

(1880) 08 CAL CK 0007

Calcutta High Court

Case No: None

Chatraput Singh

APPELLANT

Vs

Grindra Chunder Roy
and Another

RESPONDENT

Date of Decision: Aug. 27, 1880

Citation: (1881) ILR (Cal) 389

Hon'ble Judges: White, J; Field, J

Bench: Division Bench

Judgement

White, J.

The appellant was the plaintiff in the lower Court, and that Court dismissed his suit without going into evidence. The question, therefore, to be determined upon this appeal is, whether in his plaint he stated a case which, if proved, would entitle him to the relief which he sought against the defendants. The following are the material allegations in his plaint:---That, on the 9th of December 1878, he purchased an eight-anna share of a large zamindari under a decree that was obtained against the defendants; that, after that date, a large sum of money became due in respect of the third quarter's Government revenue for the year 1878-79, and also in respect of the road cess and public works cess for the same quarter; that on the 13th January 1879, the last day for paying the same, he paid the entire amount into the Government treasury; that, prior to the date of his auction-purchase, he had no right in the property which he had bought; that the defendants, down to the 8th of December 1879, were owners of the mehal sold and entitled to realize rent from the tenants ; and that he was compelled, in order to save his interest in the mehal, to pay the amount that so became due for revenue and cesses.

2. His plaint prays for a declaration that he is entitled to recover from the defendants a proportionate amount of the Government revenue, road cess and public works cess payable in respect of the mehal from the 29th of September to the 8th of December 1878, and for a decree for that proportionate amount.

3. It is admitted by the appellant that his title to the eight annas share of the zamindari dates from his purchase, namely, the 9th December 1878, and that the revenue and cesses which he seeks to apportion, although accruing from an earlier date, did not become due until after the 9th of December 1878, when the eight annas share had, by virtue of the purchase, become vested in himself. It is also admitted by his pleader that the sale was not made under the revenue-sale law. Government revenue does not become due from day to day, but at certain specified times, according to the contract of the parties, or the custom which may prevail in the district. The same remark applies to the cesses mentioned in the plaint, which are payable along with, and under the same conditions as, revenue. Therefore, the liability to pay revenue in this case was a liability which first became due after the appellant had acquired his title. As the payments did not become due until after he had become owner of the estate, and he bought under no special stipulation which allowed of the payments being apportioned, I am of opinion that the doctrines neither of contribution nor of apportionment apply, but that he is liable to discharge the whole amount of the payments, and cannot make the judgment-debtors pay any portion of them.

4. There is another view of the case presented by the lower Court, which to my mind seems also a sound one, namely, that, upon the facts alleged, the plaintiff must be held to have purchased at the auction the eight annas share of the mehal with all revenue and cesses that may be either due or accruing due at the time of his purchase. Revenue and the public cesses mentioned constitute a standing incumbrance and first charge upon the land subject to them. A man who purchases an estate which pays revenue and cesses to Government, knows that the estate is by the law chargeable with this revenue and cesses, whether in arrear or accruing, and that unless he pays the same he will lose his purchase. In the absence of any express stipulation to the contrary in the proclamation of sale he must be taken to purchase the estate subject to the discharge of these liabilities. A purchase can easily, and I have no doubt does, protect himself from these liabilities by taking them into account in estimating the value of what he is about to buy, and regulating his biddings accordingly.

5. The proposition is supported by authority. The lower Court refers to the cases of *Obhoy Chunder Bundopadhyaya v. Nilambur Mookerjee* (W. E. 1864 73) and *Sheik Khoda Buksh v. Degumburee Dossee* (W. E. 1864 207) ; and we are also referred to another case decided by Mr. Justice LOUIS JACKSON and Mr. Justice McDonell on the 20th January 1876, Special Appeal No. 706 of 1875. The cases of *Obhoy Chunder Bundopadhyaya v. Nilambur Mookerjee* (W. E. 1864 73), and *Sheik Khoda Buksh v. Degumburee Dossee* (W. E. 1864 207), although not cited in the judgment of Mr. Justice JACKSON, are yet cited in the judgment of the lower Court then under appeal, and are approved of by the High Court.

6. The appeal is dismissed with costs.

Field, J.

7. In this case the plaintiff purchased a moiety of a revenue-paying estate at a sale held in execution of a decree. The date of the sale was the 9th December 1878; and it is admitted on both sides that the case is governed by the Full Bench decision in *Bhyrub Chunder Bundopadhya v. Soudamini Dabee* (I. L. R. Cal. 141), that is to say, that the plaintiff's title accrued from the date of sale, namely, the 9th December 1878. After the date of sale the, judgment-debtor made objections, and the sale was not confirmed until the 13th March. Meanwhile an instalment of Government revenue became payable on the 13th January 1879; and this, together with the road cess and public works cess, amounting in all to Rs. 15, 833 annas 12, was paid by the plaintiff.

8. The ground upon which the plaintiff seeks to recover from the defendants their share of this sum, is set forth in the 4th paragraph of the plaint in the following words:-

As the defendants were owners of the mehal sold and were entitled to realize rent from the tenants of that mehal from the 29th of September 1878, the first day of the aforesaid third quarter up to 8th December, and as they held possession thereof during that time, and as the plaintiff had no right to realize the rent of the period antecedent to his auction-purchase, the defendants are bound to pay the collectorate revenue and the road cess and public work cess of the above period.

9. In other words, the plaintiff contends, that as the defendants were in receipt of the rents and profits of the estate up to the 8th December 1878, they ought to pay the Government revenue and other outgoings up to that date. At first sight it does appear somewhat inequitable that the person who has received the profits and rents should not by law be compelled to pay the outgoings; but I think there can be no doubt that upon the authorities we are concluded from making any other decree in this case than that which has been made by the lower Court. There is no law providing for the apportionment of Government revenue in such cases. According to the law of landlord and tenant rent is not apportionable in these provinces, and the defendants would not therefore be entitled to have the rents payable by the tenants apportioned so as to entitle them to recover exactly the rents due up to the 8th December 1878. The principle upon which the apportionment of revenue is claimed would not, therefore, be supported by the apportionment of the rent.

10. If this be regarded as a suit for the recovery of money paid to the defendants' use, there must be either an express or implied promise on the part of the defendants to pay that money. That there was any express promise has not been contended, and the circumstances are wanting from which a promise could be implied. The law under certain circumstances implies a promise when money is paid by A which B was lawfully bound to pay. In the case before us, it is impossible to say that B was lawfully bound to pay this money. According to the revenue law of these

provinces, the estate must first have been sold for the realization of Government revenue due thereupon, and B, or the defendants in this case could have been compelled to pay this money only if, after the estate had been sold, the arrears of Government revenue had not been realized from the sale-proceeds. It is not contended, and there is no evidence that, if the estate had been sold in this instance, the revenue would not have been realized from the sale-proceeds; and, therefore, that the personal liabilities of the defendants would have arisen. I think, therefore, that no grounds exist from which a promise on the part of the defendants to pay this money can be implied.

I concur in dismissing the appeal.