

APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

BROJENDRA LAL DAS

v.

DEB NARAIN TEWARI.*

1917

May 22.

Chaukidari Chakaran Lands—Included in revenue-paying estate—Resumption of, and transfer to landlord—Village Chaukidari Act (Beng. VI of 1870)—Sale of parent estate for default of payment of Government revenue—Revenue Sale Law (Act XI of 1859)—Title of purchaser.

Where chaukidari chakaran lands resumed by Government under the provisions of the Village Chaukidari Act, 1870, were transferred in 1900 to A, in consequence of whose default in paying Government revenue, the parent estate was sold in 1907 and purchased by B, and where B sued to recover possession of the same :

Held, that the purchaser at the revenue sale acquired no title to the Chaukidari Chakaran lands which were never put up to sale for realization of the arrears due from the remainder of the estate.

Ranjit Singh v. Kali Dasi Debi (1) followed.

Kazi Newaz Khoda v. Ram Jadu Dey (2), *Hareck Chand Babu v. Charu Chandra Sinha* (3), *Rakhal Das Mukerji v. Malhab Chandra Singha* (4) referred to.

Kashim Sheik v. Prasanna Kumar Mukerjee (5) dissented from.

SECOND APPEAL by Brojendra Lal Das and others, the defendants.

* Appeal from Appellate Decree No. 963 of 1913, against the decree of Hari Prasanna Mookerji, Subordinate Judge of Burdwan, dated Nov. 29, 1912, confirming the decree of Rash Behari Mookerjee, Munsif of Burdwan, dated Aug. 30, 1911.

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| (1) (1917) I. L. R. 44 Calc. 841 ;
21 C. W. N. 609. | (3) (1910) 13 C. L. J. 102 ;
15 C. W. N. 5. |
| (2) (1906) I. L. R. 34 Calc. 109 ;
11 C. W. N. 201. | (4) (1910) 13 C. L. J. 109.
(5) (1906) I. L. R. 33 Calc. 596 ;
10 C. W. N. 598. |

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The facts necessary for the purposes of this report are shortly these. On the 2nd February, 1900, the lands in dispute, which were originally chaukidari chakaran lands were resumed under the Village Chaukidari Act, 1870, and transferred to the plaintiffs. The latter having defaulted to pay Government revenue, the parent estate was sold on the 27th March, 1907, and purchased by the defendants. In a suit for recovery of possession instituted on the 19th January, 1911, the plaintiffs contended that their title to the chaukidari chakaran lands was not affected by the sale of the parent estate and that they were entitled to possession. The defendant, on the other hand, pleaded that the sale under the provisions of Act XI of 1859, transferred to them, not merely the lands comprised in the parent estate but also the resumed chaukidari chakaran lands. On the 13th August, 1911, the Court of first instance decreed the suit which on appeal, the lower Appellate Court on the 29th November, 1912, confirmed.

From that decision the defendants preferred this second appeal to the High Court.

Babu Ram Chandra Mazumdar, for the appellant.

Babu Dwarkanath Chakravarty and *Babu Gopal Chandra Chakravarty*, for the respondents.

MOOKERJEE AND WALMSLEY JJ. This is an appeal by the defendants in a suit for recovery of possession of immovable property on declaration of title. The lands in dispute were originally chaukidari chakaran lands, which were resumed under the provisions of the Village Chaukidar's Act, 1870, and were transferred to the plaintiffs on the 2nd February, 1900. Since then, the proprietors of the estate have defaulted to pay Government revenue, with the result that the parent estate was sold on the 27th March, 1907, when it was

