheo Sahai Lal for Rs. 100. The sale was confirmed on the 20th February 1906, and the purchaser on the 28th June 1906, transferred the property for Rs. 500 to Janak Dhari Lal. On the 2nd January 1907, the plaintiff commenced the present action for declaration of his title and for recovery of possession. He joined the Secretary of State for India in Council as the first defendant, Shoo Sahai Lal, the purchaser of the certificate sale as a second defendant, some Mokararidars as the third, fourth, fifth, and sixth defendants, and the transferee from the auction purchaser as the seventh defendant. The claim was resisted by the seventh defendant alone, substantially, on the ground that arrears of Cesses were due, that the sale had been rightly held, and that, in any event, it could not be set aside, as against a bona fide purchaser for value without notice. The Subordinate Judge in the Court below found that the certificate was as a

matter of fact made, not on the 26th July 1905, but on the 11th August, on which date an entry was made in the order sheet initiating the certificate proceedings. He concluded, therefore, that on the date on which the certificate was made there were no arrears due, and that, consequently, the Collector had no jurisdiction either to issue a certificate or to execute it. In this view, he set aside the sale and made a decree in favour of the plaintiff which entitled him to recover possession. The seventh defendant has now appealed to this Court, and, on his behalf, it had been contended, first that the certificate was made on the 26th July 1905, and not on the 11th August, as held by the Subordinate Judge, secondly, that the only remedy of the plaintiff was by proceedings under Sections 12 and 15 of the Public Demands Recovery Act, and thirdly that even if a regular Suit is held to be maintainable, the plaintiff is not entitled to any relief on the ground that the sale took place on the basis of a satisfied certificate.

3. As regards the first ground taken on behalf of the appellant, we are satisfied that the view taken by the Subordinate Judge is erroneous. The copy of the certificate on the record shows that it was initialled by the certificate officer on the 26th July, and there is no foundation for the speculation of the Subordinate Judge that the entry of the date was subsequent to the actual making and signature of the certificate. It is perfectly true that the date is not entered in the space provided in the printed form for that purpose, nor is the amount due mentioned in the place where it ought to have been made. But, these defects do not, by themselves, afford any basis for suspicion that the certificate was subsequently made and deliberately antedated. We must consequently hold that the certificate was made on the 26th July 1905.

4. The second ground taken on behalf of the appellant raises the question as to the remedies open to the plaintiff after the certificate had been made. It is argued on behalf of the appellant that the sole remedy of the plaintiff was to file a petition of objection to the certificate u/s 12 of the Public Demands Recovery Act, and, if he was defeated on such an application, he might institute a suit in the Civil Court u/s 15. In our opinion, there is no foundation for this contention. Section 12 contemplates a case in which an objection is taken that the judgment-debtor is not liable to pay the whole or any part of the amount for which the certificate has been made and filed against him. Section 13 provides, that the certificate officer may set aside, modify or vary the certificate if the petitioner establishes his denial of liability. It is manifest that the procedure provided in Section 12 is open only when the judgment-debtor is in a position to allege and prove that there were no arrears due from him at the time when the certificate was made, or that a smaller amount than the one in respect of which the certificate was made was due. Section 12 has no application when the judgment-debtor admits that the certificate was rightly made, but alleges that the amount of arrears has been subsequently paid. Section 15 has precisely the same scope, and entitles the judgment-debtor to maintain an action for cancellation or modification of the certificate. A certificate which has been properly made for arrears actually due cannot be cancelled or modified, because the demand has been subsequently satisfied. This, we think, is reasonably plain from Section 17, Sub-section

