
(1872) 03 CAL CK 0002

Calcutta High Court

Case No: Special Appeal, No. 576 of 1971

Baikantha Nath Sing
and Others

APPELLANT

Vs

Maharaja Dhiraj
Mahatab Chand
Bahadur, Zamindar and
Others

RESPONDENT

Date of Decision: March 8, 1872

Judgement

Kemp, J.

The special appellant in this case, the plaintiff below, is the patnidar of a certain mehal Called Ichapore. The defendants, special respondents, are the Maharaja of Burdwan, the zamindar, and the auction-purchasers. The suit was to set aside a sale made at the instance of the zamindar, the Raja, of a patni talook belonging to the plaintiff. Damages were also claimed.

2. The first Court, the Subordinate Judge of Hooghly, Baboo Jagabandhu Banerjee, found that the receipt of service of As, however, the auction-purchaser does not press to be indemnified by a refund of his purchase-money we think it sufficient to declare that the notice not having been published at prescribed by law, the sale is not binding upon the plaintiffs in this case, and that they are entitled to recover their share in the patni.

3. The question of costs which the plaintiffs will recover from the zamindar will be determined by the Court below, and the auction-purchaser will recover his costs from the zamindar. notice which was filed on behalf of the zamindar, the Raja, was a forgery, and his decision on this point is not interfered with by the Judge on appeal. The Subordinate Judge further found that the requirements of cl. 2, s. 8 of Regulation VIII of 1819 had not been complied within this case, inasmuch as no notice was stack up in the cutcherry of the Collector and no copy or extract of the notice was published at the cutcherry, or principal town or village upon the land of the defaulter. He therefore reversed the sale. On the question of damages he found that the plaintiffs were clearly defaulters, and that it

was gross neglect on their part that they did not enquire whether a suit under the Regulation was instituted against them within the prescribed time, and that they are bound to abide by the loss which has accrued to them in consequence of their own laches.

4. On appeal to the Judge by the zamindar, there being no cross-appeal by the patnidar on the question of damages, we find that the points raised in appeal are not the point upon which the Judge's decision turns, namely whether personal service on the patnidar was sufficient, but the grounds of appeal were directed against the finding of the first Court on the question of fact, namely, whether the receipt of service of notice was a forgery or not. There were other grounds of appeal, but there was no such ground that personal service on the talookdar was a sufficient compliance with the requirements of the law. Now, as already observed, the Judge concurs with the first Court in finding that the receipt filed on behalf of the zamindar is a forgery; he says:--There is no reason to differ from the lower Court's rejection of this receipt, inasmuch as it is not attested in any way, and that part of the evidence which relates to the act of signature is not credible." The Judge goes on to state that, looking at all the probabilities of the case, he is of opinion that personal service on the patnidars has been proved, and he infers that the evidence as to personal service must be accepted, because the patnidars knew that they were in arrears, because they knew their legal obligations with respect to their rents and lastly with reference to the weakness of their excuses for not having tendered the arrear due before the 6th or 7th of Jaishta, namely, that their mooktear at Midnapore said that the sale would not take place before the 10th of Jaishta. On these presumptions the Judge overrules the decision of the first Court and holds that the personal service having been proved, the object of the law has been fulfilled; that the defaulters had an opportunity of saving the estate, if so minded, and not having done so the sale must be upheld. The decision of the first Court was therefore reversed. The only question we have to decide in this appeal is whether the finding of the Judge, that the personal service on the patnidar was a sufficient service under the terms of cl. 2, s. 8, Regulation VIII of 1819, is correct. The clause enacts that istahars or notices of sale shall be stuck up in some conspicuous part of the cutcherry, that a similar notice shall be stuck up at the cutcherry of the zamindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent, to be similarly published at the cutcherry, or at the principal town or village upon the land of the defaulter. The clause then goes on to enact that the zamindar shall be exclusively answerable for the observance of the forms above prescribed. It further enacts that if it shall appear, from the tenor of the receipt or attestation of three substantial persons residing in the neighbourhood, that the notice has been published at any time previous to the 15th of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed. Now in this case it appears to us very clear, that the first requirement of this clause of the law, namely, that the notice of sale shall be stuck up on some conspicuous part of the cutcherry of the Collector, has not been carried out. It is admitted that the notice was not stuck up in the cutcherry, but that it was pasted into some book which, it is said, remains in charge of the

sheristadar; and which is not accessible to the public without the permission of the sheristadar. It does not require much reasoning to see that that is not a compliance with the requirements of the law. We also think that the copy or extract of the notice, which requires to be stuck up at the cutcherry, or at the principal town or village upon the land of the defaulter, has not been so published as directed by law. The evidence of the two piadahs of the Raja, namely. Sheikh Amanat and Ruhumu, alias Filu, in the case of Amanat, goes to show that they went to Daspore, and not to Ichapore, although the notice was directed to be served at Ichapore; and in the case of Ruhumu, alias Filu, he deposes that he went to Daspore, and that he did not go to the Ichapore cutcherry; he also states that although he has served notices several times on this patnidar he never went to the cutcherry; he does not certainly say Ichapore cutcherry, but as he had already said that he did not go to Ichapore, it may be safely inferred, that he means that he never went to Ichapore cutcherry. The learned counsel for the appellants has called our attention to many decisions in which it has been ruled that the requirements of cl. 2, s. 8 of Regulation VIII of 1819, must be strictly carried out, and that the responsibility of carrying them out according to the letter of the law is with the zamindar, We think it sufficient to refer on this point to a decision of the late Sudder Court of the 28th August 1849--Lootf-o-nissa Begum v. Kowur Ram Chunder S.D.D. for 1849, p. 371. That was a decision before three Judges, who were very competent to pass an opinion upon the construction to be put upon the Regulation. Those learned Judges held, that the duty of the zamindar under cl. 2, s. 8 of Regulation. VIII of 1819, was an indispensable duty; that he is bound to serve notice on the defaulter, either at his cutcherry or at the principal town or village on the land of the defaulter; and they further give it as their opinion that the land of the patni in arrear is what is meant in the Regulation by the words "land of the defaulter." We therefore think it very clear that the requirements of the law have not been complied with in this case, and that the sale must be reversed. Mr. Money, who appears for the auction-purchaser, who has been made a party to this suit, has called out attention to s. 14 of Regulation VIII, more particularly to the latter portion of the section which enacts that "The purchaser shall be made a party in each suits and, upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss at the charge of the zamindar or person at whose suit the sale may have been made.

We are informed that the purchase-money is still in the hands of the Collector. We therefore decree the special appeal, reverse the decision of the Judge, and restore that of the first Court. The plaintiff's costs of both Courts including the costs of this Court will be paid by the Raja with interest. The purchaser defendant will also be entitled to recover his costs from the Raja, including the costs of this Court, and the purchase-money will be refunded to him. The plaintiffs and the purchaser will recover separate costs from the Raja.