

The Indian Law Reports.

Calcutta Series.

PRIVY COUNCIL.

BHUPENDRA NARAYAN SINGH (DEFENDANT)

v.

MADAR BUKSH (SINCE DECEASED) AND OTHERS
(PLAINTIFFS).

P. C.^o
1925

June 19.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Patni Tenure—Sale of patni for arrears of rent—Notice of sale—Omission to specify all patnidars—Invalidity of sale—Patni Regulation (Ben. Reg. VIII of 1819) s. 8.

When a patni tenure is to be sold under the Patni Regulation (Ben. Reg. VIII of 1819), s. 8 requires that the balances due from all the patnidars should be stated in the notice stuck up at the Collector's katchari. A notice giving only the name of one patnidar and the amount in arrear is insufficient, and a sale held under it is invalid.

Decision of the High Court affirmed.

APPEAL (No. 63 of 1723) from a decree of the High Court (August 23, 1921) affirming a decree of the District Judge of Birbhum.

^oPresent: LORD SHAW, LORD CARSON, SIR JOHN EDGE, and MR AMEER ALI.

1925
 BRUPENDRA
 NARAYAN
 SINGH
 v.
 MADAR
 BUKSH.

The appellant, the Raja of Nashipur, was the zamindar of a patni tenure granted to one Joy Sankar Roy.

He presented a petition to the Collector stating that rent, cesses, and interest were in arrear amounting together to Rs. 1,380, As. 10, and prayed for the recovery of that sum by an auction sale under Ben. Reg. VIII. of 1819. The schedule to the petition showed as follows: "Towzi No. 1152/2; name of patni "Mahal Balidanga, Janakinagar, etc.; name of patnidar "Joy Sankar Roy; annual rent Rs. 1,326." Particulars then followed showing that the rent under demand was Rs. 1,211, and further sums for cesses, interest, and costs, bringing the total to Rs. 1,380, As. 10.

The Collector thereupon issued a notice under cl. 2 of s. 8 in the following terms:—

"Notice to patnidars to make payment to the zamindars (cl. 2 of s. 8 of Reg. VIII. of 1819).

Istaharnama of the Collectorate of district Birbhum.

That the zamindar has filed today an application for auction-sale of the patni taluks under provisions of Reg. VIII of 1819, on May 15, 1914, corresponding to 1st Jaishta, 1321 B.S., for recovery from the patnidars of the rent in arrear for the six-monthly instalment of the year 1320 B.S., as stated below and the said day is fixed for the sale. This istahar is therefore hung up in the sudder katchari accompanied by the original application and the istahar filed by the zamindar. The defaulter patnidars should pay their respective rents in arrears as mentioned in the petition, to the zamindar before the date fixed for the sale, otherwise the amount due to the zamindar will be realised by auction-sale of the patni taluks on the said date according to law and no objection will be heard afterwards.

April 22, 1914, corresponding to the 9th Baisakh,
1321 B.S.

1925

(Seal).

BHUPENDRA
NARAYAN
SINGH
v.
MADAR
BUKSH.

Total amount due.

Rs. a. g. k.

Balidanga Janakinagar, etc.,
appertaining.

to

Mahal No. 1152/2 ... 1,358 10 7 2

At the foot of the notice there appeared further the usual particulars as to time, place, and mode of service.

The respondent Madar Buksh (since deceased), who was in possession of a moiety of the patni both as patnidar and as darpatnidar, applied to the Collector to cancel the sale on the ground that he was ready and willing to deposit the whole of the arrears; but the Collector rejected the application, and the order was affirmed by the Commissioner on appeal.

Thereupon Madar Buksh, and others, instituted the present suit under cl. (1) of s. 14 of the Regulation. By the plaint the sale was impugned on various grounds, the main ground being that the notice did not comply with the requirements of s. 8 of the Regulation, and that the sale therefore was invalid.

The District Judge, who tried the suit, agreed with that contention and set aside the sale.

On appeal to the High Court the decision was affirmed.

The learned Judges (Mookerjee and Panton JJ.), after referring to the terms of s. 8 of the Regulation, said:—"This leaves no room for doubt that the notice to be stuck up in the katchari of the Collector, like the petition, must contain specification of the balances that may be due to the zamindar concerned from all the patnidars under him and that a copy or extract of

1925.
 BHUPENDRA
 NARAYAN
 SINGH
 v.
 MADAR
 BUKSH.

such part of the notice as may apply to an individual defaulter shall be sent by the zamindar to be similarly published at the katchari or at the principal town or village upon the land of the defaulter. There can thus be no serious controversy as to the correctness of the view adopted by this Court in this case of *Biroy Krishna v. Lakshmi Narain Jiu* (1) regarding the contents of the notice which is required to be stuck up in the katchari of the Collector under s. 8 and to be taken down at the time of the sale under s. 10, so that the lots may be called up successively in the order in which they may be found in that notice.

“We have now to judge by this test, whether the zamindar who is exclusively answerable for the observance of the forms prescribed in s. 8, cl. (2), has established that the statutory requirements were carried out. The notice which has been produced obviously does not fulfil the requirements of the Regulation; it does not contain a specification of the balances due from all the patnidars; it mentions only the patni, now in suit, though the oral evidence makes it clear that ‘there were about forty *astam* cases in which the Raja of Nashipur was interested.’”

Sir George Lowndes, K. C., and *Dube*, for the appellants, contended that the notice complied with the requirements of the Regulation, admitting that under decisions of the Judicial Committee those requirements had to be strictly observed; they referred to *Bejoy Krishna v. Lakshmi Narain Jiu* (1), and to an unreported decision of the High Court to the contrary effect.

The respondents did not appear.

The judgment of their Lordships was delivered by 1925.

LORD SHAW. Their Lordships have heard the argument of Sir George Lowndes in this case. He has traversed ground which has been for many years familiar in Bengal. The only question in the case is whether ss. 8 and 10 of the Regulation referred to were complied with.

BHUPENDRA
NARAYAN
SINGH
v.
MADAR
BUKSH.

The only point that now remains on the appeal is, there having been no general notice put up as the Act requires, whether the objection under s. 8 of the Regulation is not instantly fatal to the present appellant's case. Their Lordships, having heard the argument, think that nothing has been pleaded which would induce them to vary the opinion which has been delivered by the Courts below.

In their Lordships' opinion the appeal accordingly ought to be dismissed, and they will humbly advise His Majesty accordingly.

Solicitors for the appellant: *W. W. Box & Co.*

A. M. T.