(1), which provides that no certificate duly made shall be cancelled by a Civil Court, otherwise than on the ground that the amount stated in the certificate was actually paid and discharged before the making of such certificate or that no part of the amount stated in the certificate was due by the judgment-debtor under the certificate. In other words, a certificate can be cancelled only on the ground that the amount stated was either never due, or, if due, had been paid before the certificate was made. Sections 12 and 15, therefore, have obviously no application to the circumstances of the present litigation, in which the contention of the plaintiff is, not that the certificate was improperly made, but that the sale was held without jurisdiction because the amount due under the certificate had been paid before the sale was held. We must, therefore, overrule the objection of the appellant that the sole remedy of the plaintiff was by an application u/s 12, or by a suit u/s 15. In the view we take, neither of these courses was open to the plaintiff. It is therefore, unnecessary to consider whether, if either of these courses had been open to the plaintiff, that could have been rightly treated as his exclusive remedy. The decision of their Lordships of the Judicial Committee in *Balkishen Das v. Simpson* 25C. 833 as also the earlier decisions of this Court in *Byjnath v. Lalla Seetul Pershad* 10 W.R. 66 F.B: 2 B.L.R. 1 F.B and *Harkhoo Singh v. Bunsidhur Singh* 25 C. 876 tend to support the proposition that if circumstances are established which show that the sale has been held without jurisdiction, the sale cannot be rightly treated as one made under the provisions of the Act, and may, consequently be challenged by a civil suit without recourse to the procedure provided in the Act, in other words, in a case of this description as there is no foundation for the exercise of jurisdiction by the revenue authority, the person injuriously affected is not deprived of his remedy by recourse to the ordinary law. As we have already indicated, however, in the case before us, the plaintiff was not entitled to proceed under either Section 12 or Section 15 of the Public Demands Recovery Act. The second ground urged on behalf of the appellant cannot, therefore, be supported.

5. The third and last ground taken on behalf of the appellant raises a question of some nicety, namely, whether, when a sale has been held by a Collector under the Public Demands Recovery Act although the amount due under the certificate has been previously deposited in the Treasury, the sale is null and void even as against a bona fide purchaser for value without notice. It has been strenuously contended by the learned vakil for the appellant that the sale cannot be set aside and he has placed reliance upon the cases of *Rewa Mahton v. Ram Kishen Singh* L.R. 13 IndAp 106; 14 C. 18; *Mothura Mohun Ghose Mondal v. Akhoy Kumar Mitter* 15 C. 557; *Yellappa v. Ramchandra* 21 B. 463 the substance of his argument is that as soon as a certificate has been properly made, the certificate has upon the authority of the decision in *Purna Chandra Chatterji v. Dinabandhu Mukerjee* 34 C. 811 the same force and effect, to all intents and purposes, as a final decree of a Civil Court, and that a purchaser in execution of a satisfied decree of a Civil Court is not liable to have the sale cancelled, if he is a bona fide purchaser for value without notice. This argument raises two questions of considerable importance, viz., first as to the precise effect of a sale in execution of a decree of a Civil Court which has been satisfied before the sale takes place, and secondly whether the rule applicable to

sales in execution of decrees of a Civil Court governs in this matter sales under the Public Demands Recovery Act. Now, so far as the first of these two questions is concerned, it is clear that the proposition for which the appellant contends is too broadly stated and is not supported by the authorities upon which reliance is placed. It is perfectly true that so far as a sale in execution of a money decree is concerned, the reversal of the decree subsequent to the sale does not affect its validity, if the purchaser at the execution sale is a person other than the decree-holder himself. This principle was affirmed by Sir Barnes Peacock in *Jan Ali v. Jan Ali Chowdhry* 1 B.L.R. 56 A C: 10 W.R. 154 to the case of sales in execution of ex parte decrees which are subsequently vacated and was then applied to cases of sales in execution of decrees which are subsequently reversed on appeal, *Zain-ul-Abdin v. Muhammed Asghar Ali* L.R 15 IndAp 12; 10 A 166; *Dorasami Ayyar* *Anasami Ayyar* 23 M. 306; *Chandan Singh v. Ramdeni Singh* 31 C. 499; *Set Umedmal v. Srinath Ray* 27 C. 810. It has also been ruled that there is no real distinction in this respect between an auction purchaser at a sale in execution of a money decree and an auction purchaser at a sale in execution of a mortgage decree *Mukhoda Dassi v. Gopal Chundar Dutt* 26 C. 734; *Shivlal Bhagvan v. Shambhu Pershad* 29 B. 435. The principle is based upon weighty reasons explained by Lord Revesdale in *Bennet v. Hamill* 2 Sch. & Lef. 566 (1806) in which that learned Judge pointed out that a purchaser has a right to presume that the Court has taken the steps necessary to investigate the rights of the parties, and that on that investigation, it has properly decreed a sale, see also *Bowen v. Evans* 1 Jones and Latonche 178, at p. 259 (1844), where Sir Edward Sugden observed that it was of the greatest importance that sales made on the authority of the Court should not be lightly set aside. The principle in question was affirmed by the House of Lords in *Bowen v. Evans* 2 H.L.C. 257 and *Tommey v. White* (1850) 3 H.L.C. 49 and by the Supreme Court of the United States in *Beanreg v. New Orleans* 18 How 497 and *Grignon v. Astor* 2 How 219. We do not refer to these decisions as authorities in any way binding upon this Court, but simply as indicating that the doctrine that the reversal or modification of a judgment does not invalidate the sale, nor divest the title of a purchaser is based upon the perfectly intelligible principle that a purchaser at a judicial sale is not compelled to go behind the judgment or decree and investigate the facts upon which it was rendered. The question, however, still remains whether a sale in execution of a judgment which has been satisfied, in so far as a bona fide purchaser without notice is concerned, is entitled to be placed in the same category as a sale in execution of a decree which was in existence and full force at the time of the sale but is subsequently reversed. It is manifest that upon principle, there is a substantial difference between the two classes of cases. In the first class of cases, there is a subsisting judgment which it is the duty of the Court to execute, but which is subsequently set aside because made ex parte or reversed on appeal because erroneous on the merits. In the second class of cases, there is not at the time of the sale an unsatisfied decree which it is the duty of the Court to execute. This fundamental distinction between the two classes of cases has led to considerable divergence of judicial opinion upon the matter. In the case of *Rewa Mahton v. Ram Kishen Singh* L.R. 13 IndAp 106: 14 C. 18, two persons A and B held cross-decrees against each other. A, who held a decree for the smaller sum, took out execution whereas

