

FULL BENCH.

*Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter,
Mr. Justice Macdonell, Mr. Justice Prinsep, and Mr. Justice Tottenham.*

THE MAHARAJAH OF BURDWAN AND OTHERS (DEFENDANTS) v.
KRISTO KAMINI DAS (PLAINTIFF)*

1883
August 14.

*Sale for arrears of rent—Reg. VIII of 1819, s. 8—Due publication of
Notice of Sale.*

Where there is a cutcheri upon the land of a defaulting patnidar the notice required by s. 8 of Reg. VIII of 1819 must be served there; but where there is no such cutcheri, the notice should be published, in the manner required by the section, at the principal town or village within the taluk.

THIS was a reference by GARTH, C.J., and MACPHERSON, J., to a Full Bench. The referring order was as follows:—

This suit was brought to set aside the sale of a patni taluk under Regulation VIII of 1819; and one of the grounds relied upon by the plaintiff was, that notice of the sale had not been duly published.

The question was, whether there had been a sufficient compliance with the provision of s. 8, which requires that “a copy of the notice shall be sent to be similarly published at the cutcheri or at the principal town or village upon the land of the defaulter.”

The patni taluk in question was called Lot Amarpur; and as the defaulting patnidar had other properties in the neighbourhood of that taluk, he had a small mal cutcheri on the land of this taluk, and another dihi cutcheri at a village called Mahanad, some eight or nine miles distant from the confines of Lot Amarpur.

At this latter cutcheri his principal business was transacted, including that of Lot Amarpur, and it appeared that two durpatnidars, who were the largest tenants on Lot Amarpur, were always in the habit of paying their rents at the dihi cutcheri.

The other cutcheri within the taluk was used for the purpose of receiving the rents of the smaller tenants, which, when received, were paid into the dihi cutcheri at Mahanad.*

* Full Bench Reference No. 82 of 1882, from the original decision of the Subordinate Judge of Hooghly, dated 3rd December 1881.

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The notice in this case was taken to the Mahanad cutcheri, and the serving peon gave it into the hands of one of the amlas at that cutcheri in the presence of the defaulting patnidar and obtained a receipt.

It was contended by the plaintiff, who is a co-sharer to the extent of eight annas in the patni, that this service was bad.

1st.—Because the cutcheri at Amarpur was the one at which the zemindar was bound to serve the notice; and

2ndly.—Because it was delivered to one of the amlas, instead of being stuck up on the wall of the cutcheri.

As regards the first point, it was held in the case of *Mungazee Chaprassee v. Shibo Sunduree* (1), that the cutcheri at which the notice should be served need not be within the patni as long as it was adjacent to it and upon the land of the defaulter—See also to the same effect *Lotfonissa v. Kowar Ram Chunder* (2), and *Gouree Lall Singh v. Joodhisteer Hajrah* (3), where the service of the notice appears to have been effected at the house of the defaulter.

We entertain some doubt, whether, so long as there is a cutcheri or a town or village of the defaulter upon the land of the taluk, the service of the notice can be effectually made otherwise than upon the land of the taluk.

With regard to the second point, the words of the section seem to leave it doubtful whether the service must be published by sticking it up on the walls of the cutcheri, or whether it may be delivered to some person at the cutcheri for that purpose; and the authorities seem equally doubtful.

It would seem from the case of *Gouree Lall Singh v. Joodhisteer Hajrah* (3), that the learned Judges in that case considered that the notice should be published by the zemindar; whereas other cases seem to show that service upon the patnidar or his amla personally at the cutcheri is sufficient—(See *Mungazee Chaprassee v. Shibo Sunduree* (1).

We entertain considerable doubt as to both these points, and as the authorities upon the subject are by no means uniform, and it is desirable that some definite rule upon the subject should be

(1) 21 W. R., 369.

(2) S. D. A., 1849, p. 371.

(3) I. L. R., 1 Calc., 359; 25 W. R., 141.

laid down, we think it right to refer the question to a Full Bench.

