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been decided by the Subordinate Judge. If he holds that the defendants do not represent Rashmoni, neither the decrees nor the admission can be admissible against them. On the other hand if he holds that the defendants do represent Rashmoni then, in our opinion, so much of the decrees as purports to give the statement of Rashmoni is admissible in the present case. The amount of weight to be given to such statement is a matter to be decided by the Court below.

The costs of this appeal to follow the result of the case.

Case remanded.

Before Mr. Justice Mitter, Offg. Chief Justice and Mr. Justice Maclean.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) v. RASBEHARY MOOKERJEE AND OTHERS (PLAINTIFFS).*

1882 *September* 12.

Sale for arrears of Revenue—Revenue-paying Estate—Sale of share of an estate—Recorded Proprietors—Omission of names of Proprietors—Irregularity—Act XI of 1859, *ss.* 6, 33.

When a notification of sale of a share in a revenue-paying estate is issued under s. 6, Act XI of 1859, the circumstance that such notification does not contain the names of all the recorded proprietors of the share, but only the name of one of them, does not amount to an irregularity within the meaning of s. 33, Act XI of 1859.

THIS was a suit instituted by the plaintiffs to set aside a sale of a share of an estate of which they were part owners, which was held by the Collector of Burdwan for arrears of Government revenue due on the share. The Secretary of State for India in Council, the purchaser at the auction sale and the remaining co-sharers of the plaintiff were made defendants. The material facts of the case are as follows:—

(1) That Aima Mungulpore, which bore a sudder jumma of Rs. 58-14-5, was recorded in the towzi as estate No. 1312.
(2) That defendants Nos. 8 and 9 had a separate account opened for their share, the revenue payable by them being Rs. 20-12.

* Appeal from Appellate Decree No. 791 of 1881 against the decree of Baboo Brojendro Coomar Seal, Additional Judge of East Burdwan, dated the 19th February 1881, reversing the decree of Baboo Bhoopoty Roy, Subordinate Judge of that district, dated the 20th November 1880.

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(3) That the remaining portion of the estate belonged to the plaintiffs and the defendants Nos. 3 to 7, whose names appear in the towzi as the recorded proprietors, and the sudder jumma payable by them was Rs. 38-2-5. It is this share of the estate which has been sold. (4) That the arrears for which the property was sold were only Rs. 5-3. (5) That the plaintiffs and defendant No. 7 had paid the revenue payable by them. The said amount of Rs. 5-3 was payable by defendants Nos. 3 to 6. (6) That the property sold was worth Rs. 4,000, but it fetched Rs. 1,350 only at the sale. It was alleged by the plaintiffs that the sale was made contrary to the provisions of the sale law, and that, therefore, they had sustained substantial injury. Of the irregularities complained of, the only one material for the purposes of this report, is the following, namely: "That the notification under s. 6, Act XI of 1859 was defective, inasmuch as it did not give the names of the plaintiffs and of defendants Nos. 3 to 7, who were the recorded proprietors, but the name of one Talebulla, a dead man, was shown as the person from whom the arrear was due."

In his judgment in the case the Subordinate Judge said:—

"It will be observed that s. 6 of the Act does not require that the name of the defaulter should be inserted in the notification of sale. The notification shall specify the estate or share of an estate to be sold. There is valid reason why the law does not require the name of the defaulter to be specified in the notice. The sale conveys the estate or share of estate in arrear, and not the right, title and interest of the defaulter. The pleader for the plaintiffs referred to the form of the sale certificate, which states the name of the late proprietor, and argues that it was the intention of the Legislature to insert the name of the defaulter in the notification of sale. I do not subscribe to this argument. Section 6 of the Act, which lays down the procedure before sale, does not require that the name of the defaulter should be specified. Upon these grounds I do not find it was an omission causing an illegality to vitiate the sale."

