
(1874) 08 CAL CK 0006

Calcutta High Court

Case No: Special Appeal No. 2373 of 1873

Kheeroo Mundul

APPELLANT

Vs

Gungadeen Misser and
Another

RESPONDENT

Date of Decision: Aug. 19, 1874

Final Decision: Allowed

Judgement

Phear, J.

The question thus appears to be whether the plaintiff as purchaser from one of the shareholders of this mehal, who has until the date of sale been in exclusive possession of the 25 bigas of land which is the subject of suit, together with other land in lieu of his undivided share of the mehal, is entitled to have exclusive possession of that land as against the defendants Nos. 1 and 2, who have bought the share of certain other defaulting proprietors at the Collector's auction-sale. It may perhaps be doubted whether the facts set out in the plaint are quite sufficient to give the plaintiff a good cause of action against the principal defendant. But if it be assumed that they do so, then the question which is to be determined is that which I have just now stated. It is an additional fact in the case that one, if not both, of the two first defendants is (independently of the purchase which they have made at the auction-sale) a shareholder; in the estate, and has been holding, and probably now is still holding, exclusive possession of a portion of land as his original share. The plaintiff contends that the defendants Nos. 1 and 2, by their purchase at the auction-sale, got no more than such right of exclusive possession to portions of the mehal as the defaulting shareholders had relative to their co-shareholders; in other words, that they did not, by that purchase, acquire a right to the defaulting shareholder's registered undivided share of the whole mehal. The argument is that, inasmuch as the defaulting shareholders were content to hold exclusively possession of specific portions of the mehal in lieu of their undivided share, the purchaser at the auction-sale, which was held under s. 13, of the share belonging to them only gets those specific portions. After giving consideration to this subject, we think that the contention cannot be maintained. S. 10, Act XI of 1869, says that,--"When a recorded sharer of a joint estate, held in common

tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by the applicant. The Collector shall then cause to be published in his own Office, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be) and Munsif, and in the Police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence."

2. This section obviously applies to the case of one who wishes to be treated by the Collector as an undivided shareholder of a revenue-paying estate. The following section applies to the case of one who desires to be recorded as a sharer of a joint estate, whose share consists of a specific portion of the land of the estate. The whole of the proprietors of the estate in the present instance, separating themselves substantially into three groups, obtained a corresponding division of the jama of the mehal under s. 10 and not under s. 11, and therefore the share of each registered group, which the Collector had in his books, and had to deal with, was an undivided share of the entire revenue paying estate, not a specific portion of the land of the estate. Then s. 13 says that,--"Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid, in the first place, shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due."

3. The section further provides that the share or shares sold, together with the share or shares excluded from the sale, "shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jama assigned thereto."

4. The effect of this plainly is that the sale of the Collector passes to the purchaser the share of the defaulting shareholder in the entire estate as it was registered in the Collector's book,--i.e., an undivided share, if registered under s. 10, and a specific portion of the estate, if registered under s. 11. In the present case, therefore, it must be an undivided share, and if we were to hold otherwise in the way contended for by the plaintiff,--namely, that the purchaser only got such portion of the land, constituting the estate as the defaulting shareholder may have chosen as between himself and the other shareholders for any reason to take as equivalent to his undivided share, then that portion might, in some cases be a very inadequate security indeed for the proportion of revenue payable by the defaulting shareholder, and the purchaser who bought at the auction-sale under s. 13 might find that he was grossly deceived in his bargain. He might, after having

paid the full value on the defaulting shareholder's undivided share in the estate, discover that he got a very inadequate portion of the estate as the result of purchase. It was not the intention, we think, of the Legislature to introduce uncertainty of this kind into auction-sales held for the purpose of realizing the revenue. On the contrary, it is rather the general principle of the Legislature to make these sales effective to pass the full share of the defaulting shareholder, free, so to speak of all incumbrances. We think, therefore, that on the facts of this case, the plaintiff was not entitled as against the defendant NOS. 1 and 2, purchasers of an undivided share of the estate under s. 13 of Act XI of 1859, to have exclusive possession of any portion of the mehal.

5. It was pressed upon us that, inasmuch as the defendants Nos. 1 and 2 were one or both of them previously shareholders in this estate, and as such enjoying their portion of the land exclusive of the others in the same way as the rest of the shareholders, there arose an equity in this case as between them and the plaintiff which ought to lead the Court to hold that, at any rate, these defendants got no more than the defaulting shareholder's particular specific share by virtue of their purchase, But we are unable to say that there is any equity arising between the parties on this ground. The plaintiff's suit fails, and ought to be dismissed. The first Court held this view, but on appeal to the Subordinate Judge, the decree of the Munsif was reversed, and the plaintiff's suit decreed. We are of opinion that this was wrong, and that the decree of the Subordinate Judge must be reversed and the plaintiff's suit dismissed with costs.