

ORIGINAL CIVIL.

Before Lord-Williams J.

CORPORATION OF CALCUTTA

v.

BON BEHARY SHAHA.*

1938

Jan. 28.

*Municipality—Consolidated rate—Apportionment—Statutory charge—
Calcutta Municipal Act (Ben. III of 1923), ss. 133 (i), 205.*

The consolidated rate payable in respect of any land or building can be apportioned under s. 133 (i) of the Calcutta Municipal Act, 1923, not only where such land or building is Hindu joint family property, the apportionment being among the co-sharers of such property, but also where a portion of such land or building is *debattar* in the hands of a *shebâit* and the rest belongs to certain co-owners, the apportionment being as between the *shebâit* on the one hand and the co-owners on the other.

Even after the consolidated rate payable in respect of any land or building has been, under cl. (i) of s. 133 of the Calcutta Municipal Act, 1923, apportioned among the several owners of such land or building, the whole of such land or building remains, under s. 205 of the Act, subject to the charge for payment of every portion of the said rate due from such owners respectively.

ORIGINAL SUIT.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

N. C. Chatterjee and *H. N. Sanyal* for the plaintiff.

S. R. Das Gupta and *A. K. Hazra* for the defendant Bon Behary Shaha.

LORT-WILLIAMS J. In this suit, instituted in April, 1935, the Corporation of Calcutta claims to enforce a statutory charge for Rs. 1,937-11 on account of consolidated rates due in respect of premises No. 122, Maniktala Street, Calcutta.

These rates became due between October 15, 1931, and January 15, 1935, and include both the owner's and the occupier's shares.

The suit is now contested only on behalf of the first defendant, Bon Behary Shaha, who is sued both personally and as *shebâit* of certain *Thâkurs*.

*Original Suit No. 692 of 1935.

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The material facts are that one Banku Behary Shaha died in 1927, leaving a will, whereby he dedicated and bequeathed absolutely to certain Deities the outer portion of the premises in suit, and bequeathed the remaining portion to his four sons in equal shares absolutely, which portions are delineated as B and A respectively on a plan annexed to the will, and he appointed his son, Bon Behary Shaha, sole executor and sole *shebâit*.

Bon Behary Shaha obtained probate of the will in March, 1928, and in April, 1928, his attorney wrote to the Assessor of the Corporation informing him of these facts, enclosing a certified copy of the probate and a plan, and asking him to sub-divide the assessment according to the value of the portions A and B, respectively, and to issue two separate rate bills, one in the name of Bon Behary Shaha as executor, and the other in the names of Bon Behary Shaha, Pulin Behary Shaha, Bipin Behary Shaha and Brojo Krishna Shaha. In a further letter he asked that the assessment of portion A also should be similarly sub-divided and that four separate rate bills for both the owner's and occupier's shares should be issued in respect thereof in the names of the four brothers respectively.

In May, 1928, the Assessor wrote asking for a further plan "showing the portions required to be separately assessed and numbered". After further correspondence and after a further plan had been submitted, the Assessor replied (Ex. E.) in July, 1928 that, as the portions sought to be separated had not been demarcated by metes and bounds, the question of separation could not then be dealt with.

In March, 1929, the attorney wrote (Ex. A) asking that the assessment of the premises No. 122, Maniktala Street should be apportioned into two portions under s. 133, cl. (i) of the Calcutta Municipal Act, 1923, and that two separate bills should be issued.

To this the Corporation assented, and in July, 1929, the Assessor issued notices in Form No. A 105

(Ex. 1), which is the usual form issued under that clause. The Corporation made an order accordingly in October, 1929.

Thereafter, the rates payable by the *shebâit* were paid regularly by Bon Behary Shaha, but those payable by the brothers personally fell into arrear owing to family squabbles.

In October, 1934, the property was partitioned, and in 1936, after the institution of this suit and upon the application of the defendants made on May 22, 1935, a further apportionment was made, and the various portions of the premises, having been separated by metes and bounds and structurally divided, were separately numbered under the provisions of cl. (ii) or (iii) of s. 133.

The contention of the first defendant is that the Corporation is not entitled to enforce its statutory charge under s. 205 of the Calcutta Municipal Act, with regard to the *debattar* portion of the premises in suit.