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Whether the service of the notice under the above circumstances was sufficient in point of law to satisfy the requirements of the Regulation ?

The Advocate-General (Mr. Paul) with him Baboo *Bosunt Coomar Bose*, Baboo *Umbia Churn Banerjee*, and Baboo *Bama Churn Banerjee* for the appellants. Section 8 of the Regulation refers to publication; the reason for the section is, and it was intended to provide, that notice of the sale should be given to the patnidar and durpatnidar. All the regulation intended was to lay down some rule to provide against fraud; the meaning of the word "cutcheri" in the section is the nearest large cutcheri at which the business of the landlord is ordinarily carried on. The Legislature never intended that the notice should be posted in a cutcheri on the land of the defaulter, for to mean this, the words "at the" must be struck out. In *Hunooman Doss v. Bipro Churn Roy* (1), it was held that it was more in compliance with the section to post the notice at a place where the gomastha carried on his business than at the cutcheri which was not in use. In *Mungazee Chaprassee v. Shibo Sunduree* (2), it was held that so long as the cutcheri, at which notice was served on the defaulter, was an adjacent one, at which all the business of the defaulting patnidar was carried on, that was sufficient. In the present case the tenants never paid their rents till a notice was served on them, and it was in this very cutcheri where such notice was always served on them, and this had been done for the last twenty years. Is the zemindar now entitled to turn round and say, "this is not the cutcheri in which a notice to avoid my patni ought to have been served?" The words in the Regulation do not necessarily mean the patni land of the defaulter; there is nothing to indicate that it was the patni land alone. In *Loolfonissa v. Kowar Ram Chunder* (3), it was held that a posting at any cutcheri of the defaulter was sufficient.

(1) 20 W. R., 132.

(2) 21 W. R., 369.

(3) S. D. A., 1849, p. 371.

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The Court did not call on Mr. *Evans*, who appeared with Baboo *Troylokho Nath Mitter*, Baboo *Guru Das Banerjee*, and Baboo *Gogesh Chunder Dey* for the respondents.

The following was the opinion of the Full Bench :—

We are of opinion that in this case the notice was insufficient.

If there is a *cutcheri* upon the land of the defaulting *patnidar*, (by which expression we mean the land of the *taluk* in question), we think that the notice must be published at that *cutcheri*.

If there is no such *cutcheri*, the notice must be published at the principal town or village within the *taluk*.

We think also that the mere delivery of the notice to the *patnidar*, or one of his *amlas*, is not sufficient; but that it must be published in the manner required by the section. The necessity for accurately conforming to both provisions of the Regulation is laid down authoritatively by the Judicial Committee in the case of the *Maharajah of Burdwan v. Tara Soondery Debia* (1).

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep, and Mr. Justice Tottenham.

1883
August 16.

SRINATH KUR AND OTHERS (PLAINTIFFS) v. PROSUNNO KUMAR GHOSE (DEFENDANT)*

Limitation Act (XV of 1877,) Sch. II, Art. 141—Act IX of 1871, Sch. II, Art. 140—Suit by Reversioner for possession.

Under Article 141 of Schedule II, Act XV of 1877, a reversioner who succeeds to immovable property has twelve years to bring his suit for possession from the time when his estate falls into possession.

THIS was a reference to a Full Bench by CUNNINGHAM and MACLEAN, JJ. The referring judgments were as follows :—

MACLEAN, J.—The plaintiffs are the grandsons (daughter's sons) of Radha Madhub Pal Chowdhry, by his daughter Shantomoni who died in 1284 (1877): the defendant is his grandson by his daughter Anundmoyi, who died in 1270 (1863). The property in

* Full Bench Reference No. 82 of 1882, against the decree of the Additional Subordinate Judge of Dacca, dated 26th November 1881, affirming the decree of the Second Munsiff of Munshigunj, dated 25th April 1881.

(1) L. R., 10 I. A., 19: S. C., ante, p. 619.