The decree-holder appealed to the District Court. The judgment of the learned Judge on this portion of the case is as follows:—

"Then the question is whether, when the debt is due from A, if it is notified that it is due from B, is that or is that not an irregularity as contemplated by s. 33 of Act XI of 1859. Now s. 6 rules that the notification shall specify the estate. The Commissioner and the Subordinate Judge hold that when the number, the name of the property,

and the sudder jumma were correctly given, it does not matter whether the name of the recorded proprietor was correctly given or not. The question is, is that the law? There is no definition of 'estate' in Act XI of 1859, but there is one in Beng. Act VII of 1868, and s. 30 of that Act says: 'This Act shall be read with and taken as part of Act XI,' so that the word 'estate' in s. 6 of Act XI has been used in the sense in which it has been defined in s. 1 of Beng. Act VII of 1868. That definition runs as follows: The word 'estate' means any land, or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the register, known as the general register, of all revenue paying-estates, or in respect of which a separate account may, in pursuance of s. 10 or s. 11 of the said Act XI of 1859, have been opened.' That shows that there are the following elements in an estate: (1) land or share in land; (2) annual sum payable to Government; (3) name of the proprietor as entered in the general register of revenue-paying estates. It is not the land which is the estate. It is not the annual jumna. It is not the name of the recorded proprietor. But it is the combination of all three, which go to form the conception of an estate as used in s. 6 of Act XI of 1859. Even when Beng. Act VII of 1868 was not in force, there is ample evidence in Act XI itself to show that that was the meaning of an estate. There can be no doubt that the words 'estate' and 'share of an estate' have been used in s. 6 in the same sense in which they have been used in s. 28 of the said Act; that section refers to schedule A, which gives the form of the certificate. The said schedule, therefore, must be taken to be part of s. 28. That form shows what an estate is. It says 'the mehal specified below,' and what is the specification that it gives: '*Touzi number, name of mehal, name of the former proprietor, sudder jumma.*' All these four elements constitute the estate. That it should be so will also be clear from a consideration of the very nature of the thing. Let us suppose that A and B hold an estate, each having an 8-anna share. B opens a separate account. It has to be recollected that under the provisions of s. 13, Act XI of 1859, notwithstanding the opening of separate accounts, the separate shares continue to constitute one integral estate. It is, therefore, that the Board of Revenue points out by their rule, which appears at page 158 of the Collection of Board's Rules of 1878, Vol. I., 'that the separation of shares of an estate held in common or consisting of specific portions of land by the opening of a separate account under ss. 10 and 11, Act XI of 1859, causes no alteration of the revenue roll.' Thus when B has caused a separate account to be opened with respect to his 8-anna share both A and B will have the same number, the same name of the property and the same sudder jumma in the 8-anna share of each. Those elements could not indicate whose estate it is. The name A or B is the only distinctive

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feature. I hold, therefore, that the notification under s. 6 of Act XI would be defective without the name of the recorded proprietor, but in the case now under consideration, if the statement of the plaintiffs is true, the notification was not only defective, but misleading. Here the name of the recorded proprietor was not admitted, but the name of a wrong man, who had no existence, was shown. Now the arrear due was Rs. 5-3 only; the property is worth at least Rs. 1,350. There is no suggestion that the property has been purchased for some one of the several co-sharers. The presumption under the circumstances is, that Peari Mohun Mookerjee, or any one of the other sharers who had paid their share of the revenue, had not come to know that the sale notification had been issued. When it has not been alleged that the plaintiffs were aware of the issue of the sale notification, it is the more necessary to examine very critically whether everything required by law was duly done. Section 8 of Beng. Act VII of 1868 precludes us from inquiring whether the most effective mode of proclamation, *viz.*, that directed to be made at the Cutcherry of the defaulter was made or not, but it is quite open to us to inquire whether the notification under s. 6 of Act XI was properly made or not. It is contended by the pleader for the purchaser that there is nothing on the record, to show what the notification was. Now the certificate granted is presumptive evidence of the contents of the notification so far as the description of the estate is concerned, nevertheless as the case must go before the first Court, and as the first Court decided the case without entering into the evidence, the point may be definitely settled. I remand the case under s. 566 of the Civil Procedure Code, for a finding on each of the following issues. *First*: 'did the notification under s. 6, Act XI of 1859, issued with respect to the property in dispute, correctly describe the name of the proprietor as it then stood in the register known as the general register of all revenue-paying estates.' If that issue is found in favour of the plaintiffs then, *secondly*, have the plaintiffs sustained substantial injury in consequence of such irregularity."

