Sreemati Ramsona Chowdhuri and others Vs Naba Kumar Singha Chowdhuri and others

Court: Calcutta High Court

Date of Decision: Feb. 27, 1911

Final Decision: Allowed

Judgement

1. The subject-matter of the litigation, which has resulted in this appeal, is an one-third share in a putni taluk created on the 19th July 1888 by

Nawab Assanulla as zemindar in favour of one Hara Lochan Das. On the 10th August 1889, the lessee transferred to the first Defendant,

Sonamala, the one-third share now in dispute, which was subsequently conveyed by Sonamala on the 2nd January 1897 to the second Defendant,

Naba Kumar Singh. On the 14th April 1893, Hara Lochan transferred the remaining two-thirds share to Probhat Chandra Nag, now represented

by his infant son, the fourth Defendant Prokash Chandra Nag. It does not appear, however, that either of the transferees got his name registered in

the books of the landlord under the provisions of sec. 5 of the Putni Regulation of 1819. Default was made in the payment of rent to the zemindar,

and the result was that the putni was sold on the 14th May 1894, under sec. 8, cl (2) of the Putni Regulation. The fifth Defendant, Basanta Kumar

Sen, was declared the purchaser at this sale for a sum of Rs. 51. On the 9th May 1895, Probhat Chandra Nag, the transferee of a two thirds

share, commenced an action for reversal of the sale under sec. 14, against the purchaser Basanta Kumar and the zemindar Nawab Assanulla. The

original putnidar, Hara Lochan, as also the transferee of the one-third share, the present first Defendant Sonamala, were joined as parties

Defendant. The Plaintiff, Probhat Chandra, asked for reversal of the entire sale, as he was bound to do upon the principle explained in the cases of

Unnoda v. Erskine 12 B. L. R. 370 (1873), Suresh v. Akkowri I. L. R. 20 Cal. 746 (1893) and Ram Charan v. Drobomoyee 17 W. R. 122

(1872), that the sale of a putni cannot be declared good or bad in part. The Plaintiff further stated that he had failed to induce his co-sharer

Sonamala to join as a co-Plaintiff, but had no objection, if upon her application, she was transferred from the category of Defendant to that of

Plaintiff. The suit was resisted by the purchaser Basanta Kumar as well as by the zemindar Nawab Assanulla; they denied that the sale was in any

way irregular, and also suggested that the Court had no jurisdiction to entertain the suits, as the value of the disputed property exceeded the limits

of its pecuniary jurisdiction. During the pendency of this litigation, the Plaintiff came to terms with the purchaser, and the result was that on the 23rd

November 1895 the purchaser executed a conveyance in favour of Probhat Chandra in respect of a two-thirds share of the putni for a sum of Rs.

300. This was intimated to the Court, and the Plaintiff declined to proceed with the suit, which was thereupon dismissed with costs in favour of the

zemindar. On the 11th August 1896, the auction-purchaser Basanta Kumar transferred the one-third share, which still remained with him, in favour

of the Plaintiffs in the present litigation. The Plaintiffs were unable to obtain possession, and commenced this action on the 26th February 1906, for

declaration of title by purchase and for recovery of possession. The principal Defendants resisted the claim on the ground that the sale under the

Putni Regulation was void as contrary to law, and that, consequently, the Plaintiffs had acquired no title under their purchase from the purchasers at

that sale. In answer to this contention, it was argued on behalf of the Plaintiffs that so long as the putni sale stood unreversed, their title could not be

impeached collaterally. The Courts below have overruled this contention, and have treated the suit as if it were one brought by the putnidars for

reversal of the sale. They have found that the Plaintiffs had failed to prove that the notices required by the Regulation had been duly served and

have dismissed the suit on the ground that they had not acquired a valid title by their purchase. The Plaintiffs have appealed to this Court, and on

their behalf the decision of the Subordinate Judge has been assailed on the ground that as the putni sale has not been set aside in the manner

provided by the Regulation, and as any suit now commenced for the purpose would be prima facie barred by limitation, the title of the Plaintiffs