under the law 13 alone ought to have taken out execution for the difference of the sums due under the decrees. Under these circumstances their Lordships of the Judicial Committee held that, although the sale was irregular the title of the execution purchaser, who was a stranger to the proceedings, was not affected. Their Lordships went on to observe as follows: A purchaser under a sale in execution is not bound to enquire whether the judgment-debtor had a cross-judgment of a higher amount, any more than he would be bound in an ordinary case to enquire whether a judgment upon which an execution issues has been satisfied or not. Those are questions to be determined by the Court issuing the execution. To hold that the purchaser at a sale in execution is bound to enquire into such matters would throw a great impediment in the way of purchases under executions, If the Court has jurisdiction, a purchaser is no more bound to enquire into the correctness of an order for execution than he is as to the correctness of the judgment upon which the execution issues." No doubt, the principle thus enunciated, taken apart from the circumstances of the case in which the rule was laid down, may be treated as of the widest possible application, but it must not be overlooked that in an earlier part of the judgment, their Lordships had pointed out that both the cross-decrees had not been brought before the Court for execution and consequently there was nothing to prevent A, the holder of the decree for the smaller sum, from taking out execution of his decree u/s 246 of the CPC of 1877. The Court, therefore, had ample jurisdiction to execute the decree at the instance of A, and if the Court had jurisdiction, no question could arise as to the propriety of the sale. The observations of the Judicial Committee, however, have been treated in subsequent cases as capable of general application. Thus in *Mothura Mohun v. Akhoy Kumar* 15 C. 557, and *Yelleppa v. Ramchandra* 21 B. 463, it was ruled that where a person--a stranger to the proceedings,--purchases property bona fide at an execution sale, his purchase cannot be invalidated on the ground that the decree had already been satisfied out of Court at the time the sale was held. This decision may be justified on the ground that as satisfaction had not been certified to the Court, the decree remained, so far as the Court was concerned, an unsatisfied decree capable of execution, and the Court had consequently jurisdiction to execute it. The cases relied on by the learned vakil for the appellant do not, therefore, support the broad contention that, when a sale takes place in execution of a decree which has been satisfied, and the property of the judgment-debtor passes into the hands of a bona fide purchaser for value without notice, the sale cannot under any circumstances be set aside. The cases relied upon are at best authorities for the proposition that the sale cannot be set aside, if the satisfaction of the decree has not been certified to the Court; but even upon this point, there has been some divergence of judicial opinion. For instance, in the case of *Pat Dasi v. Sharup Chand Mala* 14 C. 376, it appears to have been assumed as obvious that as the decree in execution of which the sale took place had been satisfied before the sale, the purchaser, though a stranger to the proceedings did not acquire any valid title. [see also *Ram Gopal Aditya Deb v. Rajan Sadagar* 6 C.L.J. 43. Again, the decision of their Lordships of the Judicial Committee in *Ganga Pershad Sahu v. Gopal Singh* L.R. 11 L.A. 234; 11 C. 136 may lend some apparent support to this view In that case the decree-holder and judgment-debtor had agreed to a postponement of the sale, but the