purchased by the appellants. The plaintiffs contend that their title to the chaukidari chakaran lands was not affected by the sale of the parent estate and that they are consequently entitled to recover possession thereof. The defendants, on the other hand, maintain that the sale under the provisions of Act XI of 1859 transferred to them, not merely the lands comprised in the parent estate but also the resumed chaukidari chakaran lands. The Courts below have concurrently negatived this contention on the authority of the decision in *Kashim Sheik v. Prasanna Kumar Mukerjee* (1). The correctness of that decision, however, has been called in question, and, our attention has been drawn to the cases of *Kazi Newaz Khoda v. Ram Jadu Dey* (2), *Hareck Chand Babu v. Charu Chandra Sinha* (3), and *Rakhal Das Mukerji v. Madhab Chandra Singha* (4). In our opinion, there is no room for controversy upon one fundamental question decided by the Judicial Committee in the case of *Ranjit Singh Bahadur v. Srimati Kali Dasi Debi* (5); namely, that chaukidari chakaran lands form part of the original estate, and, when they are resumed and transferred to the zemindar, the latter does not acquire thereby a new estate, as was erroneously laid down in *Kashim Sheik v. Prasanna Kumar Mukerjee* (1). The Village Chaukidar's Act recognises the existing title of the zemindar to the lands resumed, and the estate taken by him under the order of transfer is in confirmation and by way of continuance of his existing estate. This proposition, however, is of no real assistance to the appellants, for as purchasers, they

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| (2) (1906) I. L. R. 34 Calc. 109;
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| | (5) (1917) I. L. R. 44 Calc. 841;
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can claim title only to what has been actually exposed for sale by the Collector. In the case before us, it is clear that the chaukidari chakaran lands have not been sold by the Collector; consequently, the appellants have acquired no title to such lands by their purchase. Indeed, the state of facts here is identical with what was foreshadowed in the case of *Kazi Newaz Khoda v. Ram Jadu Dey* (1). The revenue authorities have treated the parent estate as divided into two, namely, one comprising all the lands of the parent estate except the chaukidari chakaran lands and the other including the chaukidari chakaran lands; *Rakhal Das v. Madhab Chandra* (2). The revenue authorities have substituted two distinct estates in place of what originally constituted one integral estate. Whether this was or was not the necessary consequence of the provisions of the Village Chaukidar's Act, we need not discuss on the present occasion; we are concerned only with the legal effect of what has actually taken place. The Collector has treated the enfranchised chaukidari chakaran lands as constituting by themselves a separate estate subject to the payment of a separate assessment made under the Village Chaukidar's Act, 1870. The residue of the original estate, as created at the time of the Permanent Settlement, has been treated as a separate estate, and that alone was exposed for sale for recovery of the arrear due therefrom. The sale was not held for the recovery of the amalgamated revenue, namely, the revenue assessed at the time of the Permanent Settlement and the subsequent assessment made at the time of the resumption under the Village Chaukidar's Act, nor was the amalgamated estate brought to sale. In these circumstances, it is clearly impossible to

(1) (1906) I. L. R. 34 Calc. 109; (2) (1910) 13 C. L. J. 109.

maintain the position that the purchaser at the revenue sale has acquired title to the chaukidari chakaran lands which were never put up to sale for realization of the arrears due from the remainder of the estate. We hold, accordingly, that the decree made by the Subordinate Judge is correct but not on the grounds set out in his judgment.

The result is that this appeal is dismissed with costs.

L. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

JADU NATH MANNA

v.

PRANKRISHNA DAS.*

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May 24.

Rent—Commutation—Bengal Tenancy Act (VIII of 1885) s 40, sub-ss. (1), (2), (3), s. 109—Order for commutation of rent—Jurisdiction.

Where under s. 40 of the Bengal Tenancy Act, an application by a tenant for commutation of rent was made to a Sub-divisional Officer, who transferred the same to a Settlement Officer, who in his turn transferred it to an Assistant Settlement Officer who heard and decided the application on its merits :

Held, that it was not competent for the Sub-divisional Officer to transfer the application to the Settlement Officer.

Held, further, that it was incumbent on the Court to satisfy itself that an order made on an application under s. 40 of the Bengal Tenancy Act was made with jurisdiction, though it was not competent to examine the propriety of an order so made

* Appeal from Appellate Decree, No. 83 of 1915, against the decree of C. Bartley, District Judge of Midnapore, dated Sep. 2, 1914, confirming the decree of Netai Charan Ghose, Munsif of Tamruk, dated Aug. 6, 1913.