cannot be successfully impeached, and there is, in substance, no valid answer to their claim. On behalf of the Respondents, it has been argued that

the validity of the putni sale may be collaterally impeached in the present suit as constituted, and that the Plaintiffs are not entitled to succeed till

they establish that they have an unimpeachable title. The question reaised is one of considerable importance and apparently one of first impression,

but we feel no doubt as to the manner in which it ought to be answered in view of well-recognised principles. Sec. 14 of Reg. VIII of 1819

provides that it shall be competent to any party, desirous of contesting the right of the zemindar to make the sale, whether on the ground of there

having been no balance due or any other ground, to sue the zemindar for the reversal of the sale, and upon establishing a sufficient plea to obtain a

decree with full costs and damages ; the purchaser shall be made a party in such a suit, 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 zemindar or person at whose suit the sale may have been made. Art. 12 of the

second schedule of the Limitation Act provides that a suit to set aside a sale of a putni taluk, sold for current arrears of rent, must be instituted

within one year from the date when the sale would become final and conclusive had no such suit been brought. These provisions plainly indicate

that the sale is treated not as void but as voidable. A sale under Reg. VIII of 1819 does not require to be confirmed. Such a sale becomes final

and conclusive when the whole of the purchase-money has been paid under sec. 9 of the Regulation, and the period of one year runs from the date

of such payment, Bhuban v. Girish 13 C. L. J. 339 (1894). It has not been suggested before us that the arrears, for "the recovery of which the sale

was held at the instance of the zemindar, were not due, but even if such an allegation were made, it would be worthy of note that sec. 14 of the

Putni Regulation contemplates a suit for reversal of the sale on the ground that no balance was due ; consequently, in such a contingency, the

question might arise whether the principle of the decisions in Byjnath v. Lala Seetul Pershad 10 W. R 66 (1868), Harkhoo v. Banshidhar I. L. R

25 Cal. 876 (1898) and Bal Kishen v. Simpson I. L. R 25 Cal. 833 (1898), namely, that a sale for arrears of revenue when no arrears are due is

not a legal sale because the Collector acts entirely without jurisdiction, would be applicable to putni sales held when no balance was due to the

zemindar. In any event when a putni sale is impeached on the ground that the notices required by the Regulation have not been duly served, the

sale must be treated as avoidable sale capable of reversal in a suit properly constituted and commenced under sec. 14 of the Putni Regulation. This

view receives considerable support from the principle which underlies the decisions of the Judicial Committee in Tasaddak v. Ahamed I. L. R. 21

Cal. 66 (1893), Gobinda Lall v. Ramjanam I. L. R. 21 Cal. 70 (1893) and Malkarjun v. Narhari I. L. R. 25 BOM. 337 (1900). These decisions

recognise the important doctrines that the omission to serve statutory notices, though it may affect the validity of a sale and render it liable to be

reversed in an appropriate proceeding, does not render the sale a nullity which may be ignored by the person whose property has been sold. This

principle may not be of universal application, as indicated by the decision of a Full Bench of this Court in Puma Chandra Chatterjee v. Dinabandhu

Mukerjee I. L. R 34 Cal. 811 (1907), where it was ruled that the omission of the Collector to serve a notice under sec. 10 of the Public Demands

Recovery Act of 1895 destroys his jurisdiction to hold the sale. In the case before us, however, it is impossible for us to hold that the sale was a

nullity, because the notices required by the Regulation were not proved to have been duly served. But reliance was placed by the learned Vakil for

the Respondents upon the cases of Maharaja of Burdwan v. Tarasundari I. L. R. 9 Cal. 619 ; L. R. 10 I. A. 19 (1882), Maharaja of Burdwan v.

