

(1950) 02 CAL CK 0019

Calcutta High Court

Case No: Letters Patent Appeal No. 2 of 1949 in Appeal from Appella from Appellate
Decree No. 1902 of 1944

Sushil Kumar Chatterji

APPELLANT

Vs

Chandra Madhab Ray

RESPONDENT

Date of Decision: Feb. 12, 1950

Acts Referred:

- Bengal Municipal Act, 1932 - Section 167, 535, 535(1), 535(7)

Citation: (1951) 1 ILR (Cal) 401

Hon'ble Judges: Das, J; Das Gupta, J

Bench: Division Bench

Advocate: Paresh Nath Mookerjee and Chandidas Roy Chowdhury, for the
Appellant; Apurbadhan Mukherji and Barun Kumar Roy Chowdhury, for the Respondent

Final Decision: Dismissed

Judgement

Das, J.

This appeal is by the Defendant No. 3 and arises out of a suit for redemption. The Plaintiff is admittedly a prior purchaser of the holding in suit. The contesting Defendant is a purchaser at a sale in execution of a decree for arrears of rates and taxes obtained by the Serampore Municipality, against Defendant No. 1 in the suit.

2. Various defences were taken to the suit, one of which was that the suit was bad for non-service of a notice u/s 535 of the Bengal Municipal Act. This particular defence was taken by the Defendant municipality.

3. The trial court was of the opinion that notice u/s 535 of the Act was not necessary and decreed the Plaintiff's suit.

4. On appeal, the lower appellate court reversed the decision of the trial court on the ground that the suit was not maintainable as the requisite notice was not served. On the merits the findings of the trial court were affirmed.

5. On Second Appeal, by the Plaintiff, our learned brother Chunder J. set aside the decree of the first appellate court and restored the decree of the Munsif on the sole ground that it was not open to Defendant No. 3, who was not the municipality concerned, to raise a plea u/s 535 of the Act. The learned Judge observed that this plea was available only to the Defendant No. 1, the municipality. As the trial court negatived the plea and the municipality did not appeal, it must be taken that the municipality abandoned this plea. The other points, which were urged on behalf of the Plaintiff Appellant, were not decided by the learned Judge.

6. In this appeal, Mr. Paresh Nath Mookerjee, appearing for Defendant No. 3, contends that the decision of our learned brother was not correct, inasmuch as the plea, having been taken by the Defendant municipality and the trial court having found in favour of the Plaintiff on the merits as also on the plea u/s 535 of the Act, it was open to Defendant No. 3, who was the Appellant in the first lower appellate court, to contest all the findings which were reached by the trial court in passing a decree in the Plaintiff's favour.

7. We heard the learned advocates appearing on both sides on this point and on their request, also on the question whether the notice u/s 535 was necessary in the facts of this case. In the view we take up in this matter it is not necessary to decide the point on which our learned brother allowed the appeal because in our opinion, the decision of the first lower appellate court on the question of the necessity of a notice u/s 535 is erroneous in law. The present suit is one for redemption of a charge, which, according to the Plaintiff, was created by Section 167 of the Bengal Municipal Act. His case is that the charge which the statute so raises was enforced in proceedings to which he was no party and his right to redeem the charge was unaffected by those proceedings. Section 535(1) requires a notice to be served if the Plaintiff complains of any act purporting to be done by the municipality or its agents, etc. Here the Plaintiff does not complain of any act done by the municipality. He simply wants to get rid of a charge which, according to him, has attached to the holding in his hands by reason of the statutory provisions.

8. In my opinion, a notice u/s 535(7) of the Bengal Municipal Act was, therefore, not necessary to be served in this case. The basis of the decision of the first lower appellate court is, therefore, wrong. As I have already stated, on the merits the first lower appellate court found in favour of the Plaintiff. Hence, the decree in favour of the Plaintiff is maintained though on a different ground as stated above.

9. The result, therefore, is that this Letters Patent Appeal is dismissed but in the circumstances of this case the parties will bear their own costs of this Letters Patent Appeal.

Das Gupta J.

10. I agree.