
(1903) 12 CAL CK 0012

Calcutta High Court

Case No: Appeal from Original Decree No. 278 of 1900

Dilchand Mahto alias
Lootai Mahto and
Others

APPELLANT

Vs

Bajjnath Singh and
Others

RESPONDENT

Date of Decision: Dec. 15, 1903

Final Decision: Dismissed

Judgement

1. The present appeal arises out of a suit brought to recover possession of the whole of the share in mouza Begrajpur and $2\frac{1}{2}$ annas share of the shares in villages Rampur Moafi and Khanapur which with the remainder of the shares in villages Rampur Moafi and Khanapur formed the share in estate No. 5488 which was sold by the Collector at a sale for arrears of Government Revenue on the 25th March 1897 for an alleged arrears of Rs. 10-3-9 falling due on the kist in January 1897 and also to have the sale declared null and illegal and to have it set aside. It appears that the original estate which bore the Towji No. 5488 was called Rampur Moafi, and was composed of 5 mouzas, viz., Rampur Khas, Khanapur, Haibatpur, Begrajpur and Gadua. Subsequently by a Butwara, which was effected by the Collector, the estate was divided into four estates with four separate Towji numbers. Shares amounting to eight annas in each of the villages Rampur Khas, Khanapur, Haibatpur and Begrajpur were made into a separate estate with the old Towji No. 5488. The remaining 8 annas share of Begrajpur became estate No. 6757, the remaining 8 annas shares of Rampur Khas, Khanapur and Haibatpur became estate No. 6759 ; and the whole of mouza Gadua became estate No. 6758. The Butwara was completed and took effect from the 1st January 1896, i.e., just before the 3rd kist of Revenue for 1895-96 fell due.

2. Further, on an application made by Defendant No. 2, the Collector by his order, dated the 22nd September 1896, opened a separate account in respect of the revenue payable by the Defendant No. 2 for her 8 annas share in Haibatpur which was included in the new

estate No. 5488. The share of the revenue on her share in the estate was fixed at Rs. 147-12 leaving the balance of Rs. 222-14 to be payable by the residue share. Defendant No. 2, who was originally the proprietor of the whole of the new estate No. 5488, had sold the whole of her share in Begrajpur and 2½ annas share on each of Rampur Moafi and Khanapur to the Plaintiffs and the remaining 13½ annas shares in Rampur Khas and Khanapur she had sold to Defendants 3 to 7.

3. This residue share belonging to Plaintiffs and Defendants 3 to 7 was sold by the Collector on the 25th March 1897 for an arrear of revenue of Rs. 10-13-9 found to be due at the 3rd kist of the years 1896-97 which fell due in January 1897. The share was purchased by the Defendant No. 1 for Rs. 625.

4. Plaintiffs afterwards appealed to the Commissioner to have the sale set aside but the appeal was dismissed on the 4th January 1898.

5. Plaintiffs then brought the present suit to have the sale set aside and to recover possession of their share in the share of the estate which had been sold.

6. Several grounds were taken in support of the suit but for the purposes of this appeal it is only necessary to consider the following, the others not having been pressed in support of the appeal. It was contended that at the time of the sale there were in fact no arrears, that the sums of Rs. 17-4 and Rs. 28 which had been paid into the treasury on the 13th January 1896 and 27th March 1896 as payments on account of estate No. 5488 and had subsequently been transferred the former by the Towzi Mohurir on his own responsibility and the latter by him under order of the Collector to the credit of the new estates Nos. 6759 and 6758 respectively, had been improperly transferred without notice to the Plaintiffs and accordingly that these sums ought to have remained to the credit of the estate No. 5488, and in that case there were no arrears due from the estate at the 3rd kist of 1896-97, i.e. in January 1897.

7. It was further contended that the notices issued prior to the sale under secs. 6 and 13 of Act X of 1859 were defective and that on that account the sale was illegal and void. The Subordinate Judge however held on the evidence that the payments relied on by the Plaintiffs were in fact made on behalf of the proprietors of these estates to which they were eventually credited, that Plaintiffs did not even allege that the payments were made on their behalf, and that in correcting the erroneous entries and transferring the sums to the credit of the estates on behalf of which they were paid the officer concerned had not acted illegally or irregularly. He found therefore that the Plaintiffs were not entitled to credit for these sums, and that in fact the revenue of the estate was in arrears at the January test in 1897.

