
Bejoy Lal Seal and Others Vs Nayan Munjari Dassi and Others

None

Court: Calcutta High Court

Date of Decision: July 22, 1919

Acts Referred:

Bengal Land Revenue Sales Act, 1859 " Section 31

Citation: 55 Ind. Cas. 639

Hon'ble Judges: Panton, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal by the plaintiffs in a suit for declaration of title to the surplus sale-proceeds of a sale held under the Revenue Sale Law, 1859.

The case for the plaintiffs is that holding No. 130, Division 1, Sub-Division 17, within the jurisdiction of the Collector of 24-Pergannas, was sold

for arrears of revenue on the 16th March 1908 for Rs. 11,100 and that after satisfaction of the dues of the Government, Rs. 11,050 approximately

is in deposit in the Collectorate. The exact sum, as appears from the written statement of the Secretary of State who was originally made a

respondent, is Rs. 11,085-7-6. At the time of the sale, the registered proprietors were members of the Paikpara Raj family of Singhs, Girish

Chandra, Purna Chandra, Kanti Chandra, Indra Chandra and Sarat Chandra. The plaintiffs assert that although the Singhs were registered

proprietors, they had no subsisting interest in the holding on the date of default or of sale. The allegation is that the property had vested in the Seals

and on a partition amongst the members of the Seal family, effected many years ago, had passed into the hands of Govinlal Seal. The plaintiffs, the

representatives-in-interest of Govinalal Seal, applied to the Collector to withdraw the balance of the sale-proceeds, but the application was refused

on the 19th October 1909. They accordingly instituted this suit on the 5th September 1916 for declaration of their title to the property at the time

of the sale and consequent thereto, their title to the surplus sale-proceeds. The plaintiffs claimed an eight-ninth share in the holding, the remaining

1/9th share, it is said, belongs to the 11th defendant who did not join as plaintiff. They also joined as defendants the representatives of the Paikpara

Raj family, as also the representatives of the Seal family other than the heirs of Govindlal Seal, The Secretary of State for India was also joined as

a defendant. But, subsequently, on the 16th October 1917, the plaintiffs prayed that the name of the Secretary of State for India might be removed

from the category of defendants. The suit was tried on the merits and was dismissed as barred by limitation under Article 120 of the First Schedule

to the Indian Limitation Act. The present appeal has been preferred by some of the plaintiffs who claim 7-9ths share in the estate and in the money

in deposit. The 11th defendant who claims an 1/9th share and the 7th plaintiff who claims an equal share are respondents. The representatives of

the Seals and the Singhs have also appeared before us, In our opinion, the suit should not have been dismissed.

2. There can be no question that the Collector properly refused to pay the surplus sale-proceeds to the plaintiffs and his order of the 19th October

1909 is based upon a correct interpretation of Section 31 of Act XI of 1859. It was pointed out by this Court in the case of Secretary of State for

India v. Marjum Hosein Khan 11 C. 359 that u/s 31 an assignee of the recorded proprietors is not their representative, so that the Collector is

justified in refusing to pay to such assignee, claiming on his own behalf, the money held in deposit on account of the recorded proprietors, Mr.

Justice Pigot pointed out that the section does not contemplate payment to an assignee who claims to receive the money on his own behalf. It does

not cast on the Collector the duty of giving effect to, and, as a preliminary, of verifying of, such assignments. But although the order of the Collector

was right, it does not follow that the plaintiffs are not entitled to the declaration which they seek. The Legislature did not contemplate that the title of

unrecorded proprietors should be lost by the sale to the extent that they would not be entitled to receive the surplus sale proceeds, even if they

could establish in the Civil Court, as against the recorded proprietors, that they were entitled to the estate at the time of the sale. In the case before

us, neither the Singhs who are the representatives of the last recorded proprietors nor the Seals who admitted that on a partition the property

passed to one member of the family, put forward any claim to the surplus sale-proceeds. Consequently the surplus sale-proceeds belong to the

plaintiffs and the 11th defendant. This is established by the uncontradicted testimony of the witnesses who have been examined in the case. In these

circumstances, the proper decree to make is to declare that the plaintiffs were entitled to 8-9ths share and the 11th defendant to 1/9th share in the

estate at the time of the sale and are consequently entitled to the surplus sale-proceeds in the same proportion. The plaintiffs and the 11th

defendant will be at liberty to apply to the Collector on the basis of this decree. If the Collector refuses to pay the surplus sale-proceeds, the

plaintiffs and the 11th defendant may have their remedy, but it is not for us to advise them what course they should pursue if such a contingency

should arise. It is sufficient to hold that, in so far as the present litigation is concerned no question of limitation arises. If Article 120 is held

applicable, time should run against the plaintiffs from the date when the right to sue accrued. The right to sue does not accrue till the right to obtain

relief by way of declaration has been denied. Events show that there has not been a dispute amongst the parties entitled to the money antecedent to

the suit and during the course of the litigation, the parties appear to have agreed that they were entitled to the estate and the money value thereof in

the shares already set out.

3. The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and a decree made in this Court in the terms indicated

above, There will be no order for costs in this Court. The order of the Court below as to costs will stand.