Krishto Kamini I. L. R. 9 Cal. 931 (1883), Maharani of Burdwan v. Krishna Kamini I. L. R. 14 Cal 365(1886), Mahomed v. Abdul I. L. R. 12

Cal, 67 (1885), Surnomoyee v. Girish Chandra I. L. R. 18 Cal. 362, 373 (1891), Hurrodyal v. Mahomed Gazi I. L. R. 19 Cal. 699 (1891), Raj

Narain v. Ananta Lal I. L. R. 19 Cal. 703 (1892), Bejoy Chand v. Atulya I. L. R. 32 Cal. 953 : s. c. 3 C. L. J. 46 (1905), Bhugwan v. Sudderally

I. L. R. 4 Cal. 41 (1878), Bykunta Naih v. Mahtap Chand 17 W R. 447 (1872), Hara v. Juggarnath 11 W. R. 87 (1869), Raghub v. Btojo Nath

14 W. R. 489 (1870) and Bejoy Chand v. Amirta Lall I. L. R. 27 Cal. 308 (1899) to show that compliance with the provisions of the Regulation

as to the issue and service of the requisite notices is essential for the validity of the sale. These cases are clearly distinguishable ; they merely show

that the validity of the sale is affected by the failure of the zemindar to comply with the provisions of the Regulation, and the sale is liable to be

annulled in a suit instituted under sec. 14, but they do not show that the sale may be treated as a nullity.

2. The learned Vakil for the Respondents, however, strenuously contended that upon general principles the validity of a statutory sale may be

attacked collaterally in a suit for ejectment brought by the purchaser or his representative in interest, and in support of this view, he relied upon the

analogy of the doctrine recognised in some judicial decisions that an objection to the validity of an execution sale may be raised by way of defence

in a regular suit although'' the objection is one within the scope of sec. 244 of the CPC of 1882 [Bhiram Ali v. Gopi Kanth I. L. R. 24 Cal. 355

(1897), Chandra Mani v. Halejennessa 9 C. L. J. 464 (1908), Durga Charan v. Karamat Khan 7 C. W. N. 607 (1903), Thathu v. Kondu I. L. R.

32 Mad. 242 (1908), Venkataramna v. Menatchisundara 19 Mad. L. J. 1 (1904)]. In answer to this argument, it may be pointed out that the

doctrine upon which reliance is placed has not uniformly been accepted in this Court [Dwarka Nath Pal v. Tarini Sankar Roy I. L. R. 34 Cal. 199

(1907), Durga Charan v. Kali Prasanna I. L. R. 26 Cal. 727 (1899) and Murullah v. Barullah 9 C. W. N. 972 (1905)]; the matter is indeed, by no

means, free from difficulty, and when it arises directly for consideration, it may require careful examination. In any event, the application of the

doctrine would prima facie be limited by the conditions imposed by sec. 47 of the CPC of 1908, which provides in sub-sec. (2) that the Court

may, subject to any objection as to limitation or jurisdiction, treat a proceeding under that section as a suit or a suit as a proceeding and may, if

necessary, order payment of any additional Court-fees. The restrictions indicated show conclusively that there are weighty reasons why the validity

of the sale should not be allowed to be impeached collaterally in the present suit. In the first place, in a suit for reversal of the sale, the zemindar is a

necessary party, as is manifest from the provisions of sec. 14 of the Regulation. In the second place as the validity of a putni sale must be

challenged in its entirety, the jurisdiction of the Court in which the suit for reversal is instituted, must be determined with reference to the value of

the entire putni, whereas in a suit for possession of a share of the putni taluk by the representative of the purchaser under the Regulation, it is the

value of the share in controversy which determines the jurisdiction of the Court. In the third place, if a suit for reversal of the sale were now to be

commenced, it would obviously be successfully met by the plea of limitation, because even if the Defendants as Plaintiffs in such a suit sought to

avail themselves of the provisions of sec. 14 of the Limitation Act, for exclusion of the time during which they have defended the present suit

