

APPELLATE CIVIL.

Before Lord-Williams and Nasim Ali JJ.

SREEGOBINDA CHAUDHURI

v.

JOGENDRANARAYAN RAY.*

1934

Feb. 26, 27, 28

March 5;

April 20.

Patni Sale—Application for setting aside sale, if must be signed and verified by applicant under s. 14A of Patni Regulation—Retrospective effect of Bengal Act IV of 1933, ss. 2, 3, 4—Jurisdiction—Code of Civil Procedure (Act V of 1908), s. 115—Bengal Patni Taluks Regulation (VIII of 1819), s. 14A.

The new provisions contained in section 14A of the *Patni Regulation* (giving a defaulting *patnidâr* the right of getting the *patni* sale set aside on conditions analogous to those contained in section 174 of the Bengal Tenancy Act and rule 89 of Order XXI of the Civil Procedure Code) apply to *patni* sales held *before* the provisions of section 14A came into operation.

The words used in Bengal Act IV of 1933, the conditions imposed on the defaulting *patnidâr* to pay five *per cent.* of the purchase money as compensation to the purchaser, the object and purpose of that Act—all these indicate that the Act was intended to apply to all sales held under the Regulation, whether the sale was *after* the Act came into operation or *before*, *viz.*, to sales held within 30 days from the date when the new Act came into force.

As section 14A is a remedial provision, it ought to be liberally construed.

Jogodanund Singh v. Amrita Lal Sircar (1) referred to and explained.

The legislature intended to provide an additional remedy for all defaulters. The words used in the amending Act are perfectly general: no distinction is made between a sale held *before* that Act and one held *after*. There is nothing in the new provisions, which justify such a limitation as restricting them to sales held *before* the Act and there is no rule or presumption, which requires that general words should be so limited in their meaning.

The Municipal Council of Sydney v. Margaret Alexandra Troy (2) referred to.

While the provisions of a statute dealing merely with matters of procedure may properly, unless the construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.

Colonial Sugar Refining Company, Limited v. Irving (3) followed.

*Civil Revision, No. 1408 of 1933, against the order of B. K. Basu, District Judge of Pabna, dated Nov. 13, 1933.

(1) (1895) I. L. R. 22 Calc. 767.

(2) (1927) 47 C. L. J. 284.

(3) [1905] A. C. 369.

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Delhi Cloth and General Mills Co., Ltd. v. Income-tax Commissioner, Delhi (1) referred to.

The application for setting aside such a sale is not required by law to be signed and verified by the applicant.

A District Judge is bound, upon the application of the petitioner, to set aside the sale under section 14A and where he did not do so, being of opinion that the new provisions in section 14A did not apply to *patni* sales held *before* they came into operation, he failed to exercise jurisdiction vested in him by law and consequently his order is open to revision by the High Court under section 115 of the Civil Procedure Code.

CIVIL RULE on behalf of the defaulting *patnidâr*.

The facts of the case and the arguments in the Rule appear sufficiently in the judgment.

Saratchandra Basak, Senior Government Pleader, *Radhabinode Pal*, *Apoorbacharan Mukherji* and *Induprakash Chatterji* for the petitioner.

H. D. Bose and *Bansarilal Sarkar* for the opposite party.

Cur. adv. vult.

NASIM ALI J. This is a Rule calling upon the opposite parties to show cause why the order of the District Judge of Pabna refusing the application of the petitioner for setting aside a *patni* sale under section 14A of the *Patni* Regulation should not be set aside. The facts giving rise to the Rule are as follows:—

A *patni* belonging to the petitioner was sold under the *Patni* Regulation at the instance of the opposite party No. 1, the *zemindâr*, on the 15th May, 1933, and was purchased by the opposite parties Nos. 2 and 3 for Rs. 16,000, out of which Rs. 4,000 was deposited on that day.

