APPELLATE CIVIL.

Before Nasim Ali and Henderson JJ.

NIRMAL NALINI DASI

v.

HARSHA MUKHI DASI.*

1938

May 17, 18, 24.

Revenue Sale—Separate accounts relating to separate shares of an estate under s. 10 of Bengal Land-Revenue Sales Act, 1859—Revenue payable to Government in arrear—Sale of one of two such shares in arrear—Sale of entire estate subsequently, when would be in accordance with s. 14 of the Act—Sale proceeds of one share, if can be applied towards payment of revenue due from another—Bengal Land-Revenue Sales Act (XI of 1859), ss. 13, 14, 31, 6.

Separate accounts were kept under the provisions of s. 10 of the Bengal Land-Revenue Sales Act, 1859, to enable the recorded sharers of a joint estate to pay their respective shares of the Government revenue separately. The revenue payable in respect of two such shares of the estate fell into arrear and one of the said two shares were put up to sale under s. 13 of the Act, but it was not sold as there was no offer for the share. The other of the said two shares was not put up to sale at all, but the entire estate was subsequently sold under s. 14 of the Act.

Held that, in the circumstances, the sale of the entire estate was in accordance with the provisions of s. 14 of the Act, but had the sale proceeds of the share first put up to sale been sufficient to liquidate the amount of revenue in arrear in respect of the said share, the other share in arrear would have had to be put up to sale under s. 13 before the entire estate could have been sold under s. 14 of the Act.

Held, further, that s. 31 of the Act did not allow of the sale proceeds of one share of a joint estate being applied to the liquidation of arrears of revenue in respect of another share.

Held, further, that the provisions of s. 6 of the Act to the effect that no payment or tender of payment made after the latest day of payment shall bar or interfere with a sale, would apply not only to a sale of an entire estate but also to a sale of a share of an estate.

APPEAL FROM ORIGINAL DECREE preferred by the plaintiffs.

The material facts of the case and arguments in the appeal are sufficiently set out in the judgment of Nasim Ali J.

Amarendra Nath Bose, Hira Lal Chakravarti and *Shyama Das Bhattacharjya* for the appellants.

*Appeal from Original Decree, No. 100 of 1935, against the decree of Basanta Kumar Ray, First Subordinate Judge, 24-*Parganás*, at Alipore, Dec. 7, 193

1938

Nirmal Nalini Dasi v. *Harsha Mukhi Dasi.*

Atul Chandra Gupta, *Satyendra Chandra Sen* and *Santosh Nath Sen*, with them *Hemendra Chandra Sen*, for the respondents.

NASIM ALI J. This is an appeal by the plaintiffs against the judgment and decree of the First Court of the Subordinate Judge of Alipore. It arises out of a suit for annulment of the sale of an entire estate for arrears of revenue held under the Bengal Land-Revenue Sales Act, 1859. There was an alternative prayer in the plaint for reconveyance of plaintiffs' share in the estate sold and for recovery of possession thereof. The plaintiff is the owner of 7 *annas* 6 *gandâs*, 2 *karâs* and 2 *krântis* share of *touzi* No. 1088 of 24-*Parganâs* Collectorate. Defendants Nos. 2 to 20 were the owners of the remaining share. Eight separate accounts in respect of this estate, namely, 1088/1 to 1088/8 were opened under s. 10 of the Bengal Land-Revenue Sales Act, 1859. The plaintiffs were the owners of a half-share in the separate account No. 1088/1 and the whole of the residuary share. He let out his entire interest in the estate in *patni*, and the *patnidârs* under the terms of the *patni* lease had to pay revenue to Government due from their shares in the estate. The other half share in separate account No. 1088/1 belonged to defendant No. 2. The separate account No. 1088/5 belonged to defendant No. 3, the husband of defendant No. 2, and his brothers, defendants Nos. 4 and 5. A sum of Rs. 56-9-4, being a moiety of revenue for the third *kist* of 1931-1932 in respect of the share 1088/1, fell into arrear. There was also a default in payment of the entire revenue for this *kist* due from 1088/5, namely, Rs. 31-4-11.

