
(1870) 03 CAL CK 0004

Calcutta High Court

Case No: Special Appeal No. 2479 of 1869

Baboo Jugdeo Sing

APPELLANT

Vs

Baboo Nishan Sing and
Others

RESPONDENT

Date of Decision: March 30, 1870

Judgement

Bayley, J.

The plaintiff in this case and certain other individuals named Lajjadhari, Behari Lall, Krishnaram, and others, were owners of a zamindari called Mehal Sukurdeh in Pergunna Arrah. Lajjadhari, Behari Lall and Krishnaram mortgaged their 2 anna share in Mauza Kishoopore, one of the component parts of Mehal Sukurdeh, to the ancestor of the defendants in the year 1825. It is admitted on all sides that at the time when this mortgage-deed was executed, the mortgagors were fully entitled to the 2-anna share above referred to. Subsequently, by virtue of a batwarra made under Regulation XIX of 1814, the plaintiff (now special respondent before us), got a 13 anna and odd gundas share in village Kishoopore in lieu of his entire interests in the zamindari; and of the three mortgagors, two, viz., Behari Lall and Krishnaram got their shares in other villages of the mehal. The plaintiff has, accordingly, brought this suit against the defendants, special appellants, to recover possession of a 1 anna 15 dame share of Mauzah Kishoopore out of the 2 anna share held by them under their mortgage, excluding the 5 dams belonging to Lajjadhari, who has got a 1 anna odd gundas share in that, village under the batwarra. Both the Courts below have given a decree to the plaintiff for reasons set forth in their respective judgments; and hence this special appeal.

2. We are clearly of opinion that, upon the facts above stated, the plaintiff has got no cause of action against the special appellants. It is beyond all question, and indeed it is not disputed by the pleader for the special respondent that at the time when the mortgage deed in question was executed in favour of the ancestors of the special appellants, the parties who executed that deed had full power to execute it, inasmuch as they were the undisputed owners of the 2-anna share which formed the subject-matter of that transaction; and if this is once admitted, it is impossible to understand according to what

principles of law or of justice the plaintiff can be permitted to come forward and say that he is entitled to take away the property from the hands of the mortgagees merely because by virtue of a partition between himself and his co-sharers, the mortgagors of the defendants have got their shares in other villages giving up their shares in the mortgaged village to the plaintiff. If the batwarra in question had been a private one, it is quite clear that the plaintiff could not have claimed any higher right than the mortgagors themselves. That the batwarra was a batwarra under Regulation XIV of 1819, makes no difference whatever, for the holders of shares allotted under that batwarra do not stand in the position of purchasers of estates at a sale for arrears of Government revenue, and have no right therefore, to hold those shares free of all bona fide encumbrances imposed upon them by their previous owners. If the plaintiff choose to take his share in a village already burthened with a valid mortgage, he has to thank himself for it; but it is perfectly clear that whatever his remedies may be, he can have no cause of action whatever against the special appellants who have an undoubted right to hold possession of the property mortgaged to them until their lien over it has been determined in due course of law. Holding this view of the case, we reverse the decisions of both the lower Courts, and dismiss the plaintiff's suit with costs of all the Courts in favour of the special appellants only.