On the first of the above issues, it was found that at the time the notification of sale was issued, the recorded proprietors were Talebulla and eight others, and that the name of Talebulla alone appeared in the notification of sale; but the Judge of the Court of first instance held that it was not proved "that owing to the omission in inserting the names of all the proprietors, the estate was sold for an inadequate price." On appeal the District Judge held that there being the defective notification and the substantial injury he was justified in assuming that the injury was caused by the defective notification, there being no evidence to show it could be caused by anything else—*Gopee Nauth Dobey* v. *Roy*

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Luchmeeput Singh Bahadur (1). The learned Judge then reversed the judgment of the Court below, and set aside the sale. The Secretary of State and the purchaser appealed to the High Court on the ground "that the Appellate Court clearly misunderstood the meaning of s. 6, Act XI of 1859, by holding that the sale notification was bad for not containing the names of all the recorded proprietors in it."

Baboo *Unnoda Persad Banerjee* and Baboo *Mohesh Chunder Chowdhry* for the appellant.

Baboo *Rash Behary Ghose*, Baboo *Bipro Dass Mookerjee* and Baboo *Pran Nauth Pundit* for the respondents.

The judgment of the Court (MITTER, J. Offg. C.J., and MACLEAN J.), was delivered by

MITTER, J.—This is a suit to set aside a revenue sale of the share of an estate called Aima Mungulpore bearing Towzi No. 1312.

The ground upon which the lower Appellate Court has set aside the sale is that the sale notification under s. 6, Act XI of 1859, did not contain the names of all the recorded proprietors of this share, but only of one of them, Talebulla. Section 6 requires that a notification should be issued in the language of the district specifying the estates or shares of estates which are to be sold. The District Judge is of opinion that unless the names of all the recorded proprietors are given, an estate, or share of an estate, cannot be considered to be specified within the meaning of s. 6. We are unable to agree in this view of the law. The section distinctly says that it is the estate or the share of an estate which is to be specified. If it were the intention of the Legislature that the names of the recorded proprietors should be also inserted, the section would have contained a provision to that effect in distinct words.

In this case it is not shown that the share of the estate which was sold was not properly specified. All that has been established in the lower Court is that instead of the names of all the recorded proprietors being mentioned in the sale notification, the name of only one of them, namely Talebulla, was inserted. As the

(1) I. L. R., 3 Calc., 542.

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section in question does not require the names of the recorded proprietors to be mentioned in the notification, the mistake of not inserting the names of all the recorded proprietors is not an irregularity within the meaning of that section.

We therefore reverse the decree of the lower Appellate Court and dismiss the plaintiff's suit with costs.

In Appeal No. 865, the purchaser is the appellant. We are of opinion that the purchaser might have joined the Government in prefering an appeal. We therefore direct that the plaintiffs will pay to the defendants, namely, the Secretary of State for India and the purchaser Purnu Chunder Singh, only one set of costs throughout the litigation.

Appeal allowed.

FULL BENCH REFERENCE.

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

1883 *February* 28.

TULSI PANDAY (DEFENDANT) *v.* BUCHU LALL (PLAINTIFF).*

Bengal Act VIII of 1869, *s.* 102—*Practice—Appeal—Second Appeal.*

In a suit for arrears of rent and ejectment the right of appeal is taken away by s. 102, Beng. Act VIII of 1869, only when it is shown that the amount sued for and the value of the property claimed is less than Rs. 100. Unless that fact appears, either from the finding of the District Judge or elsewhere upon the proceedings, the High Court has no right to draw any inference to that effect.

THIS was a suit for arrears of rent amounting to Rs. 16-1-3, and for ejectment. The defence was, amongst other things, that the defendant held more lands than the plaintiff admitted in his plaint; that the annual jumma of the defendant's land was Rs. 5-1 of which the plaintiff's share was Rs. 2-8-6; that the defendant had paid to the plaintiff the rent of 1284 F. S.; and that he had deposited in Court the rent for the years 1285 F. S. and 1286 F. S. The Court of first instance gave the plaintiff a decree. On appeal the defendant urged that the plaintiff, being a cosharer, was not entitled to eject the defendant. The District Judge overruled the objections and dismissed the appeal. The defendant ap-

*Full Bench Reference made by Mr. Justice Mitter, Offg. Chief Justice, and Mr. Justice Norris, dated the 4th August 1882, in appeal from Appellate Decree No 586 of 1882.