On the 18th May, 1933, Bengal Act IV of 1933 came into operation. By this Act the defaulting *patnidâr* was given the right of getting the *patni* sale set aside on conditions analogous to those contained in section 174 of the Bengal Tenancy Act and rule 89 of Order XXI of the Code of Civil Procedure. On the 22nd May the purchasers deposited the balance of the

purchase money. On the 13th June, 1933, the petitioners applied to the Collector under the new provisions, which are now contained in section 14A of the *Patni* Regulation for setting aside the *patni* sale. The opposite parties having objected to the petitioner's application, the Collector referred the matter to the District Judge under section 14A, clause 5, of the Regulation. The learned District Judge dismissed the petitioner's application on the grounds that the new provisions contained in section 14A do not apply to sales held *before* they came into operation. He also held that the application of the petitioner under section 14A was not in order, inasmuch as it was not signed and verified by the petitioner. The petitioner thereupon moved this Court and obtained the present Rule on the following grounds :—

(a) that the court below has failed to exercise a jurisdiction vested in it by law in dismissing the application for setting aside the sale and in thus refusing to set aside the sale on the ground that section 14A of the *Patni* Regulations, as amended by Bengal Act IV of 1933, had no application to the sale in question.

(b) that in the absence of any law prescribing any particular form of application the court below erred in holding that the application required the signature of the applicant himself or verification by him and was wrong in saying that the same as made was irregular.

The argument on behalf of the petitioner in support of the first ground consists of two parts :—

The first part is to the effect that the Bengal Act IV of 1933 simply lays down a rule of procedure and there is, therefore, no presumption against its retrospective operation.

The second part is to the effect that, even if the Act touches a right in existence (assuming that the purchaser's right to get complete title to the property on payment of the balance of the purchase money is a right in existence, which has been touched), the language used by the legislature, the conditions about the payment of 5 *per cent.* of purchase money as compensation to the purchaser, the scope and object of the Act indicate that the legislature intended the application of the Act not only to sales held after the

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new Act came into operation but also to sales held within 30 days from the date, when the new Act came into force. These two branches of the contention required separate consideration.

In support of the first branch of the argument reliance was placed upon the decision of this Court in the case of *Jogodanund Singh v. Amrita Lal Sircar* (1), in which the effect of section 174 of the Bengal Tenancy Act and section 310A of the Code of Civil Procedure of 1882 on proceedings in execution pending at the time, when those provisions of law came into operation, was considered by this Court. It is true that there are some general observations in that case, which support the contention of the petitioner. The learned counsel, who has appeared to oppose the Rule, however, contended that the sale in that case was held after the new provision came into operation and that the actual decision in the case must be taken as confined to sales held after the new Act came into force. In my opinion, the general observations made in that case must be read along with the facts of the case, in which the decision was given, and the point which had to be decided. The actual decision in that case, therefore, must be taken as confined to sales held *after* the new Act came into operation. In such a case the question, whether the vested right of the auction-purchaser is interfered with or not by the new provision for setting aside the sale on deposit of the money due, does not arise.

In support of the second branch of the argument reliance was placed upon the following observation of their Lordships of the Judicial Committee in the case of *Delhi Cloth and General Mills Co., Ltd. v. Income-tax Commissioner, Delhi* (2), *viz.*,

The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the *Colonial Sugar Refining Company, Limited v. Irving* (3), where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure

(1) (1895) I. L. R. 22 Calc. 767. (2) (1927) I. L. R. 9 Lah. 284 (290);

L. R. 54 I. A. 421 (425).

(3) [1905] A. C. 369.

may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.

Now, by section 2 of Bengal Act IV of 1933, the words—"unless he makes an application under "section 14A"—were added at the end of section 14 of the *Patni* Regulation, 1819. It is not disputed that section 14 without the words added by the new Act would apply to all sales held either before the Act or after. The addition of the words by the new Act indicates that the legislature intended to provide an additional remedy to all defaulters. By section 3 of the Act, a new section, *viz.*, section 14 A, was added to the *Patni* Regulation. By section 4 of the Act, for the words in section 15 of the *Patni* Regulation, *viz.*, "so soon as the entire amount of the purchase "money shall have been paid by the purchaser at any "sale made under the Regulation," the following was substituted, namely :—

On the expiry of thirty days from the date of any sale made under this regulation, or if there has been a re-sale within thirty days of the original sale, if the entire amount of the purchase money has been paid by the purchaser, and if no application under section 14A to set aside the sale is pending.