8. He further held that the notices were not defective and that the Plaintiffs' ground for setting aside the sale on that account failed.

9. He accordingly dismissed the suit with costs and the Plaintiffs have appealed.

10. The only points which have been pressed in support of the appeal are those already mentioned which were urged on behalf of the Plaintiffs in the first Court.

11. As to the two payments of Rs. 17-4 and Rs. 28 originally relied on, it has not been seriously contested before us that the transfer of the latter sum from the credit of estate No. 5488 to the credit of the estate No. 6758, which was made by order of the Collector on the application of the proprietor of the latter estate, was illegal or made without proper authority. Arguments have been confined to the transfer of the sum of Rs. 17-4 and it has been urged that the Towji Mohurir had no authority whatever, to make the transfer, that the sum should have been left standing to the credit of estate No. 5488, and that therefore there were no arrears when the residue share of the estate was sold.

12. The facts however appear to be as follows :---The Butwara was completed and took effect from January 1896, that is to say from a very short time anterior to the date when the 3rd test for 1895-96 fell due and to the date when the payment of the sum of Rs. 17-4-0 was made, viz., the 13th January 1896. The Chalan with which the payment was made no doubt shows the number of the estate as 5488, but it further shows that the payment was made by one Lekh Narain on behalf of the proprietor Raj Kumar Singh and in respect of separate account "Tafrig Masam Jadubansi Lal" that the share in respect of which there was this separate account fell to the share of Lala Gur Buksh Lal in Haibatpur at the time of the Butwara, and was with shares in other estates formed into estate No. 6759 and that the share in question had been purchased at an auction sale by Jawahir Singh in the name of Raj Kumar Singh, and that Lekh Narain who made the payment was the servant of Jowar Singh. It is not suggested by Plaintiffs that the payment was made on behalf of their share in estate No. 5488. Lekh Narain says that when he made the payment he did not know there had been any change in the Towzi number assigned to his master's estate and so entered the old number in the Chalan, and it must be remembered that the Butwara had come into effect and the new numbers had been assigned to the new estates only a few days before the payment was made. The Towzi Mohurir on his part says that after he had made the entry to the credit of the new estate No. 5488 he discovered that he had made a mistake after the posting of the Chalan and comparison. He found that by the Butwara the share which had previously stood in the name of the Jadubansi Lal had been allotted to the new estate No. 6759 and realizing that he had been in error in entering the payment against new estate No. 5488, he corrected his mistake by striking out that entry and by entering the payment against the new estate No. 6759. We cannot find that in so doing he acted illegally or irregularly especially as the payment appears to have been made on behalf of the old estate No. 5488 and not on behalf of the proprietor of the new estate of that number.

13. Further, it appears that when the accounts were balanced after the kist in January 1896 that sum of Rs. 17-4 was not placed to the credit of the new estate No. 5488, nor was it credited to the credit of that estate in the accounts of all the subsequent kist up to the 3rd kist of 1896-97 which fell due in January 1897, and for arrears due at which the Plaintiffs' share in the estates was sold. Plaintiffs appear therefore never to have been

misled by the entry, they never paid or authorized the payment of that sum to the credit of their estate and in fact they do not appear to have been aware of the erroneous entry in the Register till 15 days after the sale, and the fact was not even mentioned in the appeal to the Commissioner. No doubt the Plaintiffs were at liberty to raise the point in their suit but we agree with the Sub-Judge that there is in fact no substance whatever in it, that the payment of Rs. 17-4 was never made to the credit of the new estate No. 5488, that the Collectorate clerk was fully justified in correcting his own error in the entry and that the arrears as alleged were due at the 3rd kist of 1896-97 from the residue share in which the Plaintiffs were interested and that the sale for those arrears was legal and in order. This point therefore fails.

14. It has also been contended that the sale is bad in law and should be set aside because the notices issued under sec. 6 and sec. 13 of Act XI of 1859 do not contain the particulars required by these sections.