joint petition of the parties was by an error presented to the wrong Court, with the result that the sale took place. This Court set aside the sale on the authority of *Rajmohun Gossain v. Gourmohun Gossain* 8 M.L.A. 91 : 4 W.R. 47 P.C., and this decision was subsequently affirmed in appeal by the Judicial Committee. No doubt, in that case, the decree-holder himself was the purchaser, but no reference is made to this circumstance as the foundation of the judgment. In any event, it is clear that there is no authority in our Courts in support of the proposition that when a decree has been satisfied, and the satisfaction has been certified to the Court, a sale held in execution of the satisfied decree passes to the purchaser an indefeasible title, because he is a stranger to the proceedings. The nearest case in the English Courts is the decision of Lord Hardwick in *Jeanes v. Willkins* (1749) 1 Ves. Sew 195. In that case, a creditor had the body of his debtor seized in execution under a *capias ad satisfaciendum*," during the continuance thereof, the Sheriff sued out a writ of *fierifacias* and levied on a leasehold of 99 years. The question arose, whether the sale could be avoided, on the ground that during the existence of the *capias ad satisfaciendum* and the person in custody, a *fierifacias* ought not to have been taken out. Lord Hardwick ruled that the *fierifacias* could not be treated as void, that although it was irregular, it was sufficient to indemnify the Sheriff, so that he might justify in an action of trespass, and that consequently, the purchaser under the Sheriff gained a good title notwithstanding the writ might be afterwards set aside. This is an express authority in favour of the view that when a Sheriff, holds a sale without notice that the defendant in execution was then in custody on a *capias ad satisfaciendum*, the sale passes a good title to a stranger purchaser. If, therefore, there is no difference between a satisfaction of a judgment in fact by the payment of money and a satisfaction in law by taking the defendant in custody on a *capias ad satisfaciendum*, it follows, that a sale held on the basis of a satisfied judgment when the satisfaction has not been certified to the Court is not void. The question has also been much debated in the American Courts, and the preponderance of authority there is in favour of the view that a sale under a satisfied judgment is void, even though such satisfaction has not been notified to the Court, and the property has passed into the hands of an innocent purchaser. The leading decisions on the point will be found collected in *Kleber on Void Judicial and Execution Sales*, Sections 262, 263 and 289; *Freeman on Judgments*, Section 480; *Freeman on Execution*, Sections 19 and 20, and *Freeman on Void Judicial Sales*, Section 7A and Section 23, note 4, where it is pointed out that a sale under a satisfied judgment is affirmed to be void in *Wood v. Colvin* 2 Hill 566, *Doe v. Jugersoll* 11 S. & M. 249 and *Murrell v. Roberts* 11 Ire. 424, where as such a sale is upheld in favour of innocent purchasers in *Boren v. McGeehee* 6 Por 432, *Van Campen v. Suyder* 3 How 66, *Hoffman v. Strohecker* 7 Watts 86 and *Reed v. Austin* 9 Miss 722. The ground in support of the view that the sale on the basis of a satisfied judgment is void is thus put in *Craft v. Merrill* 14 N.Y. 456. "The judgment was the sole foundation of the Sheriff's power to sell and convey the premises; and if the judgment was paid when he undertook to sell and convey, his power was at an end, and all his acts were without authority and void; the purchaser under a power is chargeable with notice, if the power does not exist, and purchases at his peril." In another case where after full satisfaction of a decree by a sale