Evidence has been tendered on behalf of this defendant to show that the two portions were made structurally separate and entirely independent and capable of separate enjoyment prior to 1929. But I am satisfied beyond any doubt that he has failed to prove these facts; on the contrary, the evidence is conclusive against his contention.

The result is that the assessment was properly dealt with as coming under the provisions of cl. (i), unless it can be established that that clause is not applicable to the circumstances disclosed in the present case. Moreover, the defendant specifically asked that the apportionment should be made under the provisions of that clause. But it is contended that the Corporation ought to have known that the provisions of that clause were not applicable and to have so informed the defendant and that in any case the defendant's mistake cannot affect the point in issue.

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Section 133 reads as follows:—

If, during the currency of any period prescribed by sub-s. (1) of s. 131, the ownership of any land or building, or portion thereof, is subdivided into separate shares, the Executive Officer may, on the application of any of the co-owners, divide the assessment of such land, building or portion in the following manner, namely,—

(i) if the ownership be sub-divided into two or more shares without separate allotments, or if as the result of such subdivision there is a separate allotment of such land, building or portion into two or more separate portions, which are not entirely independent and capable of separate enjoyment, the Executive Officer may, if he thinks fit, apportion the assessment among the share-holders according to the value of their respective shares without assigning any separate number ;

(ii) if, as the result of such subdivision, there are separate allotments of such land, building or portion and if such allotments are made entirely independent and capable of separate enjoyment but not in conformity with the provisions of this Act, or of any rules or by-laws made thereunder, relating to buildings, the Executive Officer may, if he thinks fit, assess such portions separately after assigning to them separate numbers under this chapter :
Provided that by such separate assessment the total assessment for the entire premises shall not be increased ;

(iii) if such separated portions of such land, building or portion are, or are made, entirely independent and capable of separate enjoyment in conformity with the provisions of this Act, or of any rules or by-laws made thereunder, relating to buildings, the Executive Officer shall assess each portion separately by assigning a separate number thereto :

Provided that by such separate assessment the total assessment for the entire premises shall not be increased :

Provided also that such apportionment or separation of the numbers and assessment, as the case may be, shall remain in force and the consolidated rate shall be levied accordingly until the expiration of the said period.

I have somewhat reluctantly come to the conclusion that the defendant's contention is unsound. The real dispute between the parties is over a question of costs, because the value of the other portion of the premises is more than ample to meet the plaintiff's claim. But it may have been necessary for the Corporation to add the *shébait* as a party in order to obviate possible objections by the other defendants. It is true that s. 133 refers to "subdivision into separate shares" and to "co-owners", and that cl. (i) refers to ownership divided into shares without separate allotments, and that, generally speaking, the provisions of the section seem to be directed to apply more particularly to property of a joint Hindu family, and it is true that the owners of portions A

and B were not co-sharers or co-owners, in the ordinary sense in which those terms are generally used.

But, in my opinion, the section was intended to have and has a wider application, and covers the circumstances disclosed in the present case. No other section of the Act was or is applicable, and no such division of the assessment was or is possible except under its provisions. The property was assessed as a whole in 1928, presumably prior to the defendant's first application. Under s. 131 such assessment remains in force for six years. During that period any change in the assessment must be made, if at all, under either s. 131 or 133 or 134 or ss. 139 to 142 or ss. 145 and 146. Of these, none but s. 133 can have any application to the circumstances of the present case. Section 135 refers only to buildings. Moreover, the Executive Officer has discretionary power under this section. Sections 145 and 146 apply only where the premises are structurally separate and independent and/or entirely independent and capable of separate enjoyment.

It is clear, in my opinion, and it has not been disputed on behalf of the defendant, that if the division of assessment is made under the provisions of s. 133, cl. (2), the whole of the premises so affected remain subject to the statutory charge. No separate numbers are assigned, and there remains only one assessment of the whole premises, though that assessment is apportioned among the shareholders or co-owners, according to the value of their respective shares.

The result is that there must be judgment for the plaintiff in terms of the prayer of the plaint, with costs.

The premises in suit are now numbered 122A, 122B, 122C, 122D and 122E, Maniktala Street.

Attorney for plaintiff: *T. C. Mitra.*

Attorneys for defendants: *A. C. Dey & Co., M. H. Huq.*

P. K. D.

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