

Before Mr. Justice Prinsep and Mr. Justice Trevelyan.

1886
February 8

OHUNDER PERSHAD ROY AND OTHERS (PLAINTIFFS) *v.* SHUVADRA
KUMARI SHAHEBA AND OTHERS (DEFENDANTS). *

Sale per arrears of rent—Putni taluk—Transfer of Putni—Registered transferee—Unregistered proprietor, Right to sue—Regulation VIII of 1819, s. 14.

Where a putni taluk has been sold under the provisions of Regulation VIII of 1819, an unregistered shareholder therein is entitled to sue for a reversal of the sale under the provisions of s. 14 of the same Regulation.

A putni taluk of a certain mehal was granted by the zemindar to one Moti Singh on the 5th of August 1860. On the 16th of August 1860 Moti Singh sold and conveyed the taluk to Boido Nath Roy and Jadub Lal Thakur jointly. On the 1st of Joisto 1290 (4th May 1883) the putni taluk was sold by the Collector of Moorshedabad under the provisions of ss. 8, 9, 10 of Regulation VIII of 1819 and purchased by one Bhubunnessur Singh.

On the 17th of July 1883, the plaintiffs, who are the heirs of Boido Nath Roy, and who, as such heirs, claimed to be entitled to an 8 annas share of the taluk, brought the present suit against the zemindar and Bhubunnessur Singh to have the sale set aside, on the ground that the notice, prescribed by s. 8, cl. 2, Regulation VIII of 1819, had not been served, and that the arrears of rent due had been tendered to the zemindar before the sale. The heirs of Jadub Lal Thakur, the owners of the other 8 annas share in the taluk, were also made defendants.

The transfer by Moti Singh in 1860, had never been registered and it was his name, therefore, which appeared as that of the registered putnidar. One of the objections taken by the defendants was that the plaintiffs, not being registered proprietors of the taluk, had no right of suit under Regulation VIII of 1819. This contention was overruled by the Court of first instance, and the plaintiffs obtained a decree for the relief claimed. On appeal this decision was reversed on the ground that the transfer from Moti Singh, not having been registered, the plaintiff had

* Appeal from Appellate Decree No. 656 of 1885, against the decree of T. M. Kirkwood, Esq., Judge of Moorshedabad, dated the 15th of January 1885, reversing the decree of Baboo Ram Gopal Chaki, Subordinate Judge of that District, dated the 27th of June 1884.

no right to sue. It was proved, however, that the fact of such transfer having been made had been known by the zemindar for many years. The plaintiffs appealed to the High Court.

Baboo *Nil Madhub Bose* for the appellants.

Baboo *Guru Das Banerji*, and Baboo *Shoshi Bhushan Dutt*, for the respondents.

The judgment of the Court (PRINSEP and TREVELYAN, JJ.) was delivered by

PRINSEP, J.—The plaintiff is the unregistered proprietor of a putni tenure, and sues to set aside a sale held under Regulation VIII of 1819, in consequence of certain irregularities therein.

The lower Courts have both found in favor of the plaintiff as regards the validity of the sale; but the lower Appellate Court has dismissed the suit, holding that the plaintiff as an unregistered putnidar is debarred from bringing this suit. As authorities for this the District Judge refers to *Gossan Mangal Das v. Roy Dhunput Singh Bahadoor* (1), being a decision of a Division Bench of this Court, and also to a case decided by the Privy Council—*Lulchi Naran Mitter v. Khettro Pal Singh Roy* (2). The last case is not in point. As regards the first case the report does not state the facts so as to enable us to judge whether it is any authority or not; the judgment does not even state whether the sale was held under the putni law.

Under such circumstances we do not feel bound by the authority of that case.

Section 14, clause 1 of the Putni Regulation says: "It shall be competent to any party desirous of contesting the right of a zemindar to make the sale, whether on the ground of there having been no balance due or on any other ground, to sue the zemindar for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages." It seems to us that the words, "any person desirous of contesting the right of the zemindar," are wide enough to include a person in the position of the plaintiff who is interested in the maintenance of the tenure which he holds. The provisions of the

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(1) 25 W. R., 152.

(2) 13 B. L. R., 146.

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Putni Regulation and the decisions of the Courts would seem to go no further. It seems to us that, although the zemindar is not bound to recognise any one except the registered tenant in any proceedings taken with reference to any matter connected with the tenure, it is nevertheless open to any person interested in that tenure, or, as the law puts it, "desirous of contesting the right of the zemindar" to sue him on account of any illegal act by which his rights may have been affected in respect to that tenure. If it were not so, a neglect to register might entail an absolute forfeiture.

The lower Courts having found on the merits in favor of the plaintiff, we set aside the order passed by the District Judge, declaring that the plaintiff is not entitled to bring the suit, and order that the suit be decreed on the finding recorded on the merits.

The plaintiff will receive his costs in all the Courts.

P. O'K.

Appeal allowed.

Before Mr. Justice Tottenham and Mr. Justice O'Kinealy.

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UDEYADETA DEB (JUDGMENT-DEBTOR) v. C. B. GREGSON (DECREE-HOLDER).*

Appeal—Execution of decree—Security Bond—Appeal from Order—Civil Procedure Code, Act XIV of 1880, s. 545, 588.

The Court which passed a certain decree ordered execution thereof to be stayed pending appeal, on the debtor's furnishing security to the amount of Rs. 70,000, under the provisions of s. 545 of the Code of Civil Procedure. The debtor objected to the amount of security required, and appealed to the High Court on that ground. The decree-holder contended that no appeal lay.

Held, that the order was appealable.

Held, also, on the facts, that the security required was excessive.

THIS was an appeal from an order made in execution of a decree. The judgment-debtor had applied for stay of execution of the decree, which was one granting specific performance of a contract to give a usufructuary mortgage of a property, the value of which was estimated at 4½ lacs of rupees. The application

* Appeal from Original Order No. 397 of 1885, against the order of A. L. Clay, Esq., Deputy Commissioner of Munbhoom, dated the 19th of November 1885.