15. Sec. 6 requires that the notice shall specify the estates or shares of estates which will be sold, and in this instance the notice contains the following specification, "Rampur Moafi Khanapur, Begraipur Ijmali share after deduction of the share separated." The Towzi number is given 5488, the Sudder Jama of the share to be sold Rs. 224-14 and the Sudder Jama of the whole estate Rs. 370-10-0. This specification is in our opinion a sufficient compliance with the provisions of the Act and it is not strongly contended to the contrary.

16. The main contention however is that the notice issued under sec. 13 of the Act does not contain the particulars required by the law and in support of this contention the rulings of this Court in the cases of Annada Charan Mukhuti v. Kishori Mohan Rai 2 C. W. N. 479 (1892) and Hem Chandra Chowdhry v. Sarat Kamini Dasya 6 C. W. N. 526 (1902) are relied on. On the other side the learned Advocate-General relies on the case of Ram Naran Koer v. Mahabir Prosad Shing I. L. R. 13 Cal. 208 (1886) in support of the view that the notice as issued contained the particulars required by the law. Sec. 13 of Act XI of 1859 after laying down that, when separate accounts have been found by the Collector of separate shares in an estate and the revenue due from one of the shares falls into arrears, that share may be put up to sale, provides that "in all such cases notice of the intention of excluding the share from which no arrears is due shall be given in the advertisement of sale prescribed in sec. 6 of the Act." In this case the notice under sec. 13 contained the Towzi number of the estate 5488, the Sudder Jama of the whole estate, and then proceeded to state the share to be sold in the following terms: --

Rampur Moafi 1

Khanapur 1

Begraipur 1

17. Ijmali share after deduction of the share separated," and further it gave the Sudder Jama of that share as Rs. 222-14. Now the whole estate No. 5488 consisted of half share in villages Rampur Khas (or Moafi) Khanapur, Begraipur and Haibatpur and the share belonging to the Defendant No. 2 in respect of which a separate account was opened by the Collector, was the share in Haibatpur only.

18. The residue share after excluding Haibatpur consisted then of the shares in Rampur Moafi, Khanapur and Begraipur. In the notice this is exactly what is stated and whether the numeral (1) opposite the names of each of those villages in the notices be taken to be the symbol for one rupee, meaning the whole of the shares included in the estate or merely the several items in the estate it seems to us clearly to indicate that what was to be sold was the whole of the shares in those 3 Mahals which were included in the estate. It further goes on to describe this share as "the ijmali share after deduction of the share separated" and this seems to us to be as full and accurate description of the share to be sold especially as the Sudder Jama on the share is also stated. This case in our opinion differs materially from the cases, *Annada Charan Mukhuti v. Kishori Mohan Rai* 2 C. W. N. 479 (1892), *Hem Chandra Chowdhry v. Sarat Kamini Dasya* 6 C. W. N. 526 (1902), in which the objection allowed to the completeness of the notice was that it failed to inform intending purchasers what was the precise property that was to be sold. In the case *Hem Chandra Chowdhry v. Sarat Kamini Dasya* 6 C. W. N. 526 (1902) to which of one of us was a party no reference appears to have been made to the case of *Ram Naran Koer v. Mahabir Prosad Shing* I. L. R. 13 Cal. 208 (1886) and it is unnecessary for the purposes of this case to determine whether in that case it was intended to depart from the principles laid down in *Ram Naran Koer v. Mahabir Prosad Shing* I. L. R. 13 Cal. 208 (1886). Each case must in our opinion be determined according to its special circumstances and having regard to the specification of the share given in the notice in the present case we are unable to accept the view that it fails to contain any of the particulars required by sec. 13 of the Act, or fails to inform intending purchasers what was the precise property to be sold. The ruling in the case *Hem Chandra Chowdhry v. Sarat Kamini Dasya* 6 C. W. N. 526 (1902) does not therefore apply. We find therefore that the objection raised on the ground that the notices issued under secs. 6 and 13 of Act XI of 1859 in this case were defective and that on that account the sale was invalid, is not supported by the facts of this case.

19. As we hold therefore that the sale in itself was valid and legal, it is hardly necessary to enter into the further question whether the price at which the property was sold was inadequate. As the property was sold subject to incumbrances and as it appears that incumbrances in fact existed the Subordinate Judge's view "that Rs. 625 may not be an unfair price" does not on the face of it appear to be incorrect. The grounds urged in support of the appeal failing, we direct that the appeal be dismissed with costs.