It is clear from the sections of the amending Act that the words used are perfectly general. No distinction is made between the sale held before the Act and that held after. If the intention of the legislature was that, it should not apply to sales held before the Act it would be necessary to substitute for the wide and general words "sale held under the regulations" "all "sales under the regulation" some such words as "sales "to be held" or "hereafter held". There is nothing in the new provisions, which would justify such limitation and there is no rule or presumption, which requires that general words should be so limited in their meaning. [See in this connection the judgment of Viscount Haldane in the *Municipal Council of Sydney v. Margaret Alexandra Troy* (1)]. Again this new right conferred by section 14A on the

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defaulting *patnidâr* was created expressly on the condition that the purchaser at the sale must be paid five *per cent.* of the purchase money, which ordinarily would be sufficient compensation.

Turning now to the scope and object of the new Act, it appears that before this amending Act, the *Patni* Regulation contained no provision, which could enable the defaulting *patnidâr* to have the sale set aside by depositing the arrears of rent, even if the property was sold at a very inadequate price. The *patnidâr* had to suffer this loss as a necessary evil. It was for redressing this evil that section 14A was added to the *Patni* Regulation and as it is a remedial provision it ought to be liberally construed [See in this connection the observations in *Jogodanund Singh's* case (1).] The words used in the Act, the conditions imposed on the defaulting *patnidâr* to pay five *per cent.* of the purchase money as compensation to the purchaser, the object and purpose of the Act indicate that the Act was intended to apply to all sales held under the Regulation, whether the sale was before the Act came into operation or after. The learned judge was not justified in rejecting the application on the ground that section 14A was not applicable to the sale in the present case. The argument in support of the second ground is that there is no provision of law, under which the application under section 14A must be signed and verified by the applicant. We are of opinion that the application for setting aside the sale is not required by law to be signed and verified by the applicant. The petition was signed by a pleader, who was duly authorised to file the application. There is, therefore, no substance in this objection of the opposite parties.

It was contended on behalf of the opposite parties that this Court could not interfere with the order of the District Judge under section 115 of the Code of Civil Procedure, even if the construction put upon section 14A by the District Judge be erroneous. It

(1) (1895) I. L. R. 22 Calc. 767, 780.

was contended that such an error would be only an error of law. But, if we are right in the view which we have taken about the operation of section 14A, the District Judge was bound upon the application of the petitioner to set aside the sale under that section and not having done so he failed to exercise jurisdiction vested in him by law and consequently his order is open to revision by this Court.

The result, therefore, is that this Rule is made absolute: the order of the District Judge dated the 13th November, 1933, refusing to set aside the *patni* sale under section 14A of the *Patni* Regulation is set aside. We direct that the sale of the *patni* be set aside, as no other objection was pressed before us. We further direct that out of the money deposited by the petitioner, (a) a sum of money equal to one *per cent.* of the purchase money be paid to Government for the purposes specified in the second clause of section 17; (b) a sum of money equal to the amount, on account of which the sale has been made, together with interest and all charges incurred in bringing the *patni* to sale be paid to the *zemindâr*, opposite party No. 1; and (c) a sum of money equal to five *per cent.* of the purchase money be paid to the purchasers at the *patni* sale. We also direct that the purchase money deposited by the purchasers be refunded to them. We further order that the receiver appointed in this case of the defaulting *patni* be discharged, subject to passing his accounts in the lower court.

In view of the facts and circumstances of the case, we make no order as to costs either in this Court or in the court below.

LORT-WILLIAMS J. I agree.

Rule absolute.

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