On March 23, 1932, the Collector put up to sale No. 1088/1 under s. 13 of the Bengal Land-Revenue Sales Act. No bidder was present on the date of the sale. The Collector, thereupon declared under s. 14 that the entire estate would be put up to sale on a future date, unless the other recorded sharer or sharers, or one or more of them, would, within ten

days, purchase the share in arrear by paying to Government the whole arrear due from such share.

On March 29, 1932, a part of the demand for the fourth *kist* from No. 1088/1 was paid. On April 8, 1932, the arrears of the third *kist*, *viz.*, Rs. 56-9-4 due from No. 1088/1 and Rs. 31-4-11 due from No. 1088/5 were deposited in the Collectorate.

On May 5, 1932, the Collector ordered the sale of the entire estate under s. 14 as none of the sharers purchased No. 1088/1 by paying the arrear as declared by him on March 23, 1932, and asked the *touzinabis* to supply the arrears of the entire estate. On May 11, 1932, he received the particulars and fixed June 20, 1932, for the sale of the entire estate.

Notice under s. 7, showing Rs. 187-15-4½ pies as arrears of the entire *touzi*, was issued and served on May 12, 1932. On June 20, 1932, defendant No. 1 purchased the entire estate for Rs. 1,600.

Appeal to the Commissioner was dismissed on December 7, 1932. On December 23, 1932, the sale was declared final and conclusive and an order was made granting sale certificate to the defendant No. 1. All the separate accounts were closed on January 4, 1933.

The present suit was instituted on December 4, 1933. The objections of the plaintiffs to the sale, so far as they are relevant for the purposes of the present appeal, are:—

(1) that there was no sale according to the provisions of s. 13 of the Act which must precede the declaration for sale of the entire *touzi* under s. 14, inasmuch as: (*a*) No. 1088/5, which was also in arrears at the time, was not put up to sale under s. 13; (*b*) No. 1088/1 was put up to sale on March 23, 1932, although the latest date of payment of the arrears of the third *kist* of 1931-32 was March 28, 1932;

(2) that the Collector having accepted payment of the arrears due from the two separate accounts in

1938

Nirmal Nalini Dasi v. *Harsha Mukhi Dasi.*

Nasim Ali J.

default on April 8, 1932, that is, after having ordered the sale of the entire *touzi* under s. 14, was legally incompetent to sell the entire *touzi* on June 20, 1932;

(3) that by reason of these illegalities or irregularities there was paucity of bidders, with the result, that the estate was sold for Rs. 1,600 only, although its market value was Rs. 20,000.

Defendant No. 1 contested each one of these grounds. The learned Subordinate Judge overruled plaintiffs' objections to the sale and dismissed the suit. Hence this appeal by them.

The first contention of Mr. Bose on behalf of the appellants is that the sale of the entire *touzi* is void, inasmuch as the sale was contrary to the provisions of s. 3 of the Bengal Land-Revenue Sales Act. The argument of Mr. Bose is this: although s. 3 of the Act gives power to the Collector to sell under the Act, a clog upon that power comes into operation when separate accounts are opened under ss. 10 and 11 of the Act, and the provisions of s. 13 not having been complied with in the present case, the clog was not removed, and consequently the sale was void.

Section 3 gives jurisdiction to the Collector to sell revenue-paying estates for arrears of revenue. Sections 6 and 7 lay down how the notifications for sale are to be issued and notice is to be given to the *râiyats* of the estates. Sections 10 and 11 deal with the opening of separate accounts, and ss. 13 and 14 lay down the procedure for sale for arrears of revenue when separate account or accounts are opened under ss. 10 and 11. Section 13 is in these terms:—

> Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.
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> In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in s. 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of *jamâ* assigned thereto.

Section 14 is in these terms:—

If in any case of a sale held according to the provisions of the last preceding section the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share.

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in ss. 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in s. 6 of this Act.

The contention of Mr. Bose is that when two or more separate accounts are in arrear, the Collector is bound, under s. 13, to put up in the first place all the defaulting accounts to sale, before he can declare that the entire estate would be put up to sale for arrears of revenue.

