
(1870) 04 CAL CK 0015

Calcutta High Court

Case No: Regular Appeal No. 39 of 1869

Baboo Pukhnarayan
Sing and Others

APPELLANT

Vs

Baboo Tundan Sing

RESPONDENT

Date of Decision: April 20, 1870

Judgement

Norman, J.

After going through the facts of the case, commenting on the evidence generally, and observing:--"No doubt a strong inference in favour of the defendant arises from the acquiescence of the family in the dispossession for so long a time. But I am not prepared to say that such inference ought to prevail against the evidence on which the Judge has based his decision, especially if we regard the practice in native families of leaving almost all matters in the hands of one and only one acknowledged kurta, or head of the joint-family," continued--The only remaining question was that argued by the Advocate-General as to the property purchased by Tundan Sing in his own name at sales for arrears of Government revenue. Item No. 1, eight annas of Mahura, was purchased prior to the passing of Act XII of 1841, at a sale for arrears of Government revenue under Regulation XI of 1822. It is admitted that the Regulation in question contains no provision which can affect the rights of the plaintiff in the present suit. The 19th and 20th sections of that Regulation empowered the Government in case of a benami purchase to annul or cancel the sale, and to dispossess the purchaser.

2. As to the purchases made after the passing of Act XII of 1841, section 22 of that Act provides "that any suit brought to oust a certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs." Act XII of 1841 was repealed by Act I of 1845, and it has been decided, and we think rightly decided, by Mr. Justice Mitter, in *Booa Russoolee v. Nawab Nazim of Bengal* ⁽¹⁾, that, by such repeal, the defence which the nominal purchaser would have had in a suit by the real purchaser is taken away.

3. Then comes a question as to a purchase of six annas of Mahespur made by the defendant Tundan Sing, at a sale for arrears of Government revenue, after the passing of Act I of 1845.

4. The case of a purchaser at a sale for arrears of Government revenue made by the manager of a joint Hindu family in his own name, on behalf of the joint family, does not appear to be expressly provided for by section 21 of Act I of 1845, and it would only be by a forced construction that such a case could be brought within the terms of that section. The section is a penal one, and should, we think, be construed strictly. The words are:--"Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs."

5. I think it must be taken as found as a fact, that the purchase of Mahespur was made by Tundan Sing, as managing member of the joint family, on behalf of himself and the other members of the family. The suit is not brought against Tundan Sing on the ground that the purchase was made on behalf of another person, and not of himself. The purchase was, in fact, admittedly made by him on his own behalf, though others may be interested with him. The suit is not brought to oust him, but to establish the rights of his co-sharers as joint owners with him. The language of section 36, Act XI of 1859, is different from that of section 21 of Act I of 1845. Words are introduced in the latter enactment, which may probably include the case of a purchaser by the managing member of a joint family in his own name. It stands as follows:--"Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, or on behalf partly of himself, and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs."

6. On the whole, we are of opinion that a purchaser at a sale for arrears of revenue under Act I of 1845, made by the managing member of a joint Hindu family in his own name, but on behalf of the joint family, is not affected by the 21st section of that Act; and that notwithstanding anything contained therein, the members of such joint family may sue to enforce rights acquired by them under such a purchase, as against the managing member, though he is the sole certified purchaser. The result is that in our opinion the appeal must be dismissed with costs.

(1) April 26th, 1869.--In this case, Mitter, J., relied on *Raja Satya Saran Ghosal v. Mahesh Chandra Mitter*, 2 B.L.R., P.C., 23, q.v., and also on *Gopee Mohun Thakoor v. Raja Radhanath*, 2 Knapp's P.C. Cases, 228, as illustrating the doctrine that "a Statute which does not declare a particular transaction to be illegal, but which is merely restrictive of jurisdiction; or, in other words, which simply prohibits the cognizance of a suit based upon that transaction, can be set up as a bar to such suit, after it has been repealed by a subsequent Act of the Legislature."