of part of the property of the judgment-debtor execution was again taken out and a sale held *Durette v. Biggs* 47 Miss 366, the Court observed: When an execution has performed its office by extracting full satisfaction from a portion of the debtor's property, it cannot have sufficient life and vigour to deprive him of the residue and transfer the title from him to another." The ground in support of the contrary view that a sale on the basis of a satisfied judgment cannot be set aside as against a purchaser for value with out notice is thus emphatically put in *Mason v. Vance* 1 Sweed 178: 60 Am. Dec 144, An execution regular on its face, based upon a judgment equally regular and apparently in full force, must be regarded as a regular execution; that, while a regular execution may be voidable it cannot be void; that it must operate as a sufficient justification to officers entrusted with its execution; and finally, that it cannot be the means of ensuring innocent purchasers when nothing exists to warn them that the foundation on which it apparently rests has in fact been swept away." But amidst this diversity of judicial opinion there is unanimity upon one point, namely, that when a sale has taken place on the basis of a satisfied judgment, the satisfaction of which has been certified to the Court, the sale is void and ineffectual to pass any title even to a bona fide purchaser for value without notice. This proposition is sufficient for the determination of the rights of the parties in the case now before the Court. But the second question which calls for decision is, whether these principles are applicable to cases of sales under the Public Demands Recovery Act. Here the form of the notice prescribed by the Act to be issued to the judgment-debtor u/s 10, expressly states that the certificate is to be executed unless the amount is paid into the office of the Collector. Section 26 of the Act further provides that in the event of payment, the certificate officer shall cause satisfaction to be entered upon the certificate, as also in the Register of certificates kept u/s 24. From these statutory provisions, it is manifest that the certificate officer has authority to sell only so long as the certificate remains unpaid, and that a duty is cast upon him by the law to enter satisfaction as soon as payment have been made. In these circumstances, can it (SIC) tended upon any intelligible principle (SIC) a sale may be upheld as valid though it has been held in execution of a certificate which has been duly satisfied? In our opinion, such a view cannot possibly be supported. The Secretary of State is the decree-holder under the Act, and the Collector is authorised to execute the certificate on his behalf. If a payment is made into the Treasury sufficient to satisfy the demand it is difficult to appreciate upon what principle it can be seriously contended that the sale is merely irregular and not void, because held entirely without statutory authority. In this view, we are supported by the decision of this Court in *Gujraj Sahai v. Secretary of State* 17 C. 414, where Mr. Justice Pigot ruled on the authority of the cases of *Abdool Hye v. Nawab Raj* 3 Supp. B.L.R. 911 : 9 W.R. 196 and *Mohan Ram Jha v. Baboo Shib Dutt* 8 B.L.R. 230: 17 W.R. 21, that a sale in execution of a satisfied certificate is absolutely void. When the matter was taken on appeal before the Judicial. Committee, *Mahomed Abdul Hai v. Gujraj Sahai* L.R. 20 L.A. 70: 20 C. 826, this view was expressly affirmed. Their Lordships observed as follows: "Upon the arrear being paid into the Treasury, it became the statutory duty of the Collector to enter satisfaction upon the certificate under his hand and signature which he failed to do. The appellant argued that there being no such entry upon the certificate, his

purchase of that date was valid. It would be a singular result if a Collector's neglect of his statutory duty gave him statutory power to sell in execution the property of a person who owed nothing to the Government. That such was not the intention of the legislature is abundantly clear. By the terms of the notice served upon the judgment-debtor, along with a copy of the certificate, all that the debtor is required to do in order to prevent execution of the certificate, is to pay the amount of arrears demanded into the office of the Collector." These observations upon the provisions of the Public Demands Recovery Act of 1880 are in our opinion, equally applicable to the Act of 1895. The third ground taken on behalf of the appellant must consequently be overruled.

6. The learned vakil for the appellant finally argued that this was a case of great hardship on his client--a purchaser from an innocent purchaser at a Government sale. With reference to this argument, it is sufficient to refer to the weighty observations of Mr. Justice Pigot in his judgment in the case of *Bajjnath Sahai v. Ramgat Singh* 5 C.L.J. 687, which was subsequently affirmed by their Lordships of the Judicial Committee *Bajjnath Sahai v. Ramgat Singh* 23 C. 775: "If considerations of hardship could affect our decision, we should still say there were none in this case. The defendant with his eyes open made a speculative purchase of a valuable estate for next to nothing, getting it at that price, as we have no doubt, because no one would buy at a sale surrounded with circumstances of such a doubtful character. If he had succeeded, as he very nearly did, he would have made a very good thing indeed. He ran the chance of some loss, or enormous profit. He must abide by the result."

7. The result, therefore, is that the decree, of the Court below must be affirmed, and this appeal dismissed. There will be no order for costs as the learned vakil for the respondent intimated to the Court that he had no instructions to defend the appeal.