

APPELLATE CIVIL.

Before Sukrawardy and Jack JJ.

KALIPADA RAY

v.

MUKUNDALAL RAY.*

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June 12.

Certificate sale—Certificate issued against manager and sale proclamation against proprietor, if valid—Sale, if passes title to the purchaser—Suit for recovery of property sold under improper certificate, if governed by ss. 36 and 37 of the Act—Bengal Public Demands Recovery Act (Beng. III of 1913), ss. 36, 37.

A certificate issued under the Public Demands Recovery Act, 1913, in the name of the mother of minor proprietors, describing her as manager for her sons, who are not shown as minors and for whose representation no steps are taken under section 41 of the Act, is improper and not binding on the minors.

The sale held under such certificate, although the sale proclamation is issued in the name of the proprietor, does not pass any title to the purchaser.

A suit for the recovery of possession of property sold under an improper certificate does not come within the purview of sections 36 and 37.

Raja Koer v. Ganga Singh (1) referred to.

SECOND APPEAL by the plaintiffs.

The appeal arose out of a suit for declaration of title to and recovery of possession of plaintiffs' half share of lands in *touzi* No. 12713 of the Dacca Collectorate with mesne profits. The *touzi* in question originally belonged to two brothers, Arunchandra Ray and Sudhanyachandra Ray in equal shares. In 1920, however, Sudhanya was recorded as the sole proprietor. There were some cesses due from the estate and the Certificate Officer issued a certificate on 16th September, 1919, under the Public Demands Recovery Act, for realisation of the dues. The debtor mentioned in the certificate was Jaylakshmi Debya, mother of the two proprietors, who was described as the manager on behalf of her sons,

*Appeal from Appellate Decree, No. 1877 of 1927, against the decree of Iradat Ulla, Additional District Judge of Dacca, dated April 2, 1927, affirming the decree of Nata Behari Ghose, Munsif of Dacca, dated June 24, 1926.

Arunchandra Ray and Sudhanyachandra Ray, and there was nothing in the certificate to show that the two brothers or either of them was a minor or that the mother was allowed to represent them as guardian. Subsequently, it was brought to the notice of the Certificate Officer that Sudhanya had become the sole proprietor and the sale proclamation was, accordingly, ordered to be issued in his name alone. The property was sold in due course and purchased by one Krishnakishore who conveyed it to one of the defendants in the suit. The plaintiffs, who were the sons and heirs of Sudhanya, brought this suit in 1925, more than a year after the sale, for a declaration that they, as heirs of Sudhanya, were the proprietors of his half share in the *touzi* and that the certificate sale, being bad in law, did not pass any title to the purchaser, and, consequently, the defendant derived no title from his vendor. The Munsif who tried the suit held that inasmuch as the plaintiffs' predecessor, Sudhanya, and his brother allowed their mother to represent them on the registers of the Collectorate, they were liable for the certificate debt and that the sale was valid, and dismissed the plaintiffs' suit with costs; and the decree was upheld by the Additional District Judge on appeal.

The plaintiffs, thereupon, appealed to the High Court.

Mr. Rajendrachandra Guha, for the appellants.

Dr. Nareshchandra Sen Gupta and *Mr. Jahnavicharan Das Gupta*, for the respondents.

The Senior Government Pleader, Mr. Surendranath Guha, and *the Assistant Government Pleader, Syed Nasim Ali*, for the Government.

SUHRAWARDY AND JACK JJ. The suit, out of which this appeal has arisen, was for recovery of possession of the plaintiffs' moiety share of *touzi* No. 12713 of the Dacca Collectorate and also for mesne profits. The plaintiffs are the minor sons of one Sudhanyachandra Ray deceased. It appears from an examination of

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the papers of the Collectorate produced in this case that the *touzi* originally belonged to two brothers, Arunchandra Ray and Sudhanyachandra Ray, who owned 8 annas share each. This was the state of things in 1919. In 1920, Sudhanya was recorded as the sole proprietor. Certificate was issued by the Certificate Officer on the 16th September, 1919, under the Public Demands Recovery Act in respect of cesses due from the estate. In the certificate, the certificate-debtor's name was mentioned as Jaylakshmi Debya, Manager on behalf of (*ka*) Arunchandra Ray and (*kha*) Sudhanyachandra Ray. This certificate was duly filed and the property was ordered to be sold. In 1920, it was brought to the notice of the Certificate Officer that Sudhanya had become the sole proprietor and he ordered the sale proclamation to be issued in his name only. The property was subsequently sold for Rs. 50—and purchased by one Krishnakishore, who conveyed it later to defendant No. 1. This suit was instituted in April, 1925, for declaration that the sale under the Public Demands Recovery Act did not pass any title to the purchaser and for recovery of possession of the property from defendant No. 1. Both the courts below have found against the plaintiffs and dismissed their suit.