[Jagatindra v. Dindyal 1 W. R. 310 (1864) and Mangu Lal v. Kandhai I. L. R. 8 All. 475 at p. 485 (1886)], it could be of no avail as against the

zemindar who is not a party to this litigation, while if they relied upon the provisions of sec. 18, for exclusion of the time during which they had been

kept by the alleged fraud of the purchaser from knowledge of their right to ask for reversal of the sale, it could be of no avail as against the

zemindar, as the latter is not a party to this suit, and as they themselves must have been apprised of the fraud, if any, before the 29th May 1906,

when they filed their written statement. But even if these difficulties could be overcome, it would have to be shown that the dismissal of the previous

suit against the zemindar was no bar to a second suit of similar scope and description. Apart however, from these considerations, we are unable to

accede to the contention of the Respondents, that, as a matter of principle, the validity of such sales ought to be allowed to be challenged

collaterally. The three decisions of the Judicial Committee to which we have already referred [Tasaddak v. Ahamed I. L. R. 21 Cal. 66(1893),

Gobinda Lall v. Ramjanam I. L. R. 21 Cal. 70 (1893) and Malkarjun v. Narhari I. L. R. 25 Bom. 337 (1900)], undoubtedly militate against such a

theory. It must further be remembered that the tendency of Courts is against collateral impeachment, except in the case of private transaction

before they have passed from the domain of contract into that of judgment [Clough v. L. & N.W. Ry. Co. L. R. 7 Exch. 26(1871), Eastern

Mortgage v. Rebati 3 C. L. J. 260 (1906), Baroda v. Gajendra 9 C. L. J. 383 at p. 398 (1909)]. For illustrations, reference may be made to

Surnamoyee Dassi v. Ashutosh Goswami I. L. R. 27 Cal. 714 (1900) and Gora Chand v. Makhan 6 C. L. J. 404 (1907), although where a

decree obtained by fraud is sought to be used against a person he is allowed, under statutory provisions (sec. 44 of the Indian Evidence Act) to

show the true nature of the decree, notwithstanding that no steps have been taken by him for reversal of the decree [Nistarini v. Nando Lal I. L. R.

26 Cal. 891 (1899) and Rajib Panda v. Lakhan I. L. R. 27 Cal. 11 (1899)]. In the absence of such a statutory provisions and in the face of an

express statutory mode for reversal of the sale, we are not prepared to hold that it ought to be allowed to be impeached collaterally. The general

rule is that a judgment rendered by a Court having jurisdiction over the parties and the subject-matter, unless reversed or annulled in some

appropriate proceeding, is not open to contradiction or impeachment in respect to its validity, verity or binding effect, by parties or privies in any

collateral action or proceeding [While v. Rose 3 Q. B. 493 (1842), Rogers v. Wood 2B. & Ad. 245(1831), Briscoe v. Stephens 2 Bing. 213 ; 27

R. R. 597 (1824)]. The same doctrine has been maintained in the American Courts in numerous cases, amongst which may be mentioned three

decided by the Supreme Court of the United States [Thompson v. Whitman 18 Wallace 457, Dunham v. Jones 159 U.S. 584 and Gunn v. Plann

94 U.S. 664], as also the case of International Wood Company v. National Assurance Company 105 Am. St. Rep. 288 (1904). No doubt, the

position may be different when a judgment shows on its face that it is void for want of jurisdiction either of the person or the subject-matter; such a

judgment may possibly be treated as a nullity and collaterally impeached by any person interested, wherever it is brought in question. But that

doctrine has no application to a case like the present where the validity of the sale is plainly intended by the Legislature to be determined in a suit,

properly constituted and brought in a Court of competent jurisdiction, within the time allowed by law, and against parties sought to be affected by

the result. We are, therefore, of opinion, that the conclusion is inevitable that the Defendants ought not to have been allowed to challenge the

validity of the sale in the present suit. We do not, however, decide whether the Defendants may not subject to the law of limitation, have some

remedy on the ground of fraud if fraud is established against the purchaser at the putni sale and other persons who may have assisted him in the

attainment of his fraudulent object. The result consequently is that this appeal must be allowed, the decrees of the Courts below discharged, and

the Plaintiffs awarded a decree for the one-third share of the putni taluk in dispute. In the circumstances disclosed, however, and in view of the

great delay in the institution of the suit, we direct each party to bear his own costs throughout the litigation, for in deciding the question of costs, we

are entitled to consider not merely the conduct of the parties in the actual litigation, but also the matters which led up to the litigation [Harnett v.

Vise (49)]