If two or more accounts are in arrear and if one of them is put to sale first, and the sale proceeds are sufficient to satisfy the arrears due on that account, s. 14 does not come into operation. The Collector then has got to proceed to sell the other account or accounts in default, and if by the sale of such other account or accounts, the arrears due from these accounts are satisfied, s. 14 does not also come into operation. If, however, the highest offer for the share first exposed to sale does not satisfy the arrears due from that share s. 14 comes into operation at once.

It was contended by Mr. Bose that this interpretation of s. 13 would deprive the proprietors of the protection given to them by the opening of separate accounts under the Act. According to Mr. Bose the protection is this: If the sale proceeds of the share first exposed to sale, fail to satisfy the arrears due from that share, and if other share or shares which are also in default are sold thereafter, the subsequent sale may bring in sufficient money to wipe off the arrears due from all the separate accounts which are in arrear, and the sale of the estate may, thereby, be

1938

Nirmal Nalini Dasi
v.
Harsha Mukhi Dasi.

Nasim Ali J.

averted. This argument assumes that the proceeds of sale, held under s. 13 of the Act, of one separate account can be appropriated towards the arrears due from other separate account or accounts. Section 31 of the Act, however, lays down that the Collector is to apply the purchase money to the liquidation of all arrears due upon the latest date of payment from the estate or share of an estate sold. Mr. Bose's contention is that the purchase money of a share of an estate can be utilised for liquidation of all arrears due from the entire estate, because the word "respectively" is not to be found after the words "the estate or "share of an estate sold" in s. 31.

I am, however unable to agree with Mr. Bose. Evidently, this is the only section in the Act which deals with application of the purchase money obtained by sales held under the Act. It, therefore, provides for the application of the purchase money not only of the entire estate but also of a share or shares of an estate. My reading of s. 31 is that the purchase money of an entire estate is to be applied to liquidate the arrears due upon the entire estates, and the purchase money of a share of an estate is to be appropriated towards the satisfaction of the arrears due from that share. The interpretation which I have put upon s. 13 does not, therefore, deprive the holders of separate accounts of any protection given to them by the Act. This interpretation of s. 13 is also supported by the use of the words "the share exposed to sale" in s. 14. Mr. Bose, however, contended that these words simply indicated the position as each share would be exposed to sale under s. 13, and consequently they would include all shares which would be put up to sale one after another under s. 13. If that was the intention of the legislature, the words "share or shares" used in s. 13 would have been repeated in s. 14. I am, therefore, of opinion, that under s. 13 the Collector is bound to put up to sale the other separate accounts in arrears, only when the share first exposed to sale fetches sufficient money to liquidate the arrears due

on such share. Where, however, the share first exposed to sale does not satisfy the arrears due from that share, it would be useless for the Collector to put up the other shares to sale, as the sale proceeds of such other shares would not wipe off the arrears, or any balance of arrears, due from the share first exposed to sale.

The next contention of Mr. Bose is that the sale of the share No. 1088/1 under s. 13 was premature, as it was held on March 23, 1932, for an arrear of revenue, the latest date for payment of which, according to the appellants, was March 28, 1932. The arrear of revenue for which No. 1088/1 was put up to sale under s. 13 of the Act was on account of the third *kist* of 1931-1932 and according to the respondent the latest day for payment of arrear for such *kist* was January 12, 1932. It was argued by Mr. Bose that January 12, 1932 was the date of payment of this *kist* according to the settlement and *kistibandi* of the *mehâl* referred to in s. 2 of the Act. The only evidence on which Mr. Bose relied in support of his contention is the entry in *touzi* ledger of No. 1088/1 for the year 1931-32. In this ledger January 12, 1932 has been stated to be the date of payment of the third *kist* for that year. In the same ledger March 28, 1933, has been stated to be the date of payment of the fourth *kist*. In Ex. G(2), the notice under s. 7 of the Act, this date has been stated to be the last date for payment of revenue. Again the dates mentioned against the four *kists* in this ledger exactly tally with the dates determined by the Board of Revenue under s. 3 as the latest dates for payment of arrears of revenue of this estate. There cannnot be any doubt, therefore, that the dates for payment of *kists* mentioned in the ledger are the latest dates of payment determined under s. 3. It may be noted in this connection that in the *touzi* ledger of 1932-1933 (Ex. 10) the word "date" has been replaced by the words "latest date of payment". The share 1088/1 was, therefore, not put up to sale under s. 13 before the latest date of payment.