The only question raised before us is that the certificate, having been issued in the name of a wrong person, the right, title and interest of the owner did not pass by the sale and the purchaser, accordingly, obtained no title to the property. This question was not raised in this form in the courts below. There is no reference to it in the judgment of the trial court; but in the lower appellate court it was urged on the ground that at the time the certificate was issued Sudhanyachandra Ray was major. The question, however, is of some importance and does not depend upon any extraneous evidence, but has to be decided on the documents filed in this case. We have, therefore, to consider as to whether the certificate was properly made in this case and was duly filed. Under section 4 of Public Demands Recovery Act

(Bengal Act III of 1913), when the Certificate Officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, being Form No. 1 in the appendix to the Act. The third column of the form requires that the name and address of the certificate-debtor should be given. Under section 6, the Certificate Officer has to file the certificate in the prescribed form and shall cause the certificate to be filed in his office. On the filing of the certificate, further execution will issue under section 7 and notice under that section shall be served on the certificate-debtor in the prescribed form. The notice should specify that a certain sum has been found to be due from the certificate-debtor on account of some demand from him under section 4 or 5 of the Act. The service of the certificate upon the certificate-debtor has the effect under section 8 of an attachment by a civil court and any transfer, thereafter, of the property or any of his immovable property is to be deemed bad in law. Section 9 is an important section and has to be considered in this connection. If a certificate is duly made and filed by service of notice effected on the certificate-debtor, he may, within 30 days from the service of notice under section 7 or from the date of execution of any process for enforcing the certificate, present to the Collector or the Certificate Officer a petition denying his liability in whole or in part. This section gives a valuable right to the certificate-debtor and, therefore, it is necessary that the certificate should be made against and served on the proper person from whom the amount of the debt is due. Part III of the Act deals with execution of certificates. Section 20 declares that if a property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the certificate-debtor against whom the certificate has been issued, at the time of the sale. The following sections deal with the steps to be taken by the certificate-debtor for having the sale set aside. Now, under section 20, what the purchaser gets in a sale

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under the Public Demands Recovery Act is the right, title and interest of the certificate-debtor. It is, therefore, necessary, in order to pass any title to the purchaser, to make the certificate against the proper certificate-debtor.

Now, to come to the facts of the present case. As we have said, the certificate was issued against the mother of the minors, in which she was described as the manager on behalf of her minor sons. The objection has been thus answered by the learned District Judge in appeal. "Arun and Sudhanya "never registered their names in the Collectorate and "allowed their mother to represent them in the "Collectorate. Therefore, the certificate made was "legal and binding upon Sudhanya, the father of "the plaintiffs." The accuracy of this statement was challenged before us and we had, therefore, to send for the original D. register of the Collectorate and the original certificate issued. We have now looked into these papers and we find that, in 1919, in the collectorate register, the names of Arun and Sudhanya stood in respect of 16 annas of this *touzi*. There is no mention in the register of the name of the mother Jaylakshmi Debi as representing the minors. There is nothing on the record to show as to how she came to be described as the manager of the minors. The District Judge, therefore, is not right in his observation that these minors allowed their mother to represent them in the Collectorate and that, therefore, the certificate was binding upon them. A certificate under the Public Demands Recovery Act is considered as equivalent to a decree of a civil court. A decree in the form in which the certificate was issued, if made by a civil court, must, undoubtedly, be held not binding on the minors whose interest is sought to be affected by it. In the case of minors, there is a provision in the Public Demands Recovery Act, which has been held to be a complete code in itself except on points to which the Civil Procedure Code has been made applicable. Section 41 of the Act lays down that, when the Certificate Officer is

satisfied that the certificate-debtor is a minor or of unsound mind, he shall, in any proceeding under the Act, permit him to be represented by any suitable person. The certificate does not show that Arun and Sudhanya were minors at the time when it was issued and, if minors, that their mother was allowed to represent them in the proceeding. She has been described as the manager. Under section 4 of the Act, a manager is not a person from whom a public demand is due. If they were treated as minors, there is no order by the Certificate Officer permitting the mother to represent them in the certificate proceeding. In *Raja Koer v. Ganga Singh* (1) it was held that the effect of a sale under the Public Demands Recovery Act, being to pass to the purchaser merely the right, title and interest of the person named as judgment-debtor in the certificate, the purchaser acquires no right if the person appears to have no interest in the property at the date of the sale. In that case, the registered debtor had lost his interest before the sale by the Collector and it was held that the purchaser did not get any title under it.

Reference has been made to sections 36 and 37 of the Act. Section 36 prescribes the period of one year within which a suit has to be brought, if the sale is sought to be set aside on the ground that no notice under section 7 was served and that the plaintiff has sustained substantial injury by reason of the irregularity. The present suit is not of that character and does not come within the purview of the section. Section 37 says that every question arising between the certificate-holder and the certificate-debtor shall be determined, not by suit, but by order of the Certificate Officer, excepting that a suit may be brought in a civil court on the ground of fraud. This section presupposes the existence of a valid certificate, for it is the existence of a valid certificate against the proper person that gives jurisdiction to the Certificate Officer to sell the property of that person. It is well settled that when

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there are no arrears the Certificate Officer has no jurisdiction to issue certificate and to sell any property under it on the ground that the Act comes into operation on the existence of a public demand for the recovery of which action has to be taken. On the same principle, the Certificate Officer is entitled to take action under the Act when there are arrears, but he has no jurisdiction to sell the property of a person unless he has made and filed a proper certificate charging that person with liability.

As regards the merits of the case, it has been found by the learned District Judge that there is no evidence of service of notice under section 7 and that the value fetched at the sale was certainly very low. But the learned Judge does not give effect to these findings on the ground that there is nothing to show that the inadequacy of price was due to non-service of notice under section 7 and that the suit was not brought within one year from the date of sale under section 36 of the Act.

Giving our anxious consideration to the facts of this case, we have come to the conclusion that the certificate as made was not a proper certificate to charge the plaintiffs' predecessor with liability and that the sale under it did not pass any title.

The result is that this appeal succeeds, the decree of the court below is set aside and the plaintiffs' suit decreed with costs in all the courts against defendant No. 1. The case is remanded to the trial court for ascertainment of mesne profits.

A. A.

Appeal allowed.