

(1920) 05 CAL CK 0049**Calcutta High Court****Case No:** None

Kumar Birendra Chandra Singh
and Manmatha Nath Mullik

APPELLANT

Vs

Mahammad Sole Man

RESPONDENT**Date of Decision:** May 25, 1920**Citation:** AIR 1921 Cal 449 : 68 Ind. Cas. 491**Hon'ble Judges:** Richardson, J; Greaves, J**Bench:** Division Bench**Judgement**

Richardson, J.

The plaintiff in the two suits out of which these appeals arise purchased holding of 2O-A in Mahal Panchannogram in the 24-Parganahs at a sale for arrears of revenue or rent held under Act VII of 1868, which incorporates the provisions of the Bengal Revenue Sales Act (XI of 1859). The holding is a tenure within Act VII of 1868 and the defendant in each suit is an under-tenure-holder in occupation of lands comprised in the holding. Appeal No. 135 relates to Suit No.20 of the Court below and Appeal No, 137 to Suit No. 19.

2. The holding was sold on the 17th May 1915 for an arrear of Rs, 6105 and the sum paid by the plaintiff was Rs. 8,900.

3. The suits were brought to vacate the under-tenures of the defendants u/s 12 of the Act of 1838 as incubuses imposed upon the tenure after its creation or after the time of Settlement. The defendants contend in the first place that the sale was invalid inasmuch as the Collect or had no authority under the law to sell the tenement when he did, and in the second place, that their under-tenures are within the first of the Third Exception to Section 12 and, therefore, protested. Before us the plea that the sale was brought about by collusion between the purchaser and the defaulter was in effect abandoned. The plaintiff won in the Court below and the defendants have appealed.

4. The point of the first defense is whether the pale was premature and it turns on the application of the Privy Council desisiou in Hoji Buksh Ilahi v. Dutliv Chandra Kar16 Ind. Cas. 82 : 39 I. A. 177 89 C. 981 : 16 C. W. N. 848, 23 M. L. J. 206 : 12 M. L. T 385 : (1912 M. W. N. 1005 : 14 I om. L, Rule 1063) 16 A. L. J, 452i 16 C. L. J, 620 (P, C.). to the fasts of the present sate. Their Lordships dealt with the effect of the two Acts and of the Board"s Notification of 6th October 1871, issued u/s 3 of the Act of 1959 in revision o the time at which there hauling in Panchannogism become saleable for arrears. The result, is that no holding an be fold till after the 28ih June next afitr the firgt day of the month following the month in which the revenue or rent should have been paid.

5. The rents of the holdings are payable annually and the result is arrived at in this way. Determine the day on which the rent is annually payable, if not paid on or before that date the rent is in arrear on the that day of the following month (Act XI of 1859, Section 2). Under the Board"s Notification of 187 i, the tenure-holder may save his tenure by paying the arrear on or before the 28th June next following. It is not till after that date has passed without the arrear being paid that the holding becomes salable at public action to the bighted bidder.

6. In tie same cried, the tenure-holder"s engagement or kabuliyat required him to pay his rent "within the 28th day of Jane every year." It w*s held that the rent be payable in any year was rent in arrear till July 1 of that year and the holding could not be sold till after June 28 of the following year

.

7. The first question to be determined, therefore, is on what day the rent in the present case was payable

8. For the plaintiff it is said that the rent was payable annually according to the Bengali year and reliance is placed on the evidence of the collsetorate Record-keeper, called by the defendants, who says that "the rent of this65 Gram mahal is generally collected according to the Bengali year." In the jama watil baki of the holding (Exhibit A), the years are entered as 1911 12, 1912.13 and so on. The entries may refer either to the financial year ending on the 31st March, or to the Bengali year ending affect the middle of April, it is immaterial which of these years is intended. The account shown that there was nothing due at the close of 1912-13 (or 1319 B. S.). The year 1913 14 (or .1920 B. S.) opened with a current demand" for no 6 1O-5 and no arrear demand. The entrant demand" far that year was paid on 3rd March 1914. Accordingly...,1914-15 (or 1321 B. S) also opened with no entry in the arrear column and an entry of Rs. 6 10 5 in the column provided is the current demand. This demand was not paid on June 28"h 19-4 or later, and the holding was sold in consequence in May 19i5. if, as is argued for the plain! iff, the amount became due and payable rm the 1st Aptil 1914, or the 1st Boisakh, 1321, the rent was in an ear on 1st May, 1914, aad the Collector was at liberty to sell it after June

28ih of the same year. If, on the other hand, the amount became due and payable in or after June of 1914, the holding could not be sold till after June 28th 1995.

9. As the Privy Council point out, the date on which the amount was payable depends primarily, not on general or administrative considerations, such as the course of business in the collect orate or the mode in which the accounts are kept, but on the contrast between the parties. In the present case that contract is embodied in a kabuliyat, dated 10th November 1882, which is in the follow-

This deed of kabuliyat is executed by Sayad Abdul Ali (a former tenure-holder) to the following effect:-

That I have got a permanent maurashi potta in respect of lands measuring 17 bighas 5 hatas 4 chataks and 10 gundas...acknowledging as yearly rent there of Ra 2012 annas 4 pies. I shall pay the rent year by year. Accordingly, on receiving a patta, I execute this Kabaliyat. Finis. 10th November 1862.

10. The original holding appears to have been split up. Holding No. 20-A comprises about a third of the original area and is responsible for an aliquot share of the rent.

11. It will be observed that the kabuliyat bears an English date and that it does not expressly mention the date on which the rent is due to be paid each year. There seems no reason by it should refer to the Bengali year or the financial year or the English calendar year, rather than to the year beginning on the date it bears, the 10th November, and ending on the 9th November of the following year, which may be called the year of the tenancy. The meaning of the words as they stand is presumably that the rent should be paid year by year on the 10th November of each year. If that be so, the account would show that the rent due on the 10th November 1913, was paid on the 23rd March 1914, and that the current demand for 194-5 was not payable till the 10th November, 1914. The rent, therefore, was not in arrear till the 1st December 1914 and the Collector was without authority to sell before the 28th June 1915. Accordingly, this sale held in May 1995 was invalid and ultra vires and conferred no right on the plaintiff, as the purchaser at the sale, to vacate these under tenures.

12. If that view be right, the defendants succeed on their first contention and it becomes unnecessary for as to consider whether the defendant's under tenures are within any of the Exceptions to Section 12 of the Act of 868, a question with which the Court below seems to have dealt somewhat cursorily. It may be added that according to the sale notice issued on 14th April 1915, u/s 7 of the Act of 1859 (Exhibit 15), the sale was held "for the realization of the Government Revenue--for the year 1320 B, Section which was payable on the 28th July 1914." On a strict construction of these words, the result would be (he same as that already arrived at. The revenue, if payable on the 28th July, was in arrear on the 1st August 1914 and the holding could not be sold till after 26th June 1915. But it is probable that the notice means that the 28th July or the 28th June was the last day for the payment of

revenue which was previously in arrear. That is to say, it was assumed that the revenue was due for the Bengali year 1320 and that it was payable on the 1st Baisakh 1321, an assumption, which in the view I take is inconsistent with the Kabuliyat.

13. The appeals should be allowed with costs in this Court and the Court below.

Garavas, J.

14. I agree.

15. We assess the hearing fee in appeal No. 135 at one hundred and fifty rupees.