1938

Nirmal Nalini Dasi v. *Harsha Mukhi Dasi.*

Nasim Ali J.

The last contention of Mr. Bose is that the payment made my the defaulting proprietors on April 8, 1932, having been appropriated by the Collector towards the arrears of the estate, and by those payments the arrear of revenue for which No. 1088/1 was put up to sale under s. 13 having been wiped off, the subsequent sale of the entire estate under s. 14 was bad. I am unable to accept this contention. The last paragraph of s. 6 lays down—

> No payment or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

Mr. Bose contended that this latest day of payment was the latest day of payment mentioned in the first paragraph of s. 6 and consequently the last paragraph of s. 6 applies only to an estate in which no separate accounts have been opened. Section 13 lays down that where separate account or accounts are to be sold, notice as prescribed under s. 6 of the Act, is to be given. Mr. Bose's contention is that this has reference only to the form and service of the notice and that it has no connection with the question of the payment or tender of payment mentioned in the last paragraph of s. 6. The jurisdiction to sell a separate account in accordance with the provisions of s. 13 is derived from s. 3 of the Act. Consequently the provisions of the last paragraph of s. 6 are attracted to sales not only of entire estates but also of shares of an estate. The payment by the defaulting proprietors after the latest day of payment of the third *kist* could not, therefore, in any way, interfere with the sale held under s. 14.

In this view of the matter, the question of injury to the plaintiffs does not at all arise.

The appeal is accordingly dismissed. There will be no order for costs in this appeal.

HENDERSON J. I agree. In my opinion, the only point of any substance urged in support of this appeal is the alleged failure of the Collector to comply with the provisions of s. 13 of the Bengal

Land-Revenue Sales Act. It seems plain that the intention of the legislature in providing for the opening of separate accounts was to afford some measure of protection to the proprietors paying their share of the revenue, against defaulters. At any rate, such protection is provided by s. 13 of the Act which requires that the shares in default are to be put up for sale first. In the present case two shares were in default: separate account No. 1088/1 and separate account No. 1088/5. The Collector put up separate account No. 1088/1 for sale, failed to obtain any bid and then proceeded to sell the entire estate under s. 14 of the Act. Mr. Bose's contention is that before proceeding under s. 14, the Collector ought also to have put up the separate account No. 1088/5 for sale. It was argued that if this had been done, a bid sufficient to cover the entire arrears might have been obtained and the sale of the entire estate thereby rendered unnecessary. I may add that if I thought that this contention was sound, I should have no difficulty in reaching the further conclusion that the irregularity caused substantial injury to the plaintiffs.

The question really depends upon the interpretation of s. 31. Unless it was open to the Collector to apply any surplus sale proceeds of the sale of separate account No. 1088/5 to discharge the arrears of separate account No. 1088/1, Mr. Bose's argument must fail. In my opinion, the terms of the section are entirely opposed to any such interpretation. After the arrears due upon the separate account are discharged, any surplus money may be applied to the liquidation of any outstanding liability on that share. But apart from that, it must be kept in deposit on account of the proprietors of that share. If Mr. Bose's contention were correct, I cannot see any necessity for referring specifically to the share of the estate. On what I conceive to be the correct interpretation, whatever price separate account No. 1088/5 might have fetched, the arrears of separate account No. 1088/1 would still remain unsatisfied.

1938

Nirmal Nalini Dasi v. *Harsha Mukhi Dasi.*

Henderson J.

The result of this is that as soon as any particular separate account fails to realise a sum sufficient to discharge the arrears due upon it, then s. 14 automatically comes into play. No doubt, if in the present case, there had been a sufficient bid for separate account No. 1088/1, the Collector then would have been bound to put up separate account No. 1088/5 for sale before proceeding to sell the entire estate, but the converse proposition does not hold good.

As there was no irregularity in connection with the sale, the plaintiffs' suit must fail.

Appeal